

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA  
CENTRAL DIVISION

---

SAM ANTOINE, a minor, by and through \_\_\_\_\_ )  
LAVINA MILK, his legal guardian; )  
RICHARD CHASING HAWK, a minor, by and )  
through ROSE MENDOZA, his legal guardian; )  
CHARLES DUBRAY; )  
MINDI FELIX, a minor, by and through )  
DONNA EISENBRAUN, her mother; )  
JESSE MILK, a minor, by and through )  
JOANNE BATES, his mother; )  
DEIDRICK OLD LODGE, a minor, by and )  
through YVETTE IRON HEART, his mother; )  
JENNIFER PENEUX; )  
JOHNATHON SCRUGGS, a minor, by and )  
through CHRISTINE RINKER, his mother; )  
JOSEPHINE TRAVERSIE, a minor, by and through )  
REGINA TRAVERSIE-LAPOINTE, her mother; )  
TAYLOR WHITE BUFFALO, a minor, by and )  
through DALE AND BEATRICE )  
WHITE BUFFALO, his parents; )  
and all others similarly situated, )

Plaintiffs, )

-versus- )

WINNER SCHOOL DISTRICT 59-2; )  
MARY FISHER, Individually and as )  
Superintendent of the Winner School District; )  
BRIAN NAASZ, Individually and as Principal )  
of Winner Middle School; and MIKE HANSON, )  
Individually and as Principal of )  
Winner High School; )

Defendants. )

**COMPLAINT**

06 Civ.

## **I. PRELIMINARY STATEMENT**

1. This class action lawsuit challenges disciplinary policies and practices intended to push Native American children out of the Winner School District in Tripp County, South Dakota, into the juvenile and criminal justice systems. It seeks to compel the Winner School District to eradicate the racially hostile educational environment it has permitted to flourish in its Middle and High Schools for at least the last ten years. In addition, it asks that the District be enjoined from engaging in racially discriminatory disciplinary practices and from coercing confessions from Native American students for the sole purpose of securing criminal convictions and findings of delinquency.

2. The Winner School District has a long history of intentional racial animosity towards Native American students and their families. As a result of Defendants= racially discriminatory disciplinary practices, the procedures they employ when referring Native American students to law enforcement, and other administrative practices and policies, Defendants have created a racially hostile educational environment in the Middle and High Schools that adversely affects every Native American child who attends those schools.

3. Although the District borders the Rosebud Sioux Indian Reservation, home to over 20,000 Sicangu Sioux, and its student body is roughly 20% Native American, Defendants employ almost no Native Americans as administrators, teachers or staff. They offer one class every two years, and only to High School students, on Native American culture and heritage. They do not encourage Native Americans to participate

in extracurricular and after school activities. They permit racially derogatory name-calling, teasing, bullying and pushing to go unpunished. District administrators and staff have been known to treat Native American parents with open disrespect.

4. Defendants punish Native American students for minor disciplinary infractions more harshly and more frequently than similarly situated Caucasian students. Based on statistics provided by the District, Native American students who attend the Middle and High Schools are more than three times more likely to be suspended and ten times more likely to be referred to the Winner City Police Department than their Caucasian counterparts. During any given school year, more than one third of all Native American Middle and High School students will be suspended. Roughly one out of seven Native American students will be arrested and prosecuted for violating a school disciplinary rule every school year.

5. When referring students to law enforcement, Defendants act as law enforcement agents and coerce students into confessing to criminal wrongdoing in a manner that offends fundamental notions of liberty. Pursuant to a long-standing agreement with the Winner City Police Department and Tripp County State=s Attorney=s Office, Defendants decide which children to arrest and what charges to file against them. They also generate all information necessary to convict the child. Neither the Police Department nor the State=s Attorney=s Office conducts independent investigations into the incidents that give rise to the referrals.

6. To obtain a written confession, Defendants isolate the children, many of whom are 10, 11 and 12 years of age, in a conference room or a Principal=s office and refuse to permit them to leave, even to use the restroom. While in the conference room

or office, Defendants tell the children that they have to draft an affidavit and sign it in front of the School Principal who will then notarize it. Children are not permitted to speak with their parents while drafting the affidavit. The School Principals use their positions of authority and the children=s relative immaturity, lack of sophistication, fear of additional punishment, and, in some cases, their learning disabilities and emotional fragility to pressure them to comply with the School Principals= demands.

7. The Principals then hand these confessions over to the Winner City Police Department, which gives them to the Tripp County State=s Attorneys. The two State=s Attorneys, both of whom also serve as Defendants= legal counsel, physically attach these confessions to the delinquency petitions filed against the children.

8. The affidavits have no educational purpose. They are obtained to secure a conviction.

9. The District=s racially hostile educational environment, racially discriminatory disciplinary policies, and police-referral customs and practices serve to push Native American youth out of Winner schools. The students become demoralized and disengaged. They act out in school, they do poorly academically, they do not attend class, and ultimately they drop out. Some transfer to faraway districts and boarding schools. Others are incarcerated in juvenile detention or correctional facilities. Although Native Americans represent nearly a fifth of the District=s student body, only two Native American students graduated from the Winner High School in the last year for which statistics are available.

10. Plaintiffs, on their own behalf and on behalf of all similarly situated Native American students in Winner Middle School and Winner High School, seek a

declaration that the Defendants= policies and practices violate 42 U.S.C. ' 1983, the Fifth and Fourteenth Amendments to the United States Constitution and Title VI of the Civil Rights Act, and an injunction enjoining any further violations.

## **II. JURISDICTION AND VENUE**

11. This court has subject matter jurisdiction over the Plaintiffs= claims pursuant 28 U.S.C. ' ' 1331 and 1343(a)(4) because this action seeks a remedy under 42 U.S.C. ' 1983 and Title VI of the Civil Rights Act, 42 U.S.C. ' 2000d. Pursuant to 28 U.S.C. ' ' 2201 and 2202, this Court has jurisdiction to declare the rights of the parties and to grant all further relief deemed necessary and proper. Rule 65 of the Federal Rules of Civil Procedure authorizes injunctive relief. The Court has authority to award costs and attorneys= fees under 42 U.S.C. ' 1988.

12. Venue is proper in this action pursuant to 28 U.S.C. ' 1391.

## **III. PARTIES**

### **A. Plaintiffs**

13. Plaintiff Sam Antoine is 15 years old and enrolled in the 9<sup>th</sup> grade at the Winner High School. He is a member of the Rosebud Sioux Tribe. He appears in this action by and through his grandmother, Lavina Milk, who is also his legal guardian.

14. Plaintiff Richard Chasing Hawk is 16 years old and enrolled in the 9<sup>th</sup> grade at the Winner High School. He is a member of the Rosebud Sioux Tribe. He appears in this action by and through his legal guardian, Rose Mendoza.

15. Plaintiff Charles DuBray is 19 years old and enrolled in the 12th grade in Winner High School. He is a member of the Rosebud Sioux Tribe.

16. Plaintiff Mindi Felix is 13 years old and enrolled in the 7<sup>th</sup> grade at the Winner Middle School. She is a member of the Rosebud Sioux Tribe. She appears in this action by and through her mother, Donna Eisenbraun.

17. Plaintiff Jesse Milk is 13 years old and enrolled in the 8<sup>th</sup> grade in Winner Middle School. He is a member of the Rosebud Sioux Tribe. He appears in this action by and through his mother, Joanne Bates.

18. Plaintiff Deidrick Old Lodge is 14 years old and enrolled in the 9<sup>th</sup> grade in Todd County, South Dakota. He is a member of the Rosebud Sioux Tribe. He appears in this action by and through his mother, Yvette Iron Heart. Deidrick left the Winner School District in March 2006 because of the policies and practices challenged herein. He would return to the Winner School District if those policies and practices were to change.

19. Plaintiff Jennifer Peneaux is 19 years old and enrolled in the 12<sup>th</sup> grade in Winner High School. She is a member of the Rosebud Sioux Tribe.

20. Plaintiff Johnathon Scruggs is 15 years old and is in the 7<sup>th</sup> grade at a public school in Anderson, Indiana. He appears in this action by and through his mother, Christine Rinker, who is a member of the Rosebud Sioux Tribe. John was enrolled in the Winner School District until October 2005, when he moved to Indiana to avoid Defendants= racially discriminatory disciplinary practices. He would return to the Winner School District if it changed its disciplinary policies and practices.

21. Plaintiff Josephine AJosie@ Traversie is 15 years old and enrolled in the 9<sup>th</sup> grade in Winner High School. She is a member of the Rosebud Sioux Tribe and appears in this action by and through her mother, Regina Traversie-La Pointe.

22. Plaintiff Taylor White Buffalo is 13 years old and enrolled in the 7<sup>th</sup> grade at the Winner Middle School. He is a member of the Rosebud Sioux Tribe. He appears in this action by and through his parents, Dale and Beatrice White Buffalo.

**B. Defendants**

23. Defendant Winner School District 59-2 is a properly incorporated school district in Tripp County, South Dakota.

24. The District is governed by the Winner Board of Education, *S.D.C.L. ' 13-8-1*, which has a general charge, direction and management of the schools@ within the District. *S.D.C.L. ' 18-8-39*. Pursuant to Winner School District Official School Board Policy File No: 2.08, the Board has a complete final authority on all matters pertaining to the district=s education system, except as prescribed by law.@ Pursuant to Winner School District Official School Board Policy File No: 2.16, the Board is solely responsible for adopting new policies or changing existing policies.

25. Defendant Mary Fisher is the Superintendent of Winner School District. Together with the Principals of the schools in her district, she has a disciplinary authority over all students while the students are in the school or participating in or attending school sponsored activities whether on or off school premises.@ *S.D.C.L. ' 13-32-1*. The Winner Board of Education has delegated to her a total responsibility for the school system=s administration,@ *Winner School District Official School Board Policy File No: 2.08*, and responsibility for a establish[ing] procedures for dealing with disciplinary problems@ within the parameters promulgated by the Board of Education. *Winner School District Official School Board Policy, File No: 7-11*. She is sued in her official and her individual capacities.

26. Defendant Brian Naasz is Principal of the Winner Middle School. Together with Defendant Fisher and Defendant Hanson, he has disciplinary authority over all students while the students are in the school or participating in or attending school sponsored activities whether on or off school premises. @ S.D.C.L. ' 13-32-1. In addition, the Winner Board of Education has delegated to him the authority to enforce policy and regulations governing student behavior, @ *Winner School District School Board Policy File No: 7.11*, and the responsibility to enforce discipline as necessary, according full due process to students. @ *Winner School District School Board Policy File No: 6.02*. He is sued in his official and individual capacities.

27. Defendant Mike Hanson is Principal of the Winner High School. Together with Defendant Fisher and Defendant Naasz, he has disciplinary authority over all students while the students are in the school or participating in or attending school sponsored activities whether on or off school premises. @ S.D.C.L. ' 13-32-1. In addition, the Winner Board of Education has delegated to him the authority to enforce policy and regulations governing student behavior, @ *Winner School District School Board Policy File No: 7.11*, and the responsibility to enforce discipline as necessary, according full due process to students, @ *Winner School District School Board Policy File No: 6.02*. He is sued in his official and individual capacities.

28. For all purposes relevant to this Complaint, Defendants have acted and continue to act under color of state law.

#### **IV. CLASS ACTION ALLEGATIONS**

29. Pursuant to Federal Rule of Civil Procedure 23(a) and (b)(2), Plaintiffs bring this action on behalf of themselves and all other similarly situated individuals.

Plaintiffs ask the Court to certify as a class all Native American students who are currently or will at some time in the future attend Winner Middle School or Winner High School.

30. This action satisfies all four requirements of Rule 23(a):

a. *Numerosity*: Joinder of all class members is impracticable because of the size of the class and the fact that the class includes some members who cannot be identified with any degree of specificity. Approximately 80 Native Americans enroll in the Winner Middle and High Schools each academic year. The identity of those who will attend those two schools in the future cannot be determined, particularly given the fluidity of the student body population. It is not unusual for a Native American student to enroll in Winner School District, leave the district, and then re-enroll two or more times during the course of his or her educational career.

b. *Commonality*: There are questions of law and fact common to all members of the class, including, but not limited to, whether Defendants engage in racially discriminatory disciplinary practices and whether the manner in which signed statements and affidavits are obtained from class members violates their constitutional rights.

c. *Typicality*: The claims of the representative Plaintiffs are typical of those of the class. Each Plaintiff has been subjected to the racially hostile educational environment at the Winner Middle and/or High School and Defendants= racially discriminatory disciplinary policies.

d. *Adequacy of Representation:* The class representatives and class counsel will fairly and adequately represent the interests of the class. The class representatives have no interests in this matter that are antagonistic to other Plaintiffs. Class counsel has many years of experience in civil rights and class action litigation, has investigated extensively the Winner School District and its disciplinary practices, and has the financial resources to zealously represent the class.

31. Class-wide declaratory and injunctive relief is appropriate under Rule 23(b)(2) because Defendants have acted or refused to act on grounds generally applicable to the class as a whole.

## **V. FACTS RELATING TO WINNER SCHOOL DISTRICT**

### **A. Winner School District**

32. The Winner School District is located in Tripp County, a rural county bordering the Rosebud Sioux Indian Reservation in south central South Dakota. According to the United States Census Bureau, Tripp County has a population of approximately 6,000 people, over 11% of whom are Native American.

33. There are six schools in the Winner School District. The three largest are located in the town of Winner: the Winner Elementary School (K through 4<sup>th</sup> grades), the Winner Middle School (5<sup>th</sup> through 8<sup>th</sup> grades), and the Winner High School (9<sup>th</sup> through 12<sup>th</sup> grades). The remaining three schools are small rural schools, located outside of town: Hamill Rural School, Millboro School and Beaver Creek School.

34. According to the website [schooltree.com](http://schooltree.com), the Winner School District currently enrolls approximately 980 students, 19% of whom are Native American.

<http://south-dakota.schooltree.org/district/Winner-School-District-59-2-014759.html>.

The percentage of Native Americans decreases across grades, however, because Native American students leave District schools as they grow older. Thus, 30% of Winner Elementary School=s 340 students are Native American, <http://south-dakota.schooltree.org/public/Winner-Elementary-078560.html>; 15.5% of the Winner Middle School=s 290 students are Native American, <http://south-dakota.schooltree.org/public/Winner-Middle-078562.html>; and 14% of the High School=s 320 students are Native American, <http://south-dakota.schooltree.org/public/Winner-High-078561.html>.

35. The District receives several hundred thousand dollars per year from a variety of federal programs. During the 2004-05 school year, for example, it received over \$450,000 pursuant to Titles I (Improving the Academic Achievement of the Disadvantaged), II (Preparing, Training and Recruiting High Quality Teachers and Principals), and IV (21<sup>st</sup> Century Schools) of the federal No Child Left Behind Act.

#### **B. The District=s Maintenance of a Racially Hostile Environment**

36. During the last ten years, Defendants have knowingly permitted a racially hostile environment to develop and flourish at the Winner Middle and High Schools by intentionally disciplining students in a racially discriminatory manner as described in *supra* Section C, using unlawful police-referral policies and practices as described in *supra* Section D, and by purposefully administering the schools in a manner antagonistic to Native American students and their families, as described more fully below.

37. For example, Defendants refuse to remedy student-on-student racial harassment. Caucasian students frequently call Native American students racially derogatory names, such as "dirty Indian," "black boy," "Indian bitch" or "prairie nigger," and tell them to "go back to the reservation." When students and parents report these incidents to Defendants, Defendants make little effort to stop them. According to its own statistics, the District only punished one child for racial harassment in 2003-2004 and one in 2004-2005.

38. Similarly, Defendants routinely accuse Native American students of engaging in gang-related activities when they walk, talk, or stand in a group of three or more, wear bandanas, or write "Native Pride" or draw medicine wheels on their notebooks. Caucasian students who engage in similar behavior are not subject to the same accusations. In fact, during a basketball tournament hosted by Winner High School in November 2004, Caucasian students wore bandanas with the school's explicit consent.

39. With the exception of one or two Native American teacher's aides, all seven members of the District's Board of Education, and all 92 administrators, teachers and staff employed by the Winner School District are Caucasian.

40. In August 2002, the District cancelled bus service to "Indian housing," the neighborhood where most Native Americans reside, 1.5 miles from the Winner Middle and High Schools. Until the Rosebud Sioux Tribe began driving children to school in Fall 2005 with a school bus donated by the Lower Brule Sioux Tribe, Native American students whose families did not have cars were often unable to go to school in the winter when the weather was particularly harsh.

41. Few Native American students participate on sports teams or after-school extracurricular activities, such as band, chorus, cheerleading or student government. During the 2003-04 school year, for example, only five Native American High School students and six Native American Middle School students participated in school sports. The High School had twelve athletic teams, each of which had between fifteen and twenty-five members. The Middle School had approximately nine sports teams, each of which also had between fifteen and twenty-five members. Native students who have expressed interest in such activities generally do not feel welcome and in some cases have been explicitly denied access.

42. Although the United States Commission on Civil Rights states that for Native American students, the importance of environments that support their cultural identities cannot be overstated, the Winner High School offers only one elective on Native American culture every other year. The Middle School offers no such classes.

43. In 2000, the Office of Civil Rights of the United States Department of Education (OCR) intervened in response to community complaints, requiring the Winner School District to revise its disciplinary policies and procedures to eliminate discrimination.

44. In 2002, the Rosebud Sioux Tribal Department of Education sent OCR a letter informing it that the Winner School District was not taking the requisite steps.

45. In June 2004, OCR withdrew its monitoring efforts, relying on false and misleading evidence provided by the District.

46. In June 2005, fourteen Native American families filed another complaint with OCR, documenting the persistence of discrimination in Winner School District.

OCR did not respond until nine months later, by which time most of the complainants had left the District, either dropping out of school altogether, incarcerated in a detention facility, or transferring to another district.

47. Defendants have sought to intimidate and silence Native American parents critical of the District=s policies and practices.

48. Among other examples, when the members of the Johnson O=Malley (JOM) Board --- a federally mandated body of community-elected Native American parents to oversee relations between the community and school administrators --- criticized the District=s disciplinary policies and lack of busing, Defendants dissolved the Board. School administrators subsequently convened a new JOM Board without giving notice to all former Board members or the community. Federal regulations require that the Board be elected by majority vote of Indian parents, but, on information and belief, there have been no such elections since 2001.

49. Another Native American mother, who had complained about unfair disciplinary practices, likewise was subject to intimidation by Defendants. Defendants pursued criminal charges against her when her child no longer wanted to attend school, and then threatened to file a Child in Need of Supervision (CHINS) petition against the child.

### **C. The District=s Pattern and Practice of Disciplining Students in a Racially Discriminatory Manner**

50. The Winner Middle and High Schools= disciplinary rules are set forth in each school=s Student Handbook. The Handbooks list various possible disciplinary infractions, the punishments that may be imposed for each (e.g., warnings, in-school

suspensions and out-of-school suspensions), and the circumstances under which law enforcement may be notified.

51. The Middle School Handbook, for example, states that Middle School administrators will notify local law enforcement of: (a) fights involving ~~swinging~~; (b) falsely pulling fire alarms; (c) tobacco, drugs and alcohol on school grounds; (d) stealing; (e) in certain cases, vandalism; and (f) gang related activities.

52. The High School Handbook states that High School administrators will notify local law enforcement of: (a) fighting (~~actual swinging/assault~~); (b) drugs and alcohol on school grounds; (c) weapons on school grounds; and (d) gang related activities.

53. Defendants have always maintained that despite the Handbooks, the Defendant School Principals, either as final policymakers with respect to school disciplinary matters, or under the guidance and supervision of the Defendant Superintendent and/or the Winner Board of Education, retain the discretion to decide whether a student has violated a disciplinary rule and what type of punishment to impose.

54. For at least the last ten years, Defendants have exercised this discretion by intentionally imposing harsher and more frequent punishments on Native American children than on Caucasian children engaging in similar misconduct, and by requesting the arrest and prosecution of Native American students for minor incidents of school misconduct while permitting Caucasian students to engage in more egregious misconduct without involving law enforcement.

55. For example, Defendant Principals initiated the arrest and prosecution of a 10-year-old Native American boy who jokingly placed a Caucasian friend in a headlock and laughingly threatened to break the friend's neck. They suspended a Native American student for responding to derogatory racial epithets from a Caucasian student by calling the Caucasian student a "stupid bitch." The Caucasian student had stated, "I guess it is time to throw rocks at greasy Indians," and had called the Native American a "dirty Indian," "fucking crackhead," and "dirty raunchy Indian." They sought to have an 11-year old Native American girl who accidentally pulled a fire alarm declared a juvenile delinquent and placed on probation for one year. They expelled and referred a 12-year old Native American boy to law enforcement for keeping lyrics to rap songs in his locker. They sought the arrest and prosecution of a 12-year old Native American boy who had a small rubber-band toy in his pocket and teasingly stated to a Caucasian classmate, "I'll peck you off."

56. At the same time, they did not request the arrest and prosecution of a Caucasian girl who slapped a Native American girl on the face with a belt, or a 12-year old Caucasian boy who struck a severely learning-disabled Native American classmate with a metal-edged ruler, or a 13-year old Caucasian boy who told a Native American boy, "I'm going to kill you," or another 13-year old Caucasian boy who told a 13-year old Native American Middle School student that he wanted "to kill Indians" and that he specifically wanted to see her "blood all over."

57. Statistics set forth in *End of Year Discipline Reports* prepared by the Defendant School Principals for the Defendant Superintendent confirm that Defendants punish Native American students more harshly and more frequently than their

Caucasian counterparts. Native Americans are disproportionately punished for conduct requiring a subjective assessment such as insubordination. During the 2004-2005 school year, for example, the Middle School suspended more than one in three Native American students for insubordination, as compared to only one out of every ten Caucasian students. Native American youth are suspended (in-school and out-of-school) more frequently than their Caucasian counterparts. During that same school year, more than half of the Native American Middle School student body was suspended, as compared to only 17% of the Caucasian student body. In the High School, although Native American youth represented only 15% of the student body, they received 100% of the out-of-school suspensions in 2003-2004, and 84% of the out-of-school suspensions in 2004-2005.

58. And, Native American youth are far more likely to be arrested at school. In each of the past four years, Defendants have referred for arrest and prosecution an average of one in every seven Native American Middle and High School students, but only one in every 70 Caucasian Middle and High School students.

**Racial Disparities in Discipline: Winner Middle School**

School Year	Number Enrolled		% of Racial Group Suspended for insubordination		% of Racial Group Suspended		% of Racial Group Referred to Law Enforcement	
	Native	Cauc.	Native	Cauc.	Native	Cauc.	Native	Cauc.
2001-02	68	248	26%	4%	34%	4%	15%	3%
2002-03	54	240	19%	3%	24%	11%	6%	2%
2003-04	52	230	29%	14%	40%	22%	17%	3%
2004-05	57	207	37%	10%	54%	17%	19%	1%

**Racial Disparities in Discipline: Winner High School**

School Year	Number Enrolled		% of Racial Group Suspended for Insubordination @		% of Racial Group Suspended		% of Racial Group Referred to Law Enforcement	
	Native	Cauc.	Native	Cauc.	Native	Cauc.	Native	Cauc.
2001-02	45	283	2%	0.3%	26%	2%	13%	1%
2002-03	46	284	39%	7%	72%	25%	N/A	N/A
2003-04	45	260	9%	0	24%	1.5%	15%	0
2004-05	44	250	9%	0.8%	34%	4%	17%	0.4%

59. Given the above statistics, every Native American student enrolled in the Winner Middle and High School faces a substantial likelihood of suspension, arrest and prosecution simply because of his or her race and ethnicity.

## **D. Defendants= Pattern and Practice of Unlawfully Coercing**

### **Confessions**

60. Pursuant to a long-standing agreement with the Winner City Police Department and the Tripp County State=s Attorney=s Office, Defendants act as agents of law enforcement after deciding that a particular student should be arrested for school misconduct. They contact the Winner City Police Department, request that a police officer be sent to the Middle or High School, specify the crime with which they want the student charged (usually Simple Assault or Disturbance of School) and compile all the evidence necessary to prosecute and adjudicate the child a juvenile delinquent.

61. As a part of compiling the necessary evidence, Defendants, pursuant to the same long-standing agreement referred to above, compel students to confess in writing, under oath, to criminal wrongdoing. In so doing, they engage in conduct that offends fundamental concepts of fairness.

62. Specifically, they exploit their positions of authority, and the students= immaturity, lack of sophistication, cultural differences, and in some cases physical and emotional disabilities. Prior to the arrival of the police officers at the school, Defendant Principals isolate the student to be arrested, hand him or her a form entitled "Affidavit" or "Affidavit in Support of Criminal Prosecution," and order him or her to describe the incident giving rise to the arrest and prosecution, and sign the completed form in front of the Principal. The Principals notarize the completed forms.

63. Alternatively, the Defendant Principals have the student=s statement typed and require the student to sign it, attesting to its accuracy.

64. Most affidavits and statements consist of a few simple sentences.

Students are neither counseled to describe the circumstances leading up to the alleged fight nor to include any mitigating factors or possible defenses.

65. Students are not permitted to leave the Defendant Principals' office or the conference room without the Principals' authorization. Students who do not complete the affidavit or sign the statement are told either that they cannot leave the conference room until they do or that they will have to complete the form at the police station.

66. Students believe that failure to obey the Defendant Principals' instructions can result in additional punishment. In fact, Defendant Principals have characterized a refusal to draft or sign a written statement as insubordination, a disciplinary infraction that has been punished with suspension, loss of classroom credit, a bad grade, or in some instances, the school's filing of a Child in Need of Supervision (CHINS) petition against the student.

67. Few, if any, students understand the significance of signing the affidavit or the statement. Defendants do not inform the children that these statements will be used against them in delinquency or criminal proceedings. They do not inform the children that they have the right to remain silent. They do not inform the children that they have a right against self-incrimination. Few of the children understand the contours of his or her constitutional rights.

68. As a general rule, Defendants do not notify the students' parents of the child's arrest in a timely manner. Although *South Dakota Administrative Rule* ' 24-07-02-01 permits school officials to arrest a child without notifying parents only where the

child poses a continuing threat or danger, few, if any, of these children constitute a continuing threat or danger.

69. When the police arrive at the school, Defendants hand them the affidavits and any supporting materials. Upon information and belief, the police do not conduct any type of independent investigation into the charges against the children. In most cases, the police never question the students.

70. The police, in turn, give the affidavits and supporting materials to the Tripp County State=s Attorneys, both of whom serve as legal counsel for Defendant Winner School District. The State=s Attorneys physically attach the affidavits and statements to the delinquency petitions served upon the children and their families.

71. In light of their notarized confessions written, many students feel they are precluded from raising mitigating factors or defenses and have no option other than to admit to the charges against them.

72. Defendants do not maintain copies in the children=s individual school files; the signed and notarized confessions serve no educational purpose. They serve only a law enforcement function.

73. By delegating to Defendants responsibility for obtaining the confessions, the Winner School District, the Winner City Police Department and the Tripp County State=s Attorney=s Office circumvent the constitutional protections afforded to individuals accused of criminal misconduct or juvenile delinquency, including, but not limited to, the right to remain silent and the right to consult with an attorney.

#### **E. Harm Suffered by the Plaintiff Class**

74. The racially hostile educational environment resulting from Defendants' unlawfully discriminatory disciplinary procedures, its unlawful law enforcement referral customs and its administrative practices interferes with and limits the ability of members of the Plaintiff Class to participate in the educational opportunities afforded by the Winner School District. Targeted because of their race and ethnicity, the self-confidence and self-esteem of Native American students plummet. They express fear and frustration by acting out, talking back, or failing to attend classes, all of which lead to additional suspensions from school and other disciplinary measures. During the 2004-05 school year, two Native American High School students were placed on homebound status by their doctors as a result of the stress from the constant harassment at school.

75. The academic performance of Native American students suffers. Children who had a C average while enrolled in the Winner School District have graduated from schools in less hostile districts with honors.

76. Many students transfer to schools in other counties or simply drop out of school. Because the area is rural and sparsely populated, there are few educational alternatives. Students wishing to transfer are often forced to leave their families behind and board at their new schools. In some cases, entire families move.

77. Those children adjudicated delinquent frequently find themselves spending months and sometimes years in juvenile detention and correctional facilities. Most are sentenced to between three and twelve months of probation. As conditions of their probation, they must attend school regularly and obey the school's disciplinary rules. If they do not abide by these terms, Defendants report them to their probation

officers, who frequently take them into custody and send them, sometimes on an emergency basis without hearing and without notifying the child=s parents, to a detention or correctional facility.

78. Defendants frequently rely on trivial school incidents to report students for violating the terms of their probation. Defendants reported a Native American Middle School student for falling asleep during study hall. They reported a 15-year-old Native American girl for grabbing the backpack of a Caucasian student who spit at her. Both of these children were sent to a juvenile detention or correctional facility.

79. Enrollment statistics confirm that Native American children leave the Winner School District in large numbers after they enter Middle School. Although Native Americans constitute almost a third of the Winner Elementary School student body, they account for 14% of the Winner High School student body. While one in five 9<sup>th</sup> grade students are Native American, only one in twenty 12<sup>th</sup> grade students are Native American.

80. During the 2001-2002 school year, the most recent year for which statistics are available, only two (2) Native American students graduated from Winner High School; during the prior year, four (4) graduated.

81. Failure to grant Plaintiffs the relief requested herein will result in continued and irreparable harm.

**F. The Challenged Actions and Inactions As Defendants= Official Policy**

82. For all purposes relevant to this Complaint, Defendants have acted and continue to with the intent to discriminate against Plaintiffs and members of the Plaintiff class.

83. The practices described herein constitute official policy of the Winner School District and the Winner Board of Education because they are longstanding and widespread practices about which the Board and Defendant Superintendent knew or should have known, but failed to remedy. In fact, Defendant Fisher=s immediate predecessor, David Nicolas, engaged in the same racially discriminatory disciplinary and police referral practices while both Superintendent of the Winner School District and Principal of the Middle School.

84. Alternatively, these practices constitute official policy of the Winner School District and the Winner Board of Education because they were promulgated by the Defendant Superintendent and Defendant Principals who have final policy making authority on school disciplinary matters pursuant to state law; and/or to whom such authority has been delegated by the Board of Education.

85. Alternatively, these practices constitute official policy of the Winner School District and the Winner Board of Education because they were undertaken pursuant to official policy promulgated by the Board.

86. Alternatively, Defendants are liable for these practices because they have a policy of failing to adequately train or supervise Winner School District officials in the administration of discipline, which foreseeably resulted in the harms described herein. On information and belief, Winner School District and the Winner Board of Education never provided Defendant Superintendent and Defendant Principals with any form of

training or supervision regarding the administration of a disciplinary program in the Middle and High Schools.

87. The Plaintiff class has no adequate remedy at law.

## **VI. FACTS RELATING TO THE INDIVIDUAL NAMED PLAINTIFFS**

### **A. Sam Antoine**

88. In October 2003, when Sam Antoine was 12 years old and in the 6<sup>th</sup> grade at the Winner Middle School, he hit a Caucasian classmate who shoved him and called him a "prairie nigger." Upon learning of the altercation, Defendant Principal Naasz contacted the Winner Police Department and requested that Sam be arrested and charged with criminal misconduct, but not the Caucasian student. Before this incident, Sam had had no contact with the juvenile justice system.

89. Defendant Principal Naasz sequestered Sam in a conference room near his office and questioned him. He used his position of authority, the fact that Sam was only 12 years old, Sam's respect for authority and Sam's fear of further punishment to compel Sam to draft and sign a statement on a form entitled "Affidavit," in which Sam admitted to hitting the other student. Sam believed that he had no choice but to comply. Defendant Naasz then notarized the affidavit.

90. At no time did Defendant Naasz tell Sam that the affidavit might be used against him in a delinquency proceeding or that he had a constitutionally protected right to remain silent.

91. When police arrived at the school, Defendant Naasz released Sam into their custody. Defendant Naasz did not attempt to contact Sam's grandmother, Mrs.

Milk, before releasing him to the Winner City Police Department. In fact, Mrs. Milk only learned of Sam=s arrest because she happened to be at the Post Office across the street from the school when she saw the police escorting Sam into a police car.

92. In his own car, Defendant Naasz followed the police officers and Sam to the police station. Once there, he handed the police officers Sam=s affidavit, his own affidavit attesting to Sam=s guilt, and three other affidavits from students who allegedly witnessed the altercation.

93. A few weeks later, Sam and his family were served with a Delinquency Petition charging Sam with Simple Assault and Disturbance of School. Sam=s affidavit and the other affidavits were attached to and incorporated into the Petition.

94. On two separate occasions, Mrs. Milk asked Defendant Naasz whether she should retain a lawyer. Both times he said no and explained that Sam=s prosecution was Aa pretty routine procedure.@

95. Without the advice of counsel, Sam subsequently admitted to the allegations in the Petition and was adjudicated delinquent. He was sentenced to six months of probation and community service.

96. The juvenile court judge told Sam=s family that if he insisted upon going to trial, he would be found guilty because of the affidavits attached to the Delinquency Petition and that he would be removed from Mrs. Milk=s custody.

97. From Defendant Naasz, Sam received two days of out-of-school suspension. Sam=s school records cite Sam as the Ainstigator@ of the fight, even though they confirm that the Caucasian boy pushed Sam first.

98. On information and belief, the Caucasian student who initiated the fight

was neither suspended nor referred to law enforcement, although Defendants' written policies called for a minimum two days of suspension for pushing. When Mrs. Milk complained to Defendant Naasz about the name-calling to which Native American children are subjected at the Middle School and asked why Caucasian children were never punished, Naasz responded: "We can't watch everybody all the time."

**B. Richard Chasing Hawk**

99. In September 2003, when he was 12 years old and in the 7<sup>th</sup> grade at the Winner Middle School, Richard Chasing Hawk and a Caucasian student hit each other after the Caucasian student accused Richard of erasing something from the classroom blackboard. Upon learning of the altercation, Defendant Principal Naasz contacted the Winner City Police Department and requested that both boys be arrested and prosecuted. Police records indicate that Defendant Naasz specifically asked that the boys be charged with Simple Assault. Prior to this incident, Richard had had no contact with the juvenile justice system.

100. Defendant Naasz placed Richard in Defendant Superintendent Fisher's office, and used his position of authority, and Richard's youth, respect for authority and fear of additional punishment to compel Richard to draft and sign an affidavit in which Richard admitted to hitting the Caucasian student. Richard, only 12 years old at the time, believed that he had no choice but to comply. Principal Naasz notarized the affidavit.

101. At no time did Principal Naasz inform Richard that the affidavit would be used against him in a juvenile delinquency proceeding or that he had a right to remain silent.

102. When the police officers arrived at the school to take Richard and the other student into custody, Defendant Naasz gave them Richard=s affidavit, an affidavit from the Caucasian student, an affidavit that Defendant Naasz had drafted in which he stated that the two boys had hit each other, and a teacher=s affidavit.

103. Upon information and belief, the Winner City Police conducted no independent investigation into the incident.

104. One month later, Richard=s family was served with a Summons and Delinquency Petition charging Richard with Simple Assault and Disturbance of School. Attached to and incorporated by reference into the Petition were Richard=s affidavits and the other affidavits compiled by Defendant Naasz.

105. Richard subsequently admitted to the allegations in the Petition and was adjudicated delinquent and sentenced to 90 days probation. At no point during the proceeding was he represented by counsel.

106. The Caucasian student was also adjudicated delinquent and received the same sentence as did Richard. In addition, Defendant Naasz suspended both boys from school for two days.

107. Two months later, Defendant Naasz again requested Richard=s arrest and prosecution. Another Native American student, acting out in class with a pencil in his hand, stabbed Richard in the stomach, breaking the skin. Richard hit the boy in response.

108. Defendant Naasz sequestered Richard in Superintendent Fisher=s office and handed Richard a form affidavit, stating: AYou know what to do.@ Again, believing that he had no choice but to comply, Richard drafted and signed an affidavit in which he

admitted to hitting the other child. Richard=s affidavit and three other affidavits compiled by Defendant Naasz were attached to and incorporated into the Delinquency Petition served upon Richard=s family.

109. In February 2004, the charges against Richard were dismissed. The other Native American child, however, was adjudicated delinquent and sent to a juvenile correctional facility. Both boys were suspended from school.

**C. Charles DuBray**

110. Charles is part of a large and close-knit extended family. In November 2000, when Charles was 14 years old and in the Middle School, he and a cousin fought during lunch period over a shirt that one of them was wearing. Although the two children lived next door to each other and saw each other on a daily basis, Defendants never contacted their parents in an effort to resolve the dispute.

111. Instead, upon learning of the altercation, Defendant Principal Naasz= predecessor, District Superintendent and Middle School Principal David Nicolas, placed Charles in a conference room next to his office and questioned him. He then used his position of authority, and Charles= youth, respect for authority and fear of additional punishment to compel Charles to draft and sign an affidavit entitled "Affidavit in Support of Criminal Prosecution," in which Charles admitted to hitting his cousin. Charles, 14 years old at the time, believed that he had no choice but to comply. Principal Nicolas notarized the statement.

112. At some point, Principal Nicolas gave Charles= statement to the Winner City Police Department. Upon information and belief, the Winner City Police Department conducted no investigation into the incident.

113. In March 2001, five months after the initial confrontation, Charles= family was served with a Delinquency Petition charging Charles with Simple Assault and Disorderly Conduct. Charles= affidavit was attached to and incorporated into the Petition.

114. Charles admitted to the charges set forth in the Petition and was adjudicated delinquent and sentenced to six months of probation.

**D. Mindi Felix**

115. Mindi has had an Individualized Education Plan for each of the last eight years. Prior to entering kindergarten, she was diagnosed with developmental delays in speech and cognitive areas. She continues to have notable difficulty with expressive language.

116. In April 2005, when Mindi was in 6<sup>th</sup> grade at the Middle School, she was playing tag and hit a Caucasian classmate who had scratched and cursed at a Native American friend. Upon learning of the fight, Defendant Principal Naasz contacted the Winner City Police Department to request the arrest and prosecution of the two Native American girls, but not the Caucasian girl. Prior to this incident, Mindi had had no contact with the juvenile justice system.

117. Defendant Naasz sequestered Mindi in his office, interviewed her and recorded the interview on audiotape. He then ordered Mindi to draft and sign an affidavit describing the altercation. Intimidated by Principal Naasz position of authority, confused as to what was happening because she was only in 6<sup>th</sup> grade and suffers from cognitive and expressive disabilities, and fearing further punishment if she failed to

comply, Mindi did as Defendant Naasz requested. Defendant Naasz then notarized the affidavit.

118. The affidavit does not mention the Caucasian student=s cursing or scratching or any other mitigating circumstances.

119. Defendant Naasz did not inform Mindi that the affidavit would be used against her in a juvenile delinquency proceeding or that she had the right to remain silent.

120. When the police officers arrived at the school to transport Mindi and her friend to the police station, Defendant Naasz gave them Mindi=s affidavit, an affidavit he had drafted describing the altercation and the sworn statements of two other students. On information and belief, the Winner City Police conducted no independent investigation into the incident.

121. Mindi=s family was served with a Delinquency Petition charging her with Disorderly Conduct and Disturbance of School. Mindi=s affidavit and the other affidavits supplied by Principal Naasz were attached to and incorporated into the Petition.

122. Mindi=s case was referred to a Court Services Officer for an informal adjustment. Mindi met with the Court Services Officer once. He requested that she complete five hours of community services.

123. Principal Naasz suspended both Mindi and the other Native American girl from school for two days. The Caucasian girl whose actions had precipitated the fight was neither referred to law enforcement nor suspended, although the school=s written policies called for a minimum one day of suspension for being involved in a fight.

124. After this incident, Defendant Naasz requested that the Winner City Police

Department arrest and prosecute Mindi on two additional occasions for fighting with another Native American classmate. Both times, Defendant Naasz coerced Mindi into writing an affidavit, employing the same methods described above. Both times, the affidavit was used against Mindi in a juvenile delinquency proceeding.

**E. Jessie Milk**

125. During the 2004-05 school year, when Jesse was in the 7<sup>th</sup> grade at the Winner Middle School, Principal Defendant Naasz suspended Jesse three times. He was suspended twice for fighting with a Caucasian student who purposefully pushed him. On information and belief, the Caucasian student was not punished, even though the school's written policies call for a minimum two days of suspension for pushing. On the third occasion, Jesse was suspended for mumbling under this breath that a P.E. teacher, who had harassed and belittled Jesse for running slowly during class, was a motherf---g racist.

126. Discouraged by his treatment at school, Jessie stopped going to class during parts of the 2005-06 school year. Defendant Principal Naasz initiated criminal proceedings against Jesse's mother, Joanne, because of the truancy. As a result, a bench warrant for Joanne's arrest was issued. Joanne went to court and was fined \$200 and 30 days in jail, both of which were suspended. She was told, however, that she would need to pay the fine and go to jail if Jesse had any more unexcused absences or tardies.

127. In February 2006, Principal Naasz ordered Jesse to remove his jacket that he had tied around his waist. When Jesse objected, pointing to other children permitted to wear jackets tied around their waist, Principal Naasz threatened to punish Jesse for

insubordination. Principal Naasz then called Jesse's mother, Joanne, and informed her that if Jesse were insubordinate again, he would file a Child in Need of Supervision petition against Jesse in juvenile court.

**F. Deidrick Old Lodge**

128. Deidrick is physically disabled and unable to use his right arm effectively. At the age of five and again at the age of nine, he was diagnosed with learning difficulties and attention deficits. He received special educational services until he was nine, at which time the Winner School District, despite his diagnoses, decided he no longer met the criteria for such services.

129. In February 2003, when he was 11 years old and enrolled in 6<sup>th</sup> grade at the Winner Middle School, two Caucasian 6<sup>th</sup> grade classmates were wrestling in a school hallway as Deidrick walked by. One of the students pushed Deidrick. The other hit him. In response, Deidrick hit one of the students. Upon learning of the incident, Defendant Principal Naasz contacted the Winner City Police Department and requested the arrest and prosecution of all three students. Before this incident, Deidrick had had no contact with the juvenile justice system.

130. Defendant Naasz sequestered Deidrick in a conference room near his office and told him that the other two boys were drafting statements describing what had happened. He ordered Deidrick to do the same. Because of Deidrick's youth, his respect for authority, his disabilities and his fear of further punishment, Deidrick, only 11 years old at the time, believed he had no choice but to comply.

131. Defendant Naasz then collected all three statements and typed new ones. He ordered each of the boys to sign the typed statement. On information and belief,

Defendant Naasz did not inform the boys that the statements would be used against them in a delinquency proceeding or that they had the right to remain silent.

132. When the police officers arrived at the school, Defendant Naasz gave them Deidrick=s affidavit, along with an affidavit he completed describing the fight and the affidavits of the two other students. On information and belief, the Winner City Police conducted no independent investigation into the incident.

133. The police transported Deidrick to the police station, where he remained for three hours before his family was notified of his whereabouts.

134. Deidrick=s family subsequently was served with a Delinquency Petition charging him with Disorderly Conduct and Disturbance of School. Deidrick=s affidavit and the other statements were attached to and incorporated into the Petition.

135. Deidrick, the only one of the three boys not represented by counsel, admitted to the charges against him and was adjudicated delinquent and sentenced to 90 days probation. In addition, Defendant Naasz suspended all three boys from school.

#### **G. Jennifer Peneaux**

136. In January 2005, when Jennifer Peneaux was in the 11<sup>th</sup> grade, she got into a fight with another Native American student over a pair of jeans. Upon learning of the fight, Defendant Principal Hanson contacted the Winner City Police Department and requested that both girls be arrested and charged with criminal misconduct.

137. Defendant Hanson summoned both girls to his office and questioned them separately. He exploited his position of authority, Jennifer=s youth, her respect for authority and her fear of further punishment, to compel Jennifer to admit to hitting the

other student. He then typed Jennifer=s admission into his computer and printed out her statement. He asked Jennifer to sign the statement attesting to its veracity.

Jennifer believed that she had no choice but to comply.

138. When officers from the Winner City Police Department arrived at the High School to arrest Jennifer, Defendant Hansen gave them Jennifer=s statement.

139. At the police station, officers questioned Jennifer about her involvement in the altercation, but no one informed her of her right to remain silent.

140. A week later, Jennifer was served with a criminal complaint charging her with Disorderly Conduct and Disturbance of School. Because she was 18 years of age at the time of the fight, she was not charged in juvenile court, but in criminal court. Her statement, as well as that of an alleged student witness, were attached to and incorporated into the charging documents.

141. Jennifer pled guilty to the Disturbance of School charge and was convicted, fined, and sentenced to 10 days suspended in the Tripp County Jail and community service. She was not represented by counsel.

142. Defendant Hanson suspended her from school for two days.

#### **H. Johnathon (AJohn@) Scruggs**

143. John has severe learning disabilities. Prior to entering kindergarten, he was diagnosed as Amildly mentally disabled.@ An Individualized Education Plan (IEP) prepared by Defendants when John was in the 5<sup>th</sup> grade states that he is Acurrently reading at the 1<sup>st</sup> grade level,@ Awriting is stressful for him,@ and he Ais difficult to understand during conversation speech because he mumbles, drops his endings, and speaks too rapidly.@

144. In January 2005, when he was in the 6<sup>th</sup> grade at the Winner Middle School, a Caucasian classmate hit John with a metal-edged ruler in a dispute over a science project during the last class of the day. John responded by hitting the classmate with his fist. The science teacher reported the incident to Defendant Principal Naasz, who contacted the Winner City Police Department to request John=s arrest and prosecution.

145. Before the police arrived at the school, Defendant Naasz placed John in a conference room next to his office and asked him to draft and sign an affidavit describing the altercation. Initially, John refused, but Defendant Naasz told him that the police needed a signed affidavit and that John could not leave the conference room until he had drafted one, even if it took him all day and all night.@ Eleven-year-old John believed he had no other choice and complied with Defendant Naasz= request. Once John had completed the affidavit, Defendant Naasz notarized it.

146. When John=s mother came to pick him up at the end of the school day, she was unable to locate John. When she asked the receptionist outside of Principal Naasz= office where John was, she was told that John was busy. When she asked to speak to Principal Naasz, she was told that he was also busy. School administrators would not let her see John until he had completed the confession and Defendant Naasz had notarized it.

147. When the Winner City Police Department arrived at the school, Defendant Naasz directed them to arrest John and not the other student. Defendant Naasz gave the police John=s affidavit, an affidavit that Defendant Naasz had drafted and the affidavits of two other students who had allegedly witnessed the event.

148. On information and belief, the Winner City Police conducted no further investigation into the incident. The police officers drove John to the police station in their car with John=s mother following in her car.

149. Two weeks later, John=s mother was served with a Summons and Delinquency Petition, charging John with Disorderly Conduct and Disturbance of School. John=s affidavit, along with the other statements, were attached to and incorporated into the Petition.

150. John ultimately admitted to the charges against him and was adjudicated delinquent. In addition, Defendant Naasz suspended him from school for two days.

151. Defendants initially refused to suspend the Caucasian child who had hit John with the metal-edged ruler until two days later, after John=s mother threatened to file charges against the boy as the school had done against her son. At that point, Defendant Naasz gave the Caucasian student two days of in-school suspension. On information and belief, the Caucasian student was required to complete only the first day of that punishment.

#### **I. Josephine AJosie@ Traversie**

152. While in the 2<sup>nd</sup> grade, Josephine (AJosie@) Traversie qualified for special educational services. Her school records, however, do not indicate that she ever received them.

153. In May 2005, when Josie was in the 8<sup>th</sup> grade at the Winner Middle School, a Native American classmate pushed Josie in a school hallway in between classes. Josie responded by hitting the girl. The altercation took place before Defendant Principal Naasz, who grabbed Josie by the arms and escorted her to a nearby detention room. While Josie waited in the detention room, Naasz interviewed the other student and then contacted the Winner City

Police Department and requested that Josie be arrested and prosecuted. He did not seek the arrest or prosecution of the other child.

154. After contacting the police, Defendant Naasz asked Josie to draft and sign an affidavit stating that she had hit the other student. Josie refused and asked to use the restroom. Defendant Naasz told her that she ~~had~~ to draft the affidavit and that she could not go to the restroom until she had done so.

155. Josie continued to refuse to draft the affidavit until the police arrived at the school and told her that she had to comply with Defendant Naasz's request. After she completed the affidavit, Defendant Naasz notarized it.

156. Defendant Naasz made no effort to contact Josie's mother to inform her that her child was being arrested.

157. Before the police transported Josie to the police station, Principal Naasz gave them Josie's affidavit, an affidavit he had drafted describing Josie's role in the altercation, and an affidavit from the other student. In his affidavit, Naasz characterized Josie's initial refusal to draft and sign the affidavit as insubordination.

158. The police transported Josie to the police station where they booked her and informed her of her right to remain silent and her right to an attorney.

159. Josie's family subsequently was served with a Delinquency Petition charging Josie with Disorderly Conduct and Disturbance of School. Josie's affidavit and the other statements were attached to and incorporated into the Petition.

160. When Josie appeared in court, the juvenile court judge read Josie's confession out loud and Josie admitted to hitting the other girl. On information and belief, neither the court nor the prosecutors introduced any other evidence against

Josie. Josie was not represented by counsel.

161. Josie was adjudicated delinquent and sentenced to 12 months probation. In addition, Principal Naasz suspended her from school for two days.

162. Defendants subsequently requested Josie=s arrest a second time after she pulled a fire alarm at school. In addition, they reported her to her probation officer twice, once for being absent from a class that she was already failing and for which she would not receive credit, and again for grabbing the backpack of a Caucasian student who had spit on Josie. Both times, Josie was taken from the school to a juvenile detention facility on an emergency basis without a hearing and without informing her parents, where she remained incarcerated for several days. On information and belief, the Caucasian student who spit at Josie was not punished, even though school policies call for a minimum one day of suspension for encouraging a fight.

163. In March 2006, Josie was sent to the principal=s office and cited for aprofanity when she laughed in class after a teacher accidentally said a curse word. Caucasian children in her class also laughed but were not punished.

164. Josie=s older sister, Amanda, who was enrolled in Winner High School and had been subjected to Defendants= racially discriminatory disciplinary policies and unlawful coerced-confession practices, dropped out of school the day after Josie was transported from school to a detention facility.

#### **J. Taylor White Buffalo**

165. In April 2004, when Taylor was 11 years old and in 5<sup>th</sup> grade, he was playing basketball with two Caucasian students and another Native American classmate. During the course of the game, one of the Caucasian classmates refused to

turn the ball over to Taylor and instead, pushed Taylor with the ball. Although Taylor asked the boy to stop, he pushed Taylor twice more. Finally, Taylor hit him once in the face with his fist. The Caucasian classmate ran and told a teacher.

166. The teacher escorted Taylor to Defendant Principal Naasz=s office. Upon learning of the incident, Defendant Naasz summoned the Winner Police Department and requested that Taylor be arrested and prosecuted with criminal misconduct but not the Caucasian student.

167. Defendant Principal Naasz placed Taylor in a small conference room next to his office. Naasz used his position of authority and the fact that Taylor was only 11 years old, and Taylor=s respect for authority and fear of further punishment to compel Taylor to draft and sign an affidavit in which he admitted to hitting the Caucasian student. Taylor believed that he would be suspended from school if he did not comply with the Principal=s commands. Once the affidavit was complete, Defendant Naasz notarized it.

168. While the police officers were at the school, Defendant Naasz gave them Taylor=s affidavit, an affidavit that Defendant Naasz had drafted attesting to Taylor=s guilt and a statement from the Caucasian student.

169. Defendant Naasz did not refer the Caucasian student to law enforcement. When Taylor=s mother asked why not, Naasz claimed that pushing did not constitute fighting. Although Taylor had not been involved in any prior disciplinary incidents at school, Principal Naasz told Taylor=s mother that the District had to send him to court because if they did not, he would Akill someone next.@

170. Taylor=s family was served with a Summons and Delinquency Petition charging Taylor with Simple Assault and Disturbance of School on the basis of the single punch. Attached to and incorporated into the Petition were the affidavits Defendant Naasz had given to the police.

171. Taylor admitted to the charges against him. He was placed on probation for 90 days and ordered to complete between 10 and 20 hours of community service.

172. In addition, Defendant Naasz gave Taylor two days of in-school suspension and noted in Taylor=s school records that he was the Ainstigator@ of the incident, although school records confirm that Taylor hit the child only after the child pushed Taylor a couple of times first. On information and belief, Defendant Naasz did not punish the other student, even though the school=s written policies call for a minimum two days of suspension for pushing.

#### **COUNT ONE: FIFTH AMENDMENT CLAIM**

173. Paragraphs one through 172 are incorporated herein by reference the same as though pleaded in full.

174. Defendants= pattern, practices and customs as alleged in this Complaint have violated and continue to violate the Plaintiffs= right against self-incrimination under 42 U.S.C. ' 1983 and the Fifth Amendment to the United States Constitution, as applied to the States by the Fourteenth Amendment.

#### **COUNT TWO: FOURTEENTH AMENDMENT DUE PROCESS CLAIM**

175. Paragraphs one through 172 are incorporated herein by reference the same as though pleaded in full.

176. Defendants= practices, policies and customs as alleged in this Complaint have violated and continue to violate rights guaranteed to Plaintiffs by 42 U.S.C. ' 1983 and the Due Process Clause of the Fourteenth Amendment to the United States Constitution, which prohibits the state from coercing confessions.

**COUNT THREE: FOURTEENTH AMENDMENT EQUAL PROTECTION**

**CLAIM**

177. Paragraphs one through 172 are incorporated herein by reference the same as though pleaded in full.

178. Defendants= practices, policies and customs as alleged in this Complaint have violated and continue to violate rights guaranteed to Plaintiffs by 42 U.S.C. ' 1983 and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, which prohibits the state from discriminating against individuals on the basis of race.

**COUNT FOUR: TITLE VI CLAIM**

179. Paragraphs one through 172 are incorporated herein by reference the same as though pleaded in full.

180. Defendants= practices, policies and customs as alleged in this Complaint have violated and continue to violate rights guaranteed to Plaintiffs under Title VI of the Civil Rights Act, 42 U.S.C. ' 2000d, which prohibits recipients of federal funding from discriminating against individuals on the basis of race.

**PRAYER FOR RELIEF**

WHEREFORE the Plaintiffs respectfully request that the Court:

1. Assume jurisdiction over this matter;
2. Certify this action as a class action pursuant to Fed. R. Civ. P. 23;
3. Declare that Defendants= actions and inactions, including Defendants= perpetuation of the racially hostile educational environment at the Winner Middle and High School, Defendants= racially discriminatory disciplinary practices and procedures, and Defendants= custom and practice of coercing confessions from students referred to law enforcement, violate rights guaranteed to the Plaintiff Class by 42 U.S.C. § 1983, the Fifth and Fourteenth Amendments to the United States Constitution, and Title VI of the Civil Rights Act, 42 U.S.C. § 2000d;
4. Enjoin any further violations of Plaintiffs= constitutional and statutory rights;
5. Order Defendants to expunge from all records in their custody or under their control confessions coercively and unlawfully obtained from members of the plaintiff class;

6. Award the Plaintiffs reasonable attorneys= fees and costs under 42 U.S.C. § 1988; and
7. Grant any other relief the Court deems necessary or proper.

Dated this \_\_\_\_ day of March, 2006.

Respectfully submitted,

---

DANA L. HANNA, ESQ.  
P.O. Box 500  
Rosebud, South Dakota 57570  
605-747-2900

STEPHEN L. PEVAR, ESQ.

AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION  
125 Broad Street  
New York, New York 10004  
212-549-2500

Of Counsel:  
Robin L. Dahlberg, Esq.  
Catherine Y. Kim, Esq.