

The background image shows the exterior of Wolf Point Junior/Senior High School during a sunset or sunrise. The sky is a mix of orange, yellow, and grey. In the foreground on the left, a large red sign with white lettering reads "WOLF POINT JUNIOR/SENIOR HIGH SCHOOL". To the left of the text on the sign is a graphic of a Native American figure in traditional dress. The school building is a long, single-story brick structure with several windows, partially obscured by the sign. The ground is covered in a layer of snow.

DISCRIMINATION AGAINST NATIVE STUDENTS

in Wolf Point, Montana
District Schools

Title VI Complaint
Fort Peck Tribes
June 2017

EXECUTIVE SUMMARY

The Wolf Point School District discriminates against Native students and deprives them of basic rights to which they are entitled in school. The Assiniboiné and Sioux Tribes, whose reservation encompasses the Wolf Point school district, asks that the U.S. Department of Justice and U.S. Department of Education intervene. The unequal treatment of Native students is detrimental to their development and education and violates federal law.

White residents on the Fort Peck Indian Reservation, which is majority-Native, control local politics, business, and schools. Gerrymandering and nepotism have perpetuated racial inequality created by federal policies, including preferential land grants for white homesteaders and compulsory boarding school programs for Native students. Schools on the Reservation bear the legacy of the Fort Peck Reservation Boarding School, which violently imposed Western culture, values, and education on Native families through the early 1900s.

Hostility towards Native students and culture persists. Native students in Wolf Point report the use of racial slurs and harmful stereotypes by white administrators, faculty, and staff. Native students are disproportionately disciplined and excluded from school, often without due process. At Wolf Point High School, non-white students, most of whom are Native, are more than twice as likely to receive in- and out-of-school suspensions than white students. These suspensions also violate federal and local standards for discipline. Native students are routinely denied academic and extracurricular opportunities available to white students. Students with academic and behavioral challenges, most of whom are Native, are warehoused in the Opportunity Learning Center, which is understaffed and underfunded.

These practices have dramatic effect on the academic performance of Native students. Ninety-four percent of Native students at Wolf Point High School are below proficiency in reading, compared to forty-nine percent of white students. The school environment contributes to Native truancy and lack of interest in school. Eighty percent of Native students are chronically absent from Wolf Point High School, compared to thirty-three percent of white students. The harassment and discrimination are also damaging to Native students' emotional well-being. Native students report feeling discouraged, and even suicidal, because of hostility they face in school. When Native residents complain about unequal treatment, district leadership retaliates, including by taking disciplinary action against students and banning parents from school property.

There is urgent need for the U.S. Department of Justice and U.S. Department of Education to investigate Wolf Point school district's discriminatory treatment of Native students and due process violations, and assist in bringing the district into compliance with federal law. The Tribes wish to work with the Departments and the district to provide Native students with an equal education.

TO: The United States Department of Justice
The United States Department of Education

RE: Wolf Point School District Violations of Title VI of the Civil Rights Act of 1964, Title II of the Americans with Disabilities Act, and Section 504 of the Rehabilitation Act of 1973

FROM: The Tribal Executive Board of the Fort Peck Indian Reservation on behalf of the children of the Assiniboine and Sioux Nations

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I. INTRODUCTION

The Tribal Executive Board of the Fort Peck Indian Reservation (the “Reservation”) brings this complaint on behalf of the children of the Assiniboiné and Sioux Nations (the “Tribes”) who are residents on the Reservation and who attend schools in the Wolf Point School District (the “District”). The District, one of five on the Reservation, is controlled and run by white people. As detailed in this complaint, our children who attend District schools have been and continue to be subjected to unequal treatment, bullying, and harassment, and have been deprived of the education to which they are entitled.

We bring this complaint in the hope that the Departments will investigate these ongoing violations and will work with us and the District to bring Wolf Point schools into compliance with the law by treating Native children as well as they do white children. The stories of unequal treatment we provide in this complaint are well known to us and were documented in dozens of interviews of students, parents, school staff, tribal leaders, and elders in our community. Many other students and families have stories like these but are fearful about coming forward with them.

Within the body of the complaint, we have redacted the names of the children and some adults who have come forward with examples of the kinds of discrimination Native students face in Wolf Point. We will provide the names to investigators from the Departments, but because these individuals fear further harassment and retaliation for participating here, we do not identify them in this document.

II. BACKGROUND

The Assiniboiné and Sioux Nations have survived 150 years of genocide, military-imposed relocation, and colonial rule. Their children were forced into an abusive boarding school program and compelled to assimilate into Anglo-American culture. Because of this history and the current local and national policies affecting Native people, the Tribes now experience staggering rates of poverty, child abuse, substance abuse, suicide, and family instability. Native¹ children need, and are entitled to, support from their on-Reservation schools. In disregard of this obligation, and despite receiving federal funds intended specifically to educate and nurture Native children, the schools in the white-controlled Wolf Point District neglect and discriminate against them.

A. The Reservation is home not only to the Tribes but also to non-Native people who occupy positions of power and economic superiority.



The Fort Peck Reservation is located in Montana's remote northeastern corner, isolated from any major economic or population center.² The Reservation has approximately 10,000 residents, 6700 of whom are Native.³ The remaining 3300 occupants of the Reservation are non-Native,⁴ largely descendants of white homesteaders who were given preferential land grants within the Reservation's borders.

The city of Wolf Point is the Reservation's business center, the political seat for county government,⁵ and the largest town on the Reservation, with a population of 2600.⁶ One third of the Reservation's non-Native population is concentrated in Wolf Point, which is forty-three percent white.⁷ The white community dominates county government and owns most local

¹ We use this term to refer to our Tribal members and associate members, as well as students who identify as Native, whose ancestry and culture are of the various indigenous tribes of the United States, in the District. Where we cite to data from government sources, we use the racial classification terms employed by these entities. For example, Montana uses the classification "Native American" and the United States government uses the term "American Indian."

² DAVID MILLER, DENNIS SMITH, JOSEPH R. MCGESHICK, JAMES SHANLEY, & CALEB SHIELDS, *THE HISTORY OF THE FORT PECK RESERVATION ASSINIBOINE AND SIOUX TRIBES, 1800-2000* 12 (2008). The Tribes have inhabited this region since at least the early seventeenth century.

³ U.S. CENSUS BUREAU. 2010 CENSUS (2010).

⁴ *Id.*

⁵ See CITY OF WOLF POINT, *Statistical Information*, <http://ci.wolf-point.mt.us/stats/> (last visited Nov. 23, 2016).

⁶ U.S. CENSUS BUREAU. 2010 CENSUS (2010).

⁷ According to 2010 Census data, the Reservation has 3000 non-Native white residents; Wolf Point has 1100 non-Native white residents and a total population of 2600. See U.S. CENSUS BUREAU. 2010 CENSUS (2010). Poplar is the second-largest town on the Reservation, home to 800 residents, the headquarters of the official governing body of the Tribes, the Fort Peck Tribal Council, and the Bureau of Indian Affairs' Fort Peck Indian Agency. See U.S.

businesses. The non-Tribal county and city governments have significant power on the Reservation because Tribal land on the Reservation is broken up, or “checker-boarded,” with state land. The Tribes and their members have no control over the state- or privately-owned land. Just under half of the Reservation’s 2,000,000 acres belong to the Tribes or their members.⁸ Non-Natives control the vast majority of the Reservation’s most valuable land.⁹ Only the city of Poplar and the other smaller and poorer communities within the Reservation’s borders are mostly Native.¹⁰

The median household income on the Reservation is \$34,300, twenty-seven percent below the state median.¹¹ Over thirty-two percent of the families on the Reservation with children under eighteen live below the poverty level, compared to seventeen percent for the state; the percentage increases significantly to forty-nine percent for families with children under five, compared to nineteen percent for the state.¹² Human services are limited.¹³ Cattle ranching, farming, and oil are the main local economies.¹⁴ Commercial businesses include a few motels, a convenience store, gas stations, restaurants, a laundromat, an auto repair shop, a video arcade, a fast food shop, arts and handcrafts vendors, and a handful of other businesses.¹⁵ Virtually all these commercial enterprises are owned by whites.



CENSUS BUREAU. 2010 CENSUS (2010); *see also* FORT PECK TRIBES, *Community*, <http://www.fortpecktribes.org/community.html> (last visited Jan. 26, 2017).

⁸ MONT. OFFICE OF PUB. INSTRUCTION, *Montana Indians: Their History and Location* (Apr. 2009), http://www.montanatribes.org/links_&_resources/tribes/Fort_Peck.pdf.

⁹ Andrea Appleton, *Blood Quantum*, HIGH COUNTRY NEWS (Jan. 12, 2009), <http://www.hcn.org/issues/41.1/blood-quantum>.

¹⁰ The Reservation’s population density is greatest in the communities that run along the southern border of the Reservation, near the Missouri River and along U.S. Highway 2. Wolf Point and Poplar are the two largest school districts; the others include Brockton, Frazer, Oswego, and Fort Kipp. *See* MONTANA DEP’T OF LAB. & INDUSTRY, *Fort Peck Reservation Profile*, (Rev. Oct. 2013), <https://lmi.mt.gov/Portals/135/Publications/LMI-Pubs/LocalAreaProfiles/Reservation%20Profiles/RF16-FortPeck.pdf>.

¹¹ U.S. CENSUS BUREAU, *2010-2014 American Community Survey 5-Year Estimates*. The state median household income was \$46,800 during this period.

¹² *Id.*

¹³ The Census and Economic Information Center of the Montana Department of Commerce used United States Census information from 2000 to analyze amenities available to Montana Reservation residents. Wolf Point residents had access to one grocery store when the community could support two; three doctors and clinics when the community could support ten; and two financial institutions when the community could support four, implying Reservation-wide underservice in these private sectors.

¹⁴ U.S. CENSUS BUREAU, *2010-2014 American Community Survey 5-Year Estimates*; *see also* MONTANA GOVERNOR’S OFFICE OF INDIAN AFFAIRS, *Fort Peck Assiniboine & Sioux Tribes*, <http://tribalnations.mt.gov/fortpeck>. (last visited Jan. 26, 2017).

¹⁵ U.S. DEP’T OF TRANSP., FED. HIGHWAY ADMIN., OFFICE OF PLAN., ENV’T, & REALTY, *Technical and Analytical Paper: Roosevelt County / Fort Peck Indian Reservation Corridor, Montana* (Nov. 2003), http://www.fhwa.dot.gov/planning/economic_development/technical_and_analytical/mt10.cfm; *See also* WOLF POINT CHAMBER OF COM. AND AGRIC., *Business Directory*, <http://www.wolfpointchamber.com/business-directory.html>. (last visited Jan. 26, 2017).

B. Non-Native political and economic control originated in the federal government's opening of the Reservation to white homesteaders in the early twentieth century.

In the early twentieth century, the federal government used land allotments to assimilate Native people, intending to transform them from nomadic hunters into sedentary farmers.¹⁶ Under the Fort Peck Allotment Act, Tribal members each received 320-acre parcels of grazing land.¹⁷ Approximately 600,000 acres were provided to individual Tribal members or reserved for Tribal use. This attempt at economic assimilation was largely unsuccessful, however, and relatively few Native Americans developed profitable farms.¹⁸ As land passed through generations, it fractionated among multiple heirs.¹⁹ In 1913, the remaining 1,400,000 of the Reservation's



2,000,000 acres were made available for white settlement.²⁰ At that point, much of the Reservation's more valuable cropland was awarded to white homesteaders.²¹

The homesteaders introduced market capitalism to the region, devastating the Native economy, which was already destabilized by decades of Anglo disease, warfare, and extermination of vital resources such as bison. White settlers flooded the region and began farming. The Great Northern Railway created new trade opportunities for the white area residents, and commercial business grew to cater to them. Meanwhile, with the disappearance of the bison and thus the Native fur trade, Tribal members became dependent on the subsistence provided by the United States government through the Bureau of Indian Affairs' Fort Peck Agency.²²

¹⁶ SCOTT DANIEL WARREN, *LANDSCAPE AND PLACE-IDENTITY IN A GREAT PLAINS RESERVATION COMMUNITY: A HISTORICAL GEOGRAPHY OF POPLAR, MONTANA*, 56 (2008); *see also* PHILIP J. DELORIA & NEAL SALISBURY, *A COMPANION TO AMERICAN INDIAN HISTORY* 528 (2008).

¹⁷ 35 Stat. 558 (1908).

¹⁸ WARREN, *supra* note 16, at 56; *see also* DELORIA & SALISBURY, *supra* note 16, at 528; *See also* Appleton, *supra* note 9 ("By 1881, early in the reservation's history, the buffalo of the region were gone. Federal rations weren't enough to make up for the loss. In desperation, the starving tribe took up farming, but northeastern Montana's dry climate and short growing season led to crop failures and more hunger.").

¹⁹ U.S. DEP'T OF INTERIOR, *Land Buy-Back Program for Tribal Nations: Frequently Asked Questions* (Rev. Nov. 2015), <https://www.doi.gov/sites/doi.gov/files/migrated/buybackprogram/landowners/upload/Frequently-Asked-Questions.pdf>.

²⁰ FORT PECK TRIBES, *Tribal History*, http://www.fortpecktribes.org/tribal_history.html (last visited Jan. 26, 2017).

²¹ *See* MONT. OFFICE OF PUB. INSTRUCTION, *supra* note 8. For further details, *see* Appleton, *supra* note 9.

²² The Bureau of Indian Affairs ("the BIA") is an agency of the federal government, responsible for managing the relationship between Native tribes and the federal government. The BIA established regional agencies, such as the Fort Peck Agency in 1871, to carry out the mission of the BIA and implement various federal policies pertaining to Native peoples. In its early years, the Fort Peck Agency provided food rations, provisions, and other necessities to the Tribes based on the premise that they were needed if acculturation was going to succeed. *See* MILLER, ET AL. *supra* note 2, at 83; *see also* BUREAU OF INDIAN AFFAIRS, <http://www.bia.gov/WhoWeAre/BIA/> (last visited Nov. 23, 2016).

As late as the 1980s, the non-Native population controlled eighty-two percent of Reservation land.²³ More recently, declines in petroleum and agricultural markets prompted some non-Native people to leave the region.²⁴ The non-Native population now no longer outnumbers the Native population on the Reservation, but white economic and political dominance persists.²⁵

C. Racism by non-Natives is pernicious in this community, but does not present in a typical discrimination framework.

The Reservation is a racially mixed population marked by white economic and political power and by prejudice against Native people.²⁶ Racial discrimination is especially evident in Wolf Point, the business center of the Reservation.²⁷

The local manifestation of racial prejudice can be difficult for outsiders to recognize because it does not follow more familiar patterns of discrimination based on skin color or phenotype. Instead, Native and non-Native people in the area are racially classified as much by their tribal enrollment status, family connections, and names as by skin color. Certain names indicate obvious Native ancestry, such as “Spotted Bird” and “Raging Bull,” but so do certain French surnames. Names such as Azure, Gourneau, Grandbois, and Trottier have passed down generations in the community since as early as 1906.²⁸ Today, the Chairman of the Council is Floyd Azure, and Roxanne Gourneau is a member of the Tribal Executive Board.²⁹ Surname alone can be used to determine Native American descent and serves as a basis for discrimination

²³ See generally MILLER, ET AL. *supra* note 2. Today, through buyback agreements with the government, the Tribes endeavor to regain their land. See INDIAN COUNTRY MEDIA NETWORK, *Three More Tribes Sign Land Buy-Back Agreements Under Cobell* (July 10, 2014), <http://indiancountrytodaymedianetwork.com/2014/07/10/three-more-tribes-sign-land-buy-back-agreements-under-cobell-155757>.

²⁴ WARREN, *supra* note 16, at 113.

²⁵ U.S. CENSUS BUREAU, 1990 CENSUS (1990); see also ASSINIBOINE & SIOUX RURAL WATER SUPPLY SYSTEM, *Final Engineering Report: Demographics*, Table 3-1: Historic Population and Growth Rate: Fort Peck Indian Reservation and Counties in Project Area (Jan. 2002), <http://www.fortpecktribes.org/asrwss/pdf/vol1/demographics.pdf>. See, e.g. Interview by Rebecca Gerome with Cookie Ragland, in Wolf Point, Mont. (Sept. 28, 2015).

When the Reservation was founded] it was checker-boarded so it was Native and non-Native across. What happened was your Native population weren't farmers, so they sold to the non-Native people and moved to town. And the non-Native guys got really big farms, up north, they're huge. It's a Mennonite population, very white, very closed, even to other whites. Half this reservation was non-Natives to start with, so that's how it happened, right from the very beginning. Now there's this buy-back thing going on, where you can't sell land, it has to be sold back to the Tribes. The Mennonites, they're not going to sell anyway, they're just going to gift it from one generation to the next. They're just going to keep those big farms. Some of that acreage went with the top, the surface, so the Natives didn't maintain the minerals, so there's that going on to where there's discrimination. Wolf Point is on the reservation but it's not run by the Tribes. It has its own city government and is the county seat.

²⁶ As late as the 1950s, businesses were all owned by non-Native people and displayed signs saying “No dogs or Indians allowed.” Interview by Rebecca Gerome with Tribal Community Member #1 in Wolf Point, Mont. (Sept. 28, 2015); See, e.g. Interview by Rebecca Gerome with Native Community Member #2 in Brockton, Mont. (Sept. 28, 2015).

²⁷ See City of Wolf Point, *Statistical Information*, <http://ci.wolf-point.mt.us/stats/> (last visited Feb. 9, 2017).

²⁸ MILLER, ET AL. *supra* note 2, at 181.

²⁹ FORT PECK TRIBES, *Executive Board*, http://www.fortpecktribes.org/executive_board.html (last visited Jan. 26, 2017).

that is not evident to non-community members. While many Tribal members on the Reservation “look white,” their racial identities are known in the community through other mechanisms.

Dynasty white Anglo families have for generations held the prominent economic and political positions in the community, and they continue to have a stranglehold on the region’s politics and economy. Their children and other non-Native children receive privileges in Wolf Point schools, while Native children are disadvantaged and disparaged.

D. The discriminatory education system on the Reservation is rooted in racist federal policies.

1. The federal government established assimilationist boarding schools on the Reservation, designed to segregate Native students and strip them of their cultural identities.



Photo credit: www.thomasleetruewest.com

Before the arrival of white settlers, the Tribes educated their children in their own culture and traditions.³⁰ Beginning in the 1870s, the federal government brutally imposed Western education on Native families.³¹ From the 1880s to the 1920s, all school-aged Tribal member on the Reservation were forced out of their homes and compelled to receive an education in the federal government’s abusive boarding school program.³² The government’s explicit intent was complete cultural assimilation of Native children.³³

The Fort Peck Reservation Boarding School was founded in 1881 and modeled after the notorious Carlisle Indian School. It was brutally repressive of Native students.³⁴ Based on the premise that Native people are intellectually inferior, the school emphasized vocational

³⁰ NEIL TAYLOR, THE FORT TRIBES EDUCATION DEPARTMENT: STATE OF RESERVATION EDUCATION REPORT 4 (2014).

Tribes took all responsibility for educating their children and for making whatever changes were necessary to improve their lives and to perpetuate the Tribes. Children were taught through the extended family. They were given continuing, daily instruction in survival skills, in living in harmony with other people and with nature; in spiritual values and in family, kinship and tribal relationships. Certain children learned special healing, spiritual and leadership skills under certain adult tribal members who had the special knowledge and abilities and who practiced those special skills. For all children, they watched and learned from adults as adults met and counseled each other on changes that had to be made when the Tribes encountered new circumstances or forces that would or could alter their lives.

³¹ *Id.*

³² Melina Angelos Healey, *The School-to-Prison Pipeline Tragedy on Montana’s American Indian Reservations*, 37 N.Y.U. Rev. L. & Soc. Change 671, 679 (citing Andrea Smith, *Boarding School Abuses, Human Rights, and Reparations*, 31.4 Social Justice 89, 89 (2004) (“by 1909, the federal government had created nearly 200 boarding schools and 307 day schools, forcing over 100,000 American Indian students to attend, and often removing them from their homes for several years”)).

³³ MILLER, ET AL. *supra* note 2, at 159.

³⁴ *Id.*

training.³⁵ The federal government required all Native students from the Reservation to attend the boarding school, but some families fought to keep their children home.³⁶ The Fort Peck Agent³⁷ responded with violence and coercion.³⁸ The Bureau of Indian Affairs' Tribal Police removed children from their families.³⁹ Parents hiding their children lost food rations and were imprisoned. School runaways were publicly ridiculed and subjected to corporal punishment. As a result of these tactics, enrollment reached 200 in 1887.⁴⁰

While Native children on the Reservation were forced to attend boarding schools, non-Native children and mixed-race children of Native mothers and white fathers attended separate public schools. Many non-Native families objected to their children attending school with full-blood Native children because they believed that the Native children were unsanitary and unhealthy.

The United States government was thus determined to dismantle the Tribes' cultural identities. Children detained in the Fort Peck Boarding School were not only removed from their homes and community, but prohibited from interacting with their Tribal families. They were punished for speaking their Native language and following traditional customs.⁴¹ Efforts to "civilize"

³⁵ This training consisted mainly of "'manual' or 'industrial' education." The boys were schooled in agriculture, blacksmithing, and stock raising, while the girls learned cooking, cleaning, sewing, and etiquette. The focus on vocational education grew out of the belief that Native people were intellectually inferior. This misconception persisted for decades. *Id.* at 160. According to the Fort Peck Reservation Agent at the time, Captain W.A. Sprole, and Department of the Interior Inspector William J. McConnell, attending the more scholarly off-Reservation boarding schools and then returning home harmed Native children from the Reservation because it revealed to them their own hopelessly degraded cultural identities as Native people. Sprole believed that the young women who returned from off-Reservation boarding schools inevitably turned to prostitution and the young men who returned simply would no longer be willing to work, for they were now "imbued with the idea of the higher education for the Indian and no longer accustomed to their natural station in life." *Id.* at 155, 163-64.

³⁶ *Id.*

³⁷ An Indian agent was a person designated by the federal government to communicate with the Tribes. *Id.* at 43.

³⁸ *Id.* at 163. Fort Peck Agent Sprole routinely employed violence to ensure compliance with the boarding schools. For example, when a young boy ran away from the Fort Peck school, his uncle, Red Eagle, informed Sprole he would have to kill Red Eagle before he allowed Sprole to take his nephew. Sprole dispatched a team to collect the student and bring in Red Eagle, advising that they use force if necessary. When the agency party arrived at Red Eagle's land, Red Eagle resisted and was shot. Sprole reported that the case was taken to federal court and that the agency was exonerated.

³⁹ See INDIAN COUNTRY CHILD TRAUMA CENTER, *IHS/BIA Child Protection Handbook: Early Initiatives Affecting American Indian Families 2* (2002), <http://www.icctc.org/Early%20Initiatives%20Affecting%20Indian%20Families.pdf> [hereinafter IHS/BIA Child Protection Handbook]; Nick McCrea, *State, Wabanaki Tribes to Sign Mandate, Look into History of Harmful Child Welfare Practices*, BANGOR DAILY NEWS (June 28, 2012), <http://bangordailynews.com/2012/06/28/news/state/state-wabanaki-tribes-to-sign-mandate-look-into-history-of-harmful-child-welfare-practices/>. In 1878, the Bureau of Indian Affairs established Indian Police Forces, wresting law enforcement power from Native leaders and placing it in the hands of the federal government. The Agents of each Reservation chose Tribal Police Officers. See Edmund Jefferson Danzinger, Jr., *United States Indian Policy During The Late Nineteenth Century: Change and Continuity* (pts. 1 & 2), 12.1 HAYES HIST. J.: U.S. INDIAN POL. (FALL 1992), 12.2 HAYES HIST. J.: U.S. INDIAN POL. (WINTER 1993), <http://www.rbhayes.org/research/hayes-historical-journal-u.s.-indian-policy/> (last visited Jan. 26, 2017); see also US DEP'T OF THE INTERIOR INDIAN AFFAIRS, HISTORY OF INDIAN LAW ENFORCEMENT, <http://www.indianaffairs.gov/WhoWeAre/BIA/OJS/History/index.htm> (last visited Apr. 25, 2016).

⁴⁰ MILLER, ET AL. *supra* note 2, at 140.

⁴¹ Healey, *supra* note 32.

Tribal children persisted even as the government replaced boarding with day schools on the Reservation in order to educate a larger number of students at a lower cost.⁴²

After victimizing several generations of the Tribes' families and children, the federal government finally eliminated the boarding and day programs in the 1920s.⁴³ But the brutal cultural genocide the program worked on the Tribes is today a part of the living memories of many elder Tribal members on the Reservation, who suffered it themselves or were raised by its victims. Its legacy remains a part of the relationship between the Native community and public education.

2. The effects of the federal government's boarding school program persist.

The Native community's attitude toward public education "goes back to historically not being able to trust the education system. If parents were violated by boarding schools, they are not going to have faith in those systems."⁴⁴ Tribal Community Member #1 recalled that "back when boarding schools first started . . . [m]y grandma would get beat up if she tried to speak her language."⁴⁵

Native children were physically, sexually, and emotionally abused in the boarding schools.⁴⁶ Denied their heritage and underexposed to their cultural values and behaviors, students lost their Native identity and community.⁴⁷ Native people continue to experience this loss of culture as "disenfranchised grief," of the kind "that persons experience when a loss cannot be openly acknowledged or publically mourned."⁴⁸ This unresolved grief is then inherited by subsequent generations.⁴⁹ As a result, Native parents today suffer from high rates of alcoholism and substance abuse and their children experience anxiety and depression.⁵⁰

⁴² During the first decade of the twentieth century, the government established three new day schools on the Reservation. The off-Reservation boarding schools, on-Reservation boarding school, and on-Reservation day schools were militaristic and vocational. See TAYLOR, *supra* note 30; see also MILLER, ET AL. *supra* note 2, at 200; CAROLYN J. MARR, UNIVERSITY OF WASHINGTON LIBRARIES, ASSIMILATION THROUGH EDUCATION: INDIAN BOARDING SCHOOLS IN THE PACIFIC NORTHWEST, <http://content.lib.washington.edu/aipnw/marr.html#movement> (last visited May 11, 2016).

⁴³ JON REYHNER, EDUCATION WEEK, *A History of American Indian Education: 1819-2013*, <http://www.edweek.org/ew/projects/2013/native-american-education/history-of-american-indian-education.html> (last visited Jan. 26, 2017).

⁴⁴ Healey, *supra* note 32, at 680.

⁴⁵ Interview by Melina Angelos Healey with Tribal Community Member #1, Wolf Point, Mont. (Sept. 28, 2015).

⁴⁶ See Andrea Smith, *Soul Wound: The Legacy of Native American Schools*, AMNESTY INTERNATIONAL MAGAZINE (Mar. 26, 2007), <http://www.amnestyusa.org/node/87342>; IHS/BIA Child Protection Handbook, *supra* note 39, at 2.

⁴⁷ Maria Yellow Horse Brave Heart, *The American Indian Holocaust: Healing Historical Unresolved Grief*, 8.2 AM. INDIAN & ALA. NATIVE MENTAL HEALTH RES. 60, 64 (1988).

⁴⁸ *Id.* at 67.

⁴⁹ *Id.* at 68.

⁵⁰ *Id.* at 66, 69. Because Native people had little experience with alcohol before the government's violent efforts at assimilation, their tolerance was low. Yellow Horse Brave Heart suggests that American Indian alcohol abuse can be explained by the "internalized aggression, internalized oppression, and unresolved grief and trauma" left by the boarding schools and assimilation efforts.

3. Reservation public schools are segregated by race.

The Reservation has five school districts: Wolf Point, Poplar, Brockton, Frazer, and Frontier Elementary.⁵¹ Poplar, Brockton, and Frazer have almost entirely Native school populations. The Wolf Point District is racially integrated with both Native and non-Native students. It encompasses three schools: Southside Elementary School (grades K–3), Northside Elementary School (grades 4–6), and Wolf Point Junior High (grades 7–8) and High School (grades 9–12), which share a building.⁵² Frontier Elementary is a single-school carved-out district within the city of Wolf Point, its lines drawn around the city’s white neighborhood.⁵³ The district consists only of Frontier Elementary School (grades K–8). Most of the non-Native children in the Wolf Point area are enrolled at Frontier Elementary School.⁵⁴ Most graduates of Frontier Elementary School later enroll in the racially integrated Wolf Point Junior High and High School.⁵⁵

4. Racial gerrymandering of local School Board voting districts deprives Tribal members of a voice in the policies and practices affecting Tribal children’s education.

The Wolf Point School District Board of Trustees (“the School Board” or “the Board”) has long operated under a white stranglehold. In response to the gerrymandering that enabled this white control, the American Civil Liberties Union filed a complaint in federal court in 2013.⁵⁶ In January 2014, the court ordered a consent decree to remedy the malapportionment of voting power that favored white Wolf Point neighborhoods.⁵⁷ Pursuant to the decree, the Board redrew its voting district boundaries.⁵⁸

⁵¹ See TAYLOR, *supra* note 30.

⁵² Wolf Point High School also contains an on-site alternative education option, the “Opportunity Learning Center.” See *infra*, Section III(B)(2).

⁵³ But see *infra* note 54.

⁵⁴ Compare U.S. DEP’T OF EDUC., OFFICE FOR CIVIL RIGHTS, 2013 Public Use Data File, <http://www2.ed.gov/about/offices/list/ocr/docs/crdc-2013-14.html> [hereinafter OCR 2013] Frontier Elementary School Data with OCR 2013 Northside and Southside School Data. In academic year 2013–14, Frontier Elementary School had 127 students of whom fifty-eight percent were Native American and twenty-eight percent were white; Wolf Point Elementary School had 690 students of whom sixty-seven percent were Native American, sixteen percent were “Two or More Races” (see *infra* notes 111–14 for a discussion of why the students classified as “Two or More Races” are likely Native), and twelve percent were white.

⁵⁵ See TAYLOR, *supra* note 30.

⁵⁶ Until 2014, Wolf Point employed a two-part school district: one district’s population was predominantly white, and its 430 residents elected three members of the School Board. The other district’s population was predominantly native, and its 4205 residents elected only five members. Thus, each Board member from the predominantly white area represented 143 residents, while each Board member from the predominantly Native area represented 841 residents. See Consent Decree, *Jackson v. Wolf Point School District*, No. CV-13-65-GF-BMM-RKS (D.Mont. Mar. 13, 2014), https://www.aclumontana.org/sites/default/files/field_documents/wolfpointconsentdecree.pdf [hereinafter *Jackson Consent Decree*]; see also Press Release, ACLU MONTANA, *ACLU Challenges Discriminatory Wolf Point Voting Districts* (Aug. 7, 2013), https://www.aclumontana.org/sites/default/files/field_documents/wolfpoint08072013final.pdf [hereinafter 2013 Press Release].

⁵⁷ See *Jackson Consent Decree*, *supra* note 56; see also 2013 Press Release, *supra* note 56.

⁵⁸ *Jackson Consent Decree*, *supra* note 56.

With the new voting districts in place, two full Tribal members⁵⁹ and one associate member⁶⁰ now sit on a six-member⁶¹ School Board. Despite this more equitable representation, the Board finds ways to exclude Native trustees from major decisions. The non-Native trustees convene “secret” meetings,⁶² fail to inform Native Board members when important decisions are scheduled, and fail to include Native Board members in information-sharing emails that circulate among the white Board members.⁶³ When the newly elected Native trustees arrived at the first board meeting, they discovered the non-Native representatives had already convened to decide who would serve as chairman and on various committees.⁶⁴ The Native representatives had been assigned to the less important committees.⁶⁵

5. The domination of non-Native faculty, administration, and leadership exacerbates the alienation of Native students in District schools.

“Education is a battle of minds,” reports Tribal member Bill Whitehead. “Who controls education controls what is being taught. We have never been in power to enlighten people to our perspective.”⁶⁶ Approximately sixty-three percent of students in the District are Native.⁶⁷ School administration and staff, meanwhile, are only 18.5% Native and school leadership is all non-Native.⁶⁸ The principals, assistant principals,⁶⁹ and guidance counselors⁷⁰ of Wolf Point Junior High and High School and the District superintendent⁷¹ are all non-Native. The current athletic director and most of the coaching staff at Wolf Point Junior High and High School are non-Native.⁷²

⁵⁹ Interview by Rebecca Gerome with Bill Whitehead in Poplar, Mont. (Sept. 30, 2015).

⁶⁰ Associate membership is for members with greater than one-eighth and less than one-fourth Tribal blood. See Hunter Pauli, *Barred by Blood*, Native News, <http://nativenews.jour.umt.edu/2016/barred-by-blood-fort-peck/> (last visited Feb. 8, 2017).

⁶¹ *Jackson Consent Decree*, *supra* note 56.

⁶² Interview by Rebecca Gerome with Robert Manning in Wolf Point, Mont. (Sept. 28, 2015).

⁶³ Telephone Interview by Melina Angelos Healey with Stacey Summers, Fort Peck Tribal Councilwoman (Apr. 26, 2016).

⁶⁴ Interview by Rebecca Gerome with Larry Wetsit in Wolf Point, Mont. (Sept. 29, 2015).

⁶⁵ *Id.*

⁶⁶ Interview by Rebecca Gerome with Bill Whitehead in Poplar, Mont. (Sept. 29, 2015).

⁶⁷ OCR 2013, Southside Elementary School Data; OCR 2013, Northside Elementary School Data; OCR 2013, Wolf Point 7–8 Data; OCR 2013, Wolf Point High School Data. In 2013–14, the District had a total of 909 students, 577 of whom were Native American.

⁶⁸ See TAYLOR, *supra* note 30, at 38–39.

⁶⁹ Telephone Interview by Cassarah Chu and Raquel Villagra with Cookie Ragland (Nov. 3, 2016).

⁷⁰ *Id.*

⁷¹ In May 2016, Rob Osborne assumed the Superintendent position, replacing Gary Scott. Bill Vander Weele, *Osborne Agrees to Be Superintendent*, THE WOLF POINT HERALD-NEWS, <http://www.wolfpointherald.com/index.php/wp-news/local-news/5548-osborne-agrees-to-be-superintendent> (last visited Jan. 26, 2017).

⁷² Telephone Interview by Melina Angelos Healey with Stacey Summers (July 15, 2016).



Non-Native domination of the District has created a culturally unwelcoming school environment for Native students. It undermines Native students' sense that they can be future teachers and school leaders, further perpetuating their underrepresentation.⁷³ The schools' teaching, coaching, and discipline methods are inconsistent with Native culture.⁷⁴ Native students often feel misunderstood and frustrated. Their behavior is misinterpreted as "bad." District staff and administration receive no cultural competency training. To succeed at all, Native students must repudiate their tribal culture and adjust to the non-Native culture imposed by the District.⁷⁵ Furthermore, although the District's schools are located on a reservation and have majority-Native enrollment, they do not offer any courses on tribal heritage or language.⁷⁶ Tribal members' efforts to incorporate Native cultural education are opposed by school administration.⁷⁷

This culturally hostile environment makes the Native community sense that those in charge of their children's education "will not listen," that Native families are "unwelcome" at the schools, and that "nothing has been done" in response to parents' prior attempts to get involved.⁷⁸ Native parents are treated dismissively by school officials, discouraging them and, in turn, resulting in low Native participation and voter turnout and continued inequality.⁷⁹

⁷³ With predominantly or all-white staffs, Fort Peck Reservation schools fail to promote "Native children's culture and aspirations." Stephanie Woodard, *ACLU Sues Montana School District for Cheating Native Voters*, INDIAN COUNTRY (Sept. 2, 2013), <http://indiancountrytodaymedianetwork.com/2013/09/02/montana-school-district-charged-voting-rights-violations-151122>. According to Larry Wetsit, a Fort Peck Tribal and Wolf Point School Board member, Native teachers are critical because "when [the] kids go to school they see these people that are our role models. They say hey, so and so lives down the street. He's a math teacher. I could be a math teacher." Interview by Rebecca Gerome with Larry Wetsit in Wolf Point, Mont. (Sept. 29, 2015). Some argue that there is no market of Native teachers to select from, failing to recognize that the damage done to Native people in the school system is cyclical and can lead to this lack of Native teachers. Those Native students who are alienated from or pushed out of school are less likely to become teachers, and in turn less likely to serve as role models for future Native students. Remedying discrimination against Native students would thus alleviate one of the major challenges Native students face in living up to their potential and becoming teachers and role models, enabling cycles of success rather than failure.

⁷⁴ See, e.g. *infra* Section III(A)(3)(a).

⁷⁵ Interview by Melina Angelos Healey with Annette Linder in Wolf Point, Mont. (July 18, 2016).

⁷⁶ Interview by Rebecca Gerome with Ruth Jackson in Wolf Point, Mont. (Sept. 29, 2015).

[Native American Week is] the one time every year when the government allows us to be who we are and showcase it. November is Native American month. According to the public law regarding [Native] education, every school district in the state of Montana has to provide an element of [Native] education and awareness in their curriculum. But you'd think that on a [Native] reservation, that it would be more.

Interview by Rebecca Gerome with Lois Black in Wolf Point, Mont. (Sept. 29, 2015) ("You can't put Native stuff in the schools. They won't let you get a day off like Poplar, Brockton, Frazer. Last week was Native American week and you can't do nothing. They did nothing in the Wolf Point school.").

⁷⁷ Interview by Rebecca Gerome with Ruth Jackson in Wolf Point, Mont. (Sept. 29, 2015).

⁷⁸ Telephone Interview by Melina Angelos Healey with Ruth Jackson (Sept. 29, 2016).

⁷⁹ Interview by Rebecca Gerome with Larry Wetsit in Wolf Point, Mont. (Sept. 29, 2015).

III. UNLAWFUL DISCRIMINATION IN THE DISTRICT

Public school students maintain substantive and procedural rights under the Constitution and Title VI of the Civil Rights Act of 1964 while at school.”⁸⁰ Like all other citizens, students enjoy the right to equal protection under the law.⁸¹

Native students in the District are harassed and pushed out to the Reservation’s all-Native school districts. They are subjected to more frequent and severe school discipline. They receive discriminatory treatment during and unequal access to school activities. The District’s staff, administration, and leadership violate Native students’ due process in discipline proceedings and the rights of Native students with learning disabilities.

A. The District concentrates power in the white community to the detriment of Native students’ education.

1. Non-Native families enjoy near exclusive power over the District.

The concentration of political and economic power among non-Native families on the Reservation is evident in the District. The District is plagued by non-Native nepotism, with the

⁸⁰ See Civil Rights Act of 1964, §§ 601, 602, 42 U.S.C. § 2000d; *Wood v. Strickland*, 420 U.S. 308 (1975); *Tinker v. Des Moines*, 393 U.S. 503 (1969).

⁸¹ See *Monteiro v. Tempe Union High School Dist.*, 158 F.3d 1022, 1033 (9th Cir. 1998) (finding that “a school district violates Title VI when 1) there is a racially hostile environment; 2) the district had notice of the problem; and 3) it failed to respond adequately to redress the racially hostile environment”). A racial discrimination claim can be found through one of two frameworks: differential treatment and disparate impact. Under a differential treatment framework, a claim is found through intentional discrimination by school officials, either by direct or circumstantial evidence, including when a protected class is treated differently or “punished differently” than “similarly situated” students. See Catherine Y. Kim, Daniel, J. Losen, & Damon T. Hewitt, *The School-To-Prison Pipeline: Structuring Legal Reform* 35–36 (2010); see also *Alexander v. Sandoval*, 532 U.S. 275, 285 (2001) (citing *Rogers v. Lodge*, 458 U.S. 613, 618 (1982)); see also *Arlington Heights v. Metropolitan Hous. Dev. Corp.*, 429 U.S. 252, 266 (1982). A “similarly situated” plaintiff must be in circumstances “reasonably comparable” in relevant respects to other students at the school and must show that “the nature of the infraction and knowledge of the evidence by school officials” is “sufficiently similar” to that of students who were not disciplined “to support a finding of facial inconsistency.” See, e.g. *Dartmouth Review v. Dartmouth Coll.*, 889 F.2d 13, 19 (1st Cir. 1989) *overruled heightened standard by* *Educadores Puertorriqueños en Accion v. Hernandez*, 367 F.3d 61 (1st Cir. 2004) (“this requires that the other incidents’ circumstances be “reasonably comparable” to those surrounding appellants’ suspensions, and that “the nature of the infraction and knowledge of the evidence by college officials [be] sufficiently similar”). Under a disparate impact claim, discrimination is found through the disproportionate effect of policies and practices on a protected class, even if there is no intent by the government actor or school official to target the particular group. See *Yick Wo v. Hopkins*, 118 U.S. 356, 374 (1886). Disparate impact claims are cognizable in state educational systems due to rules attached to the federal funding of schools with certain students such as American Indian students, and under federal laws meant to prevent discrimination. See U.S. Dep’t of Just. and U.S. Dep’t of Educ., *Dear Colleague Letter on the Nondiscriminatory Administration of School Discipline*, 11 (2008); 3 C.F.R. § 100.3(b)(2); 28 C.F.R. § 42.104(b)(2). Offending educators and institutions may be charged by the Department of Justice. Recipients of funding specifically will not receive federal funding if they use criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, or national origin.

School Board and administration preferentially hiring family for faculty and staff positions. High level non-Native school leaders are often related to each other or School Board members.⁸²

When Wolf Point teachers challenge discriminatory practices or stand up for Native students, the non-Native leadership often rebuffs or retaliates against them. Wolf Point's few Native school teachers are invited to join the Indian Education Committee to discuss how to spend Native-specific federal funding, specifically Title VII and Johnson O'Malley money, but the invitation is not for meaningful contribution. The Native teachers, fearing for their jobs, feel pressure to agree with the powerful white school officials. The voting rights lawsuit against the School Board exacerbated tensions. Many white community members blame the plaintiffs, spreading false allegations that it was a ploy by Native community members to make money (no monetary compensation was sought). After Jennifer Medicine Cloud, a Native Wolf Point High School teacher, challenged the sports department's treatment of her daughter, many of her colleagues and superiors acted as though she "did not exist."⁸³ These experiences instruct Native community members that questioning school policies and practices risks retaliation by those families who run the town.

2. The District preferentially hires and promotes members of non-Native families while failing to hire or promote qualified Native professionals.

In 2014, out of approximately 108 teachers and staff at Wolf Point schools, only twenty were Native.⁸⁴ The District fails to both hire and promote Native teachers. In 2015, Native Employee #1, a teacher with significant coaching experience, applied for a girls' basketball coaching position at Wolf Point High School and was denied in favor of the daughter of a white School Board trustee. In 2016, the non-Native School Board chairman hired his son to be a Wolf Point High School girls' basketball coach.

Jennifer Medicine Cloud taught at Wolf Point High School for eight years. When she left, she was one of only two teachers who had a master's degree in education leadership. She received numerous statewide awards for her teaching. During her eight years at the school, she saw many less-qualified, non-Native colleagues receive invitations to serve as substitute principal, though she never did. She was invited to serve on the Indian Education Committee, along with her other Native colleagues, but never to participate on the other more leadership-oriented committees. She felt the administration had no confidence in her abilities and provided her with no career guidance. With the existing administration and School Board, she knew that she would be a classroom teacher forever, so she left Wolf Point High School to teach at the all-Native Poplar Elementary School.

On the other hand, Ruth Jackson was encouraged to apply for a counseling position by a school leader at Southside Elementary. Ms. Jackson thought the administrator would say, "I want you to apply for my position because I think you would be a good asset for the school, you would be a good team member, you're good with the families." Instead, the school leader told Ms.

⁸² For example, in the 2015–16 school year, the Wolf Point High School Assistant Principal was son of the District Superintendent. Interview by Rebecca Gerome with Cookie Ragland in Wolf Point, Mont. (Sept. 28, 2015).

⁸³ Telephone Interview by Raquel Villagra with Jennifer Medicine Cloud (Oct. 27, 2016).

⁸⁴ See TAYLOR, *supra* note 30, at 38–39.

Jackson, “I want you to apply to my counseling position, because you would make my school look good. All the Indians I’m ever able to hire are teacher’s aids and janitors.” After this interaction, Ms. Jackson elected to leave her employment with the District.

As a result of the District’s hiring and promotion practices, qualified Native teachers and staff are refused employment opportunities and pushed to other school districts.⁸⁵ The ultimate victims of these practices are Wolf Point’s Native students, who lose the instruction and mentorship of talented professionals and do not benefit from seeing Native adults as role models in the classroom.⁸⁶

3. Wolf Point schools’ predominantly white staff and administration fail to connect with Native students.

The District’s hiring and promotion practices result in predominantly white leadership, administration, and staff in Wolf Point schools. These employees, lacking culturally-informed training, often fail to connect with the majority-Native student body, which results in a school culture that tells Native students they are less worthy than their white classmates.

a. Wolf Point schools fail to train their staff and administration in Native culture.

The District’s failure to train its faculty and staff in tribal culture alienates Native families. Local law enforcement, by contrast, does receive minimal cultural competency training. For example, county⁸⁷ law enforcement officers are instructed not to be suspicious of lack of eye contact, which Native people often avoid. Tribal members commonly show respect through thoughtful quietness, and avoiding eye contact is a sign of this respect and not of guilt. Unfortunately, Native parents, in their interactions with school staff and leadership, feel pressure to conform to non-Native behaviors and force themselves to make unnatural eye contact in school meetings. They believe that avoidance of eye contact and other cultural behaviors and customs are misinterpreted by school staff and punished.

Staff at Wolf Point schools often use aggressive questioning and loud condemnation when teaching and coaching. Unaccustomed to this manner of interaction, Native students respond poorly. One Poplar community member noted at a basketball game that the Wolf Point High School girls’ basketball coach was “animated . . . to the point that he looked almost out of control,” when directing his anger at a particular Native player.⁸⁸ Native students, under pressure in such starkly unfamiliar cultural environments, retreat into themselves and tune instruction out.

⁸⁵ See, e.g. Interview by Rebecca Gerome with Ruth Jackson in Wolf Point, Mont. (Sept. 29, 2015) (citing the situation of Ruth’s niece, Jennifer Medicine Cloud, as well as that of another successful Native teacher who was discouraged from applying for a position with the Wolf Point Junior High School).

⁸⁶ See Healey, *supra* note 32, at 716.

⁸⁷ Roosevelt County, Montana covers the majority of the Reservation. *Tribal Nations*, Montana Governor’s Office of Indian Affairs, <https://tribalnations.mt.gov/tribalnations> (last visited Apr. 9, 2017).

⁸⁸ Rich McDonald, Written Statement (Mar., 2016) (on file with author).

Expulsion proceedings in the District also conflict with Native students' cultural upbringing and expectations. They are closed, with students answering in an isolated environment to the Board members, often too intimidated to explain their cases.⁸⁹

One commonly held stereotype about Native communities is that of "Indian time." According to this stereotype, Native people are perpetually late, suggesting that they are inconsiderate of other people's time.⁹⁰ The pejorative term is a misinterpretation of Native values such as patience and thoughtful consideration of surrounding circumstances.⁹¹ While in Anglo culture days can be formally scheduled and structured, many tribes embrace the idea that humans cannot control everything and that it is best to remain observant and to act when the time is right.⁹² Differing beliefs on how the day should be structured can lead to misunderstandings regarding student or parent timeliness and to inappropriate schools responses.

Exacerbating the divide between Native students and District staff, many of Wolf Point schools' Native students grow up in poverty. Wolf Point's policies and practices do not meet these students' needs.⁹³ For example, a Native student who has grown up unable to rely on the adults in her life may try to resolve a disagreement independently, leading to a physical altercation with another student. Many Native students from poor families shoulder tremendous responsibilities outside of school. Middle-class teachers insensitive to these obligations punish students for unexcused tardiness and absence without exploring or considering the underlying cause. By not accounting for cultural and economic differences, Wolf Point schools foster a stifling and even hostile learning environment that inhibits effective Native instruction.

⁸⁹ Interview by Rebecca Gerome with Tribal Community Member #1 in Wolf Point, Mont. (Sept. 28, 2015) ("Expulsion decisions usually happen in a closed session. They'll take them into that room. All the board members are sitting at the table like this around a half shoe. Here's the student and the parent... It's intimidating. They have a chance to plead. 'Tell me, why would you want to stay in school. Give me your reasoning.'").

⁹⁰ Kelly Gibson, *Stereotypes: "Indian Time,"* PARTNERSHIP WITH NATIVE AMERICANS (Nov. 3, 2011), <http://blog.nativepartnership.org/my-thoughts-on-stereotypes/>.

⁹¹ *Id.*

⁹² *Id.*

⁹³ Interview by Rebecca Gerome with Nancy Pickett in Poplar, Mont. (Oct. 1, 2015).

So there's a disconnect there, where the kids are doing what they know, but it doesn't work at school. The kids in school here have learned that they can't really rely on grown-ups to protect them, or anybody, so they rely on each other. If there's a disagreement or a bullying issue, they handle it themselves by fighting physically. That's against the middle class rules of school so the kids get into trouble and they get suspended for fighting, when in fact, in order to survive out in the community, they need to be able to do that. So it's like having different sets of rules, and either not knowing there are different sets of rules, or realizing that there are two sets and not knowing when to use them. That's where a lot of your suspensions come from.

b. Wolf Point schools fail to embrace Native programming and their Native legacy.

The lack of training and white-centered attitudes of non-Native faculty accompany a District-wide culture that disavows and suppresses its unique Native heritage and presence on Indian territory. Wolf Point High School does not offer courses on Native history or culture. In 2012, the school offered an Assiniboine language class, but it had a concentrated enrollment of students with disciplinary issues, essentially turning it into a classroom housing misbehavior. The class has since been cut. Montana requires its public schools to teach Native history and culture in their classrooms,⁹⁴ but Wolf Point schools — despite their majority-Native student body and presence on a reservation — fail to comply with this mandate. Those “cultural” activities they include tend to be stereotypical, like crafting “dreamcatchers.” They refuse to acknowledge the Native heritage of the sovereign territory the District occupies, or the cultural identities of their students, in their public image. Wolf Point High School, for example, does not bring its sports teams to Native-American classics, the Native-specific basketball tournaments, acting as though it does not belong with the other Native teams. Its public rejection of its Native roots intensifies the message that Native students are at the margins in Wolf Point schools.

c. Wolf Point schools violate educational law and offend cultural norms in their interactions with Native students and families.

Wolf Point officials and teachers disregard federal and state privacy and other laws when they interact with the families of their Native students. In so doing, they intentionally engage in the kind of public humiliation of Native children that leads to inequality of opportunity, loss of dignity, discouragement, and ultimately to pushout for these students.

For example, on March 8, 2017, a teacher at Northside Elementary School sent an unenclosed postcard to the family of Native Student #22. The text of the postcard, which identifies the student and is visible to any casual handler, reads in full: “[Native Student #22] is a very bright young lady but at the same time she can be very rude to her classmates and myself. She also often struggles to complete assignments without supervision.”

This kind of casual contempt not only for the law⁹⁵ but for the privacy and dignity of a Native student and her family, is unfortunately characteristic of the District’s attitudes. This teacher made no effort to otherwise contact or to initiate a constructive dialogue with the family. Instead, by sending an open postcard criticizing the student, he engaged in the kind of public shaming that evidences the District’s disregard both of the rights and the cultural sensitivities of the Native students in its care and their families. As a result, Native Student #22 and her family felt both unwelcome and devalued in the school.

⁹⁴ MONT. CODE ANN. § 20-1-501 (1999).

⁹⁵ An open-faced postcard containing sensitive student identifying information and educational and behavioral records potentially violates federal and state privacy laws. *See* MONT. CONST. art. 2, § 10 (“The right of individual privacy is essential to the well-being of a free society and shall not be infringed without the showing of a *compelling* state interest.”) (emphasis added); Family Educational Rights and Privacy Act, 20 U.S.C. 1232g.

4. Wolf Point schools refuse to work with the Native community to address the epidemic of self-harm and suicide among its vulnerable Native students.

Native students in the District attempt and commit suicide at a devastating rate. Their special vulnerability has been well documented and is well known to the District.⁹⁶ But it has done virtually nothing to address this tragedy. Rather, by engaging in the policies and practices described in this complaint⁹⁷ the District not only demonstrates indifference to but actually inflames Native students' vulnerability to self-harm.

Montana has the highest rate of suicide in the nation, and Native youth in Montana have a suicide rate that is 438% higher than the nation's average.⁹⁸ In Roosevelt County, where the District is located, the problem is particularly acute. In 2010, six Native students on the Fort Peck Reservation committed suicide and twenty others attempted to take their lives.⁹⁹

State-sponsored information readily available to the District shows that effective prevention of suicide of Native youth requires a culturally-based approach.¹⁰⁰ The physician who worked on the Reservation during the 2010 child suicide epidemic reports that on Fort Peck, "the problem was not understanding the people and culture."¹⁰¹ In an effort to provide solutions to the agonizing situation they faced in 2010, the Tribes organized a suicide prevention and intervention program¹⁰² and offered its services to the District and its schoolchildren.¹⁰³ Their offer was rebuffed, and for six years the District made no efforts to develop any suicide prevention program at all.¹⁰⁴ In the intervening years, suicidal behavior has increased among Native youth who go to school on or near a reservation in Montana.¹⁰⁵ In Roosevelt County, for the year 2015 alone, twenty-eight of 223 high school students attempted suicide at least once.¹⁰⁶

In the spring of 2017, the District's refusal to work with the Tribes to attend to the risk of suicide among its Native students had tragic consequences. On March 14, Native Student # 21, a student who was troubled in school, committed suicide. Several weeks later, Native Student #24, who

⁹⁶ See, e.g., Healey, *supra* note 32; MONT. OFFICE OF PUB. INSTRUCTION, *2015 Montana Youth Risk Behavior Survey*, 26-27 (Sept. 2015), http://opi.mt.gov/pdf/YRBS/15/15MT_YRBS_FullReport.pdf.

⁹⁷ See *infra* Section III(B)-(D).

⁹⁸ Amy Linn, *A Suicide Crisis in Montana and Beyond*, SPOTLIGHT ON POVERTY AND OPPORTUNITY (Dec. 13, 2016), <https://spotlightonpoverty.org/spotlight-exclusives/suicide-crisis-montana-beyond/>.

⁹⁹ *Id.*

¹⁰⁰ See, e.g., KAUFFMAN & ASSOCIATES, INC., *Montana Native Youth Suicide Reduction Strategic Plan*, 55 (Jan. 2017), <https://dphhs.mt.gov/Portals/85/amdd/documents/Substance%20Abuse/MontanaNativeYouthSuicideStrategicPlan.pdf>.

¹⁰¹ Telephone Interview by Lucy Kissel with Dr. Michael Uphues (Apr. 24, 2017).

¹⁰² FORT PECK TRIBES SUICIDE PREVENTION, www.fortpecktribes.org/honoryourlife (last visited May 17, 2017); see also KAUFFMAN & ASSOCIATES, INC. *supra* note 100, at 38.

¹⁰³ Telephone Interview by Melina Angelos Healey with Roxanne Gourneau (Mar. 20, 2017).

¹⁰⁴ *Id.*

¹⁰⁵ MONT. OFFICE OF PUB. INSTRUCTION, *Montana Youth Risk Behavior Survey*, 2 (June 2015), http://opi.mt.gov/pdf/YRBS/15/Trend/15Trend_NAR.pdf.

¹⁰⁶ Eric Killelea, *Fort Peck Tribes Fighting Back Against Youth Suicide Numbers*, THE WOLF POINT HERALD-NEWS, <http://www.wolfpointherald.com/index.php/wp-news/local-news/4697-fort-peck-tribes-fighting-back-against-youth-suicide-numbers> (last visited May 17, 2017).

the District knew was suffering from bullying in school, made a serious attempt at suicide and has been hospitalized ever since. Other Native students in the District suffer trauma as a result of these experiences.

B. District staff and administration bully, harass, and push out Native students.

The District is guilty of more than discriminatory hiring practices and cultural ignorance. Native students in Wolf Point schools are bullied and harassed because of their race, driving many Native students to withdraw from Wolf Point schools.

1. Teachers, administrators, and fellow students in Wolf Point schools bully and harass Native students on the basis of race.

The District tolerates and encourages deliberate mistreatment of Native students in its schools.¹⁰⁷ One Northside physical education teacher physically abused eleven-year-old Native Student #19 by shaking him during gym class. Wolf Point teachers use coded language, and even racial slurs, to refer to Native students. A former Wolf Point High School principal told a Native student that she would never amount to anything. In response to a Native student's question in class, a Wolf Point High School teacher commented, "See what happens when you're on drugs?" mocking the student's question and reinforcing the harmful stereotype of a drunk or drug-addicted Native.

In a school-wide assembly, a Wolf Point principal announced that students from Frontier Elementary are superior to students from "town" — in other words, white students are superior to Native students. Frontier Elementary, with its significantly greater white population, enables white families to send their children to school alongside far fewer Native children, who are assigned to predominantly Native elementary schools nearby. This manner of thinly veiled racist language is common. At Southside Elementary, one teacher commented that "those Headstart kids are so bad, I can't stand it when they come over here. . . . [A]ll those little Native kids that come from Headstart are bad." This same teacher announced that Native students should not be allowed to have second portions at lunch, but white students should, because the Native students "don't have to pay," since they are eligible for free lunches under federal poverty programs. Another Wolf Point High School teacher lamented to a Native student that "Indians aren't good at math."

The schools also encourage non-Native students to parrot racist, intolerant views. Native Student #7 expressed her frustration following a Wolf Point High School government class

¹⁰⁷ This discrimination is not new in the Wolf Point School District. Wilfred Max Bear, a current Elder, recalls that when he was a student at Wolf Point several decades ago, Native students were given manual typewriters, while white students were bestowed with electric typewriters for typing classes. Telephone Interview by Melina Angelos Healey with Wilfred Max Bear (July 16, 2016). *See also* Nadine Shawl McClurry, Written Statement (Mar. 18, 2016) (on file with author).

While attending [Wolf Point High School] in 1970, four of us Native girls got into an altercation with four white girls we were all called to the office. While we were in the lobby one of [the white girls'] mothers came in. She grabbed my arm and asked me if I was the one who fought her daughter. The principal pointed to my friend—the woman grabbed her by the hair and was dragging her around. The principal did nothing to stop this but stood and watched.... There has been prejudice in [Wolf Point] for years and now my granddaughters are the victims.

discussion about the shooting of Michael Brown in Ferguson, Missouri. Native Student #7 was one of only three Native students in the class, and one of the very few students who believed that Ferguson police had used excessive force. During the discussion, a white classmate joked, “I’m glad they killed that nigger.” The teacher did not address the comment. This experience was familiar to Native Student #7, whose classmates frequently suggested that Native “drunks” should be thrown in jail. She felt that she was constantly being treated as inferior because she was Native.

These incidents offer merely a glimpse into the pervasive and ongoing abuse that Native students face in the District. Unfortunately, taunting and name-calling are only part of the discrimination that is deeply rooted here, and it goes unaddressed by District officials.

2. Wolf Point schools push Native students out.

Many Native students have no one to stand up for them, and they end up being “brushed under the rug” by District staff. This hostile environment contributes to Native students feeling “unwelcome” at school, leading these students to drop out or transfer to school districts much farther from their homes on the Reservation. They leave even though they were born and raised in the area and their parents attended Wolf Point schools themselves. The precise extent of school pushout is difficult to quantify because Wolf Point systematically underreports truancy, suspension, and expulsion.

The District tolerates bullying of Native students, failing to take action when Native students suffer acute distress because of it. When students at risk of leaving the schools seek help from Wolf Point teachers and administrators, the schools ignore and even encourage the pushout.

Native Student #2, a junior at Wolf Point High School during the 2015–16 academic year, was bullied so much by her volleyball teammates that she quit the team. She reported the bullying to her coaches, and her family even raised the issue up to the superintendent; these school leaders failed to take any action. Native Student #2 felt unwelcome at the school and began to have suicidal thoughts. She later went to the school’s guidance counselor to learn about how to withdraw from school or graduate early. Even though Native Student #2 had a 4.0 grade point average and was in the National Honor Society, the guidance counselor rushed to get her the paperwork she needed to withdraw, without asking whether there was anything she could do to encourage Native Student #2 to stay in school. Native Student #2 stayed in school with the help of substantial emotional support from her family, but many students with less supportive families simply abandon education altogether in response to unaddressed bullying.

At Northside Elementary School, Native Student #1 was bullied regularly. She reported the bullying to school administration but saw no results. Eventually she announced that she would rather go to the Juvenile Detention Center than return to school. Finally, out of frustration, her mother transferred her to another school so she could escape the bullying. Also at Northside, Native Student #19 was bullied incessantly because of his long, traditionally Native hair.

Native students are also disciplined when they attempt to stand up to bullying. In the 2014–15 school year, a boy in the District had complained three times to his teacher about being bullied,

but nothing was done. When he finally got into a physical fight with one of his bullies, he was suspended for a week for defending himself.

Wolf Point High School sports programs also harass and disproportionately discipline Native students, frustrating their athletic ambitions and driving them into other school districts or out of school. This complaint explores the stories of these students in later sections;¹⁰⁸ their experiences illustrate the District's mistreatment of or general indifference toward Native students.

The schools also exclude students from the high school environment by transferring them to the mixed-ability level "Opportunity Learning Center" (OLC). Wolf Point High School created the OLC to warehouse students with academic or behavioral challenges. Those students who are shifted into the OLC are not counted as suspended, expelled, or transferred, though they are in a very different setting.¹⁰⁹

Families who challenge the abusive atmosphere in Wolf Point schools often ultimately give up, finding it better worth their energy to transfer out. Jennifer Medicine Cloud, who left Wolf Point High School to teach at all-Native Poplar Elementary School, drives herself and her children twenty-two miles to and from school every day in order to avoid the District. She is not alone. Each year some Native students who start the year at their home school district, Wolf Point, transfer to Native-run Reservation school districts such as Poplar, Brockton, and Frazer.

The District has a financial incentive to retain Native students just until the fall semester "head count" date, and then to get rid of them once that date has passed by employing these pushout methods. Indeed, once the District receives federal funds specifically allocated for Native student enrollment, they begin to "weed out" Native students. The money does not follow the students who transfer to other districts. Thus, those schools that eventually receive these students do not benefit for the balance of the academic year from their equitable share of this Native-specific federal funding, and their resources are strained by the influx of Native students fleeing from Wolf Point.

C. District staff and administration discipline Native students more frequently and harshly than white students.

In addition to this undocumented harassment, bullying, neglect, and pushout, Wolf Point schools disproportionately impose formal discipline on Native students. Anecdotal evidence, data, and official policy demonstrate this discrimination.

¹⁰⁸ See *infra* Section III(D)(3)(c)-(e).

¹⁰⁹ For more information about the OLC, see *infra* Section III(D)(4). Additionally, Wolf Point High School's informal undocumented pushout from regular classrooms and into the OLC is not accounted for in the statistical data on disproportionate discipline, see *infra* Section III(C), even though OLC is known as a warehouse for Native students with behavioral or learning issues.

1. Federal data show disproportionate discipline of Native students in Wolf Point schools.

The most recent data from the Office of Civil Rights (OCR) “Civil Rights Data Collection” (CRDC) show that Native students in the District are removed from their regular classroom settings at disproportionate rates.

In 2011, OCR introduced a new racial classification category for CRDC, “Two or More Races.”¹¹⁰ This category can obscure discrimination in places such as reservations and border towns in Indian Country. The Reservation is almost exclusively Native and white, or some biracial mixture thereof. Because of this, the “Two or More Races” category disguises the extent to which discipline disproportionality affects Native people because it does not allow cross-identification of “Two or More Races” with any other racial category. America’s indigenous populations are the racial or ethnic group most likely to identify as more than one race.¹¹¹

In 2015, a survey by the Pew Research Center found that fifty percent of Americans identified as “Two or More Races” are a mixture of Native American and white.¹¹² This represents an increase over those so identifying during the 2010 Census, when forty-four percent of people who reported their race as American Indian or Alaska Native reported it alongside another race.¹¹³ By contrast, only three percent of people who reported their race as white reported it alongside another race.¹¹⁴ Native people are uniquely conscious of being racially mixed, as tribal membership and qualification for certain federal benefits are contingent on establishing a particular lineage and blood quantum.¹¹⁵

In the 2013–14, school year, students in the District classified as “Two or More Races” were almost certainly Native. Because of this, the CRDC data has become a less reliable indicator than in previous reporting years for how severely Native students are targeted for discipline. Aggregating the non-white (again, undoubtedly Native) students, and comparing them to white students, paints a clearer picture of the discrimination Native students face than comparisons between the exclusively Native racial classification and white students.¹¹⁶

¹¹⁰ 72 Fed. Reg. 59,266 (Oct. 19, 2007).

¹¹¹ See U.S. CENSUS BUREAU, *2010 Census Briefs, The Two or More Races Population: 2010*, 20 (Sept. 2012), <https://www.census.gov/prod/cen2010/briefs/c2010br-13.pdf>.

The two numerically smallest race groups — the American Indian and Alaska Native population and the Native Hawaiian and Other Pacific Islander population — were unique in that large proportions of these populations reported more than one race. In fact, they had the highest percentages reporting multiple races of all race groups. Of the 5.2 million individuals who reported American Indian and Alaska Native alone or in combination, 44 percent, or 2.3 million, reported American Indian and Alaska Native as well as at least one other race.

¹¹² PEW RESEARCH CENTER, *Multi-Racial In America* (June 2015), <http://www.pewresearch.org/multiracial-voices/>.

¹¹³ See U.S. CENSUS BUREAU, *2010 Census Briefs, The Two or More Races Population: 2010*, 20 (Sept., 2012), <https://www.census.gov/prod/cen2010/briefs/c2010br-13.pdf>.

¹¹⁴ *Id.*

¹¹⁵ See Appleton, *supra* note 9.

¹¹⁶ See U.S. DEP’T OF EDUC., OFFICE FOR CIVIL RIGHTS, 2009 Public Data, <http://ocrdata.ed.gov/Page?t=s&eid=277652&syk=5&pid=1> [hereinafter OCR 2009], Wolf Point High School; U.S. DEP’T OF EDUC., OFFICE FOR CIVIL RIGHTS, 2011 Public Data,



Data on the Hispanic student population can, like the “Two or More Races” category, be similarly confusing in this context. Under the OCR collection schema, students can self-identify as ethnically Hispanic “of any race” as an independent racial classification.¹¹⁷ Any additional racial classification with which they identify is ignored if they have selected the “Hispanic” box. Those students in Wolf Point who identified as Hispanic are likely also at least part Native. Notably, these students endure the most severe disciplinary discrimination.

Although they comprised only six percent of the student population in 2013–14, Hispanic students made up eighteen percent of students receiving at least one in-school suspension, nineteen percent of students receiving at least one out-of-school suspension, and sixty-seven percent of students receiving an expulsion without educational services.¹¹⁸

In 2013–14, non-white students at Wolf Point High School were more than twice as likely to be suspended as their white peers.¹¹⁹

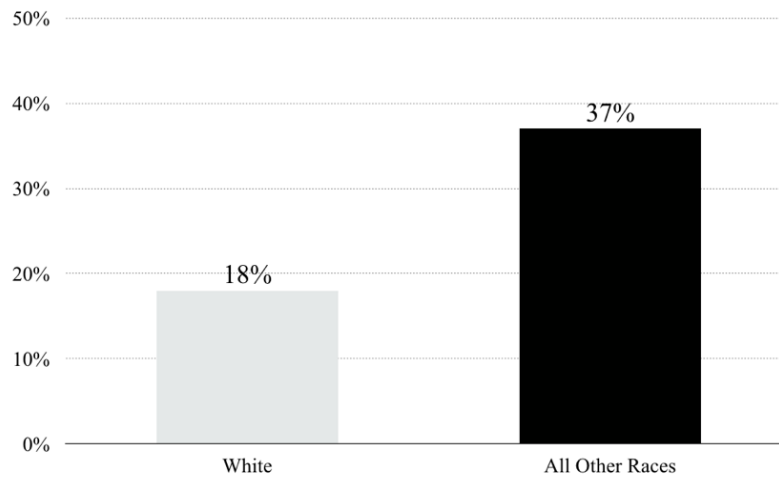
<http://ocrdata.ed.gov/Page?t=s&eid=277652&syk=6&pid=732> [hereinafter OCR 2011], Wolf Point High School. Students identified in Wolf Point High School’s “Two or More Races” category are most likely all Native American. In 2009, before the new racial category was included, Wolf Point High School had a total enrollment of 250 students: seventy-five were white (thirty percent), 170 were Native American (sixty-eight percent), and five were Hispanic (two percent). In 2011, Wolf Point High School had a total enrollment of 243 students: sixty-seven were white (27.6%), 139 were Native American (57.2%), twenty-eight were “Two or More Races” (11.5%), and seven were Hispanic (2.9%). While the number of white students at Wolf Point High School stayed relatively consistent from 2009 to 2011 (seventy-five to sixty-seven), the reported Native enrollment dropped from 170 to 139. This change in Native enrollment tracks the twenty-eight students under the new “Two or More Races” category. Thus, students in the “Two or More Races” category on the Reservation are most likely Native American and this complaint focuses on comparing the OCR data for white versus non-white students in the District.

¹¹⁷ See U.S. DEP’T OF EDUC., OFFICE FOR CIVIL RIGHTS, *2013–2014 Civil Rights Data Collection Frequently Asked Questions* 5–6, <https://www.educateiowa.gov/sites/files/ed/documents/2013-2014%20CRDC%20FAQs.pdf> (describing the steps that educational agencies must take to determine the racial classification of individual students for CRDC purposes).

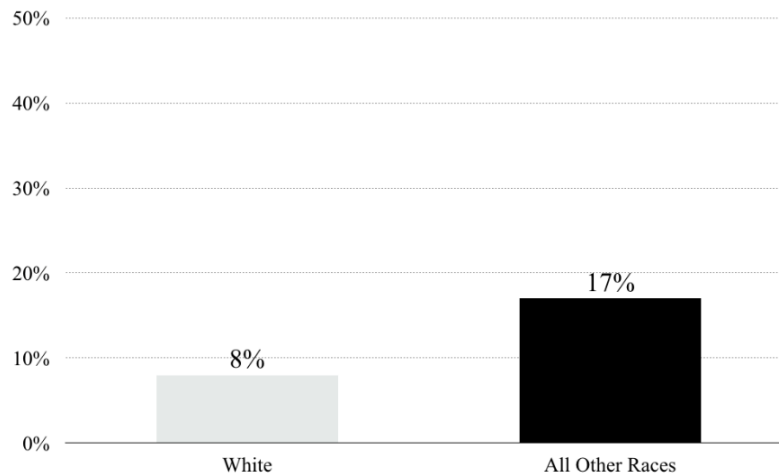
¹¹⁸ See OCR 2013, Wolf Point High School. In 2013, only thirteen of the 219 enrolled students (5.9%) were Hispanic. Thirteen of the seventy-two students with at least one in-school suspension were Hispanic (18.1%), meaning every student of this ethnic population received at least one in-school suspension. Six of the thirty-two students with at least one out-of-school suspension were Hispanic (18.8%). Four of the six expelled students were Hispanic (66.7%).

¹¹⁹ See OCR 2013, Wolf Point High School. While only 18.4% of white students received at least one in-school suspension, 37.1% of non-white students received at least one in-school suspension. 8.2% of white students received at least one out-of-school-suspension, but 16.5% of non-white students received at least one out-of-school suspension.

**Percentage of White and Non-White Students
with One or More In-School Suspensions at Wolf Point High School¹²⁰**



**Percentage of White and Non-White Students
with One or More Out-of-School Suspensions at Wolf Point High School¹²¹**



¹²⁰ See OCR 2013, Wolf Point High School. Seventy-two students total received at least one in-school suspension: nine were white, thirty-two were Native American, eighteen were “Two or More Races,” and thirteen were Hispanic. Total enrollment at Wolf Point High School during this period was 219. Forty-nine of those students were white. The remaining 170 non-white students were Native American (n=118), students of “Two or More Races” (n=37), Hispanic (n=13), and Asian (n=2). Thus, nine white students of a total white population of forty-nine (18.4%) received an in-school suspension, while sixty-three non-white students of a total non-white population of 170 (37.1%) received an in-school suspension.

¹²¹ *Id.* Thirty-two students were disciplined with one or more out-of-school suspensions; four were white, sixteen were Native American, six were “Two or More Races,” and six were Hispanic. Total enrollment at Wolf Point High School during this period was 219. Forty-nine of those students were white, 118 students were Native American, thirty-seven students were “Two or More Races,” thirteen students were Hispanic, and two students were Asian. Four white students of a total white population of forty-nine (8.2%) received an out-of-school suspension, while twenty-eight non-white students of a total non-white population of 170 (16.5%) received an out-of-school suspension.

In 2013, white students at Wolf Point High School were twenty-two percent of the total student population, but only thirteen percent of students with at least one in-school suspension and thirteen percent of students with at least one out-of-school suspension.¹²² Seventy-eight percent of the students at Wolf Point High School were non-white, but this population comprised eighty-seven percent of students with at least one in-school suspension and eighty-seven percent of students with at least one out-of-school suspension.¹²³

Notably, all six of the students who were formally expelled from Wolf Point High School in the 2013–2014 school year were non-white.¹²⁴ This does not account for the several additional informal and undocumented expulsions that Wolf Point High School families reported during that period.

This pattern of racial disparity in discipline is also present at Wolf Point Junior High, where students from the majority-Native Northside Elementary School, and students from nearby Frontier Elementary School District, which enrolls most of the city’s white youth, combine to attend secondary school together.¹²⁵

In 2013–14, non-white students were forty percent more likely to receive an in-school suspension and more than twice as likely as white students to receive an out-of-school suspension.¹²⁶

¹²² See OCR 2013, Wolf Point High School. Nine of the seventy-two students disciplined with an in-school suspension were white (12.5%), thirty-two were Native American (44.4%), eighteen were “Two or More Races” (twenty-five percent), and thirteen were Hispanic (18.1%). Thus, thirteen percent of students receiving at least one in-school suspension were white, and eighty-seven percent were non-white. Thirty-two students were served with at least one out-of-school suspension. Four of the thirty-two students were white (12.5%), while twenty-eight were non-white (87.5%). Specifically, sixteen were Native American (fifty percent), six were “Two or More Races” (18.8%), and six were Hispanic (18.8%).

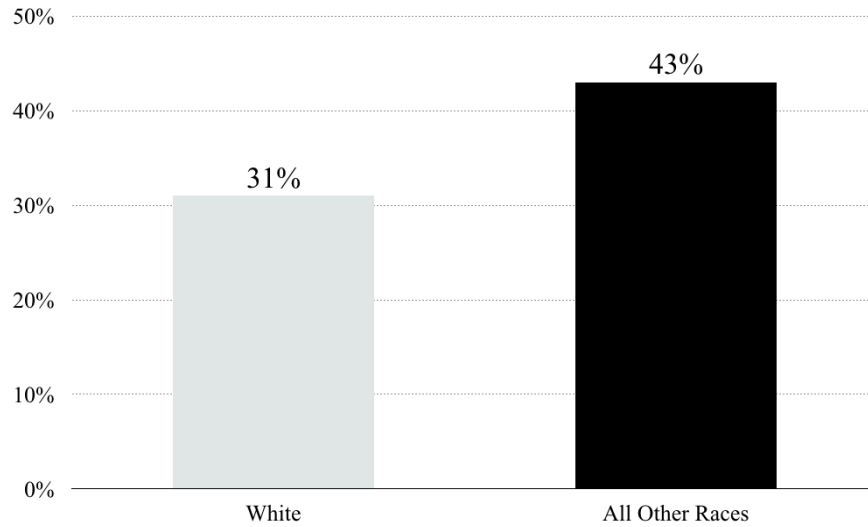
¹²³ *Id.*

¹²⁴ See *id.* No white students were expelled from Wolf Point High School; four Hispanic and two students of the “Two or More Races” category were expelled in 2013–14.

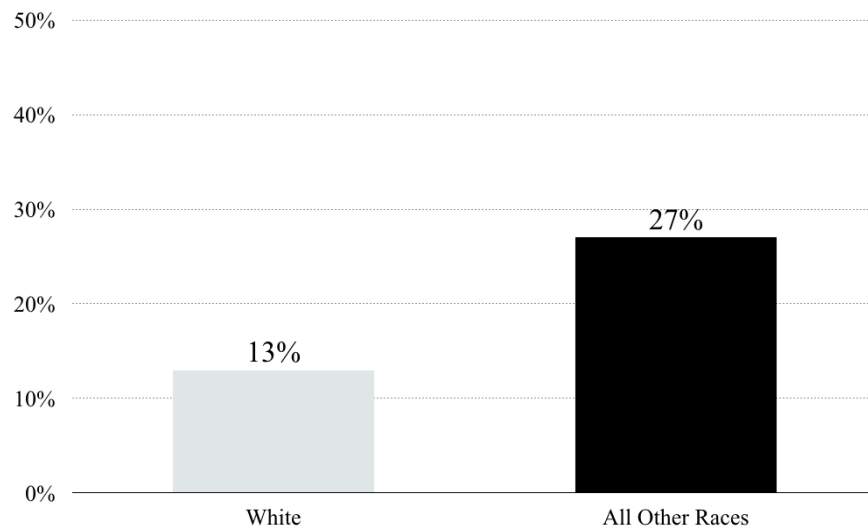
¹²⁵ See OCR 2013, Northside Elementary School; OCR 2013, Frontier Elementary School District. Northside Elementary School (serving grades 4–6), had 187 students in 2013. One hundred thirty-three were Native American (71.1%), nineteen were white (10.2%), twenty-eight were “Two or More Races” (fifteen percent), and seven were Hispanic (3.7%). Frontier Elementary School (serving grades K–6), had a higher absolute number and proportion of white students in its population. In 2013, Frontier Elementary School had 106 students. Sixty-four were Native American (60.4%), twenty-eight were white (26.4%), four were Asian (3.8%), four were black (3.8%), two were Hispanic (1.9%), two were Native Hawaiian/Pacific Islander (1.9%), and two were of “Two or More Races” (1.9%).

¹²⁶ See OCR 2013, Wolf Point Junior High. Five out of the sixteen white students (31.3%) received one or more in-school suspensions, while fifty-three of the 122 non-white students (43.4%) received one or more in-school suspensions.

**Percentage of White and Non-White Students
with One or More In-School Suspensions at Wolf Point Junior High¹²⁷**



**Percentage of White and Non-White Students
with One or More Out-of-School Suspensions at Wolf Point Junior High¹²⁸**



¹²⁷ See OCR 2013, Wolf Point Junior High.

¹²⁸ *Id.* Two of the sixteen white students were suspended (12.5%), while thirty-three of the 122 non-white students (twenty-seven percent) were suspended.

White students at Wolf Point Junior High made up twelve percent of the overall student population in 2013–14, yet comprised only nine percent students receiving in-school suspensions, six percent of students receiving out-of-school suspensions, and zero percent of the expelled population.¹²⁹

As in Wolf Point High School, while a number of non-white students were expelled, not a single white student was expelled from Wolf Point Junior High School.¹³⁰

This racial disproportion is particularly probative because it has occurred in the District’s single racially integrated Junior and Senior High School. The data demonstrate that this single school inflicts glaringly different discipline on students of different races.¹³¹ It is far more common to find statistical evidence of discrimination in multi-school school districts with racially disproportionate disciplinary patterns across multiple racially segregated schools that have varied institutional philosophies about discipline.

Notably, these data only represent Wolf Point’s formally documented discipline practices. Since its unequal disciplinary practices received negative publicity several years ago,¹³² the District has begun to underreport student truancy, suspensions, and expulsions. In addition, as described below, Wolf Point schools frequently neglect to call parents to inform them when students are disciplined and simply send them home. Furthermore, Wolf Point schools adopt numerous other techniques for disproportionately targeting and punishing Native students that fall outside of the discipline categories that schools are required to report to OCR.¹³³

2. Wolf Point schools target Native students for discipline.

Native students are punished differently and more frequently than their white classmates for the same disciplinary violations. Native parent Annette Linder tells her children and other Native students to fly “under the radar” because teachers and administrators excuse and rationalize white students’ behavior, but they will not make the same accommodation for Native students. When Native students display behavioral problems teachers send them out of the classroom indefinitely so they spend their school days isolated rather than learning.¹³⁴ Meanwhile, when

¹²⁹ See OCR 2013, Wolf Point Junior High. In 2013, total enrollment was 138 students. Sixteen were white (11.6%), ninety-four were Native American (68.1%), nineteen were “Two or More Races” (13.8%), seven were Hispanic (5.1%), and two were Asian (1.4%).

¹³⁰ *Id.* In 2013, four students were expelled, two of Native American descent, and two of Hispanic descent.

¹³¹ Although OCR separates the data for the junior high school (grades 7–8) from the senior high school (grades 9–12), Wolf Point Junior High and High School are located on the same campus and operate under the same administrative team.

¹³² See, e.g. Stephanie Woodard, INDIAN COUNTRY TODAY, *Montana’s Pipeline to Prison—and Suicide—for Native Kids* (Dec., 2013) <https://indiancountrymedianetwork.com/news/politics/montanas-pipeline-to-prisonand-suicidefor-native-kids/>.

¹³³ See, e.g., Section III(B)(2).

¹³⁴ See, e.g. Interview by Rebecca Gerome with Cookie Ragland in Wolf Point, Mont. (Sept. 28, 2015).

Wolf Point teachers and administrators] say, “go sit on the bench out there and when the bell rings you can go.” That’s not appropriate, because it teaches a kid, if you do these behaviors, then you’re going to get out of the classwork and you’re going to go down there to the office and you’re going to have to sit on the bench and nothing is really talked [about]. You don’t learn to deal, they don’t learn the social skills how to

white students misbehave, teachers and administrators work with them closely to solve the problem.

Native students in the District are conditioned to accept this different treatment from an early age. After a non-Native student shot a hair tie across the classroom, Native Student #24 picked it up off the ground and was subsequently accused of wielding a “concealed” or “deadly” weapon. Despite attempting to explain the situation, Native Student #24’s teacher banned her from participating in an important college trip and gave her an in-school suspension, saying “why don’t you just leave and find some place to go? I just don’t like you.” The non-Native student who shot the hair tie was not punished and was allowed to participate in the college visit.

Even at Frontier Elementary School, the racially mixed elementary school that feeds into Wolf Point Junior High and High School, parents report similar issues of targeted discipline. Native Student #17 told her teacher that two white boys on the bus were “doing nasties to each other.” The teacher merely told the two boys to stop, but denounced the girl as a “troublemaker” and banned her from the state science fair competition. Having worked hard on her volcano, the punishment destroyed the girl’s spirit. Her grandmother believes the punishment was so much more severe than the boys’ punishment because she is a Native child who speaks up. Native Student #17’s great aunt asked the superintendent if the teacher’s approach was a “white-black thing.” The superintendent responded that he was “done with the conversation.” Native students and their families learn to expect this behavior from school officials from elementary school through to high school.

3. Wolf Point schools enforce disciplinary policies designed to target Native students.

Wolf Point schools establish facially neutral policies and practices related to truancy, lateness, and parental support that intentionally target Native students. Native students in Wolf Point disproportionately struggle with truancy and absence.¹³⁵ They are often in the informal care of grandparents or friends, have unusually large responsibilities for themselves and their families, live in poverty, and experience significant trauma.¹³⁶ These burdens and stressors in their home lives contribute to higher rates of Native truancy. Instead of encouraging and supporting those Native students who are tardy, absent, or lack family support, Wolf Point schools use these circumstances to selectively exclude or eliminate Native students.

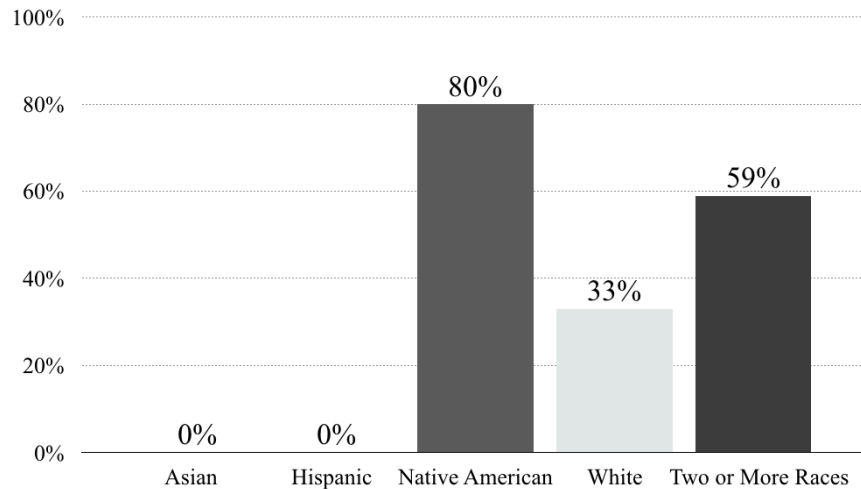
Percentage of Students by Race Who Are Chronically Absent

behave in a group, they don’t learn what’s appropriate, we don’t teach them what’s appropriate. Their house is chaotic so they learn to be chaotic. They don’t have to be accountable for anything. I see it over and over: “Go sit on the bench, get out of that class, go wander around.” The Native kids, they sit on the bench outside. The white kids, it’s “well come in here and have a donut. We’ll talk about this.” There’s no disciplinary consequences for them and it just kind of depends on who your parent is, until you are just so frustrated that you don’t come back. And that’s the hope: that you don’t come back.

¹³⁵ See *infra* Section III(C)(3) chart displaying Percentage of Students by Race Who Are Chronically Absent at Wolf Point High School.

¹³⁶ See generally Healey, *supra* note 32.

at Wolf Point High School¹³⁷



Many teachers at Wolf Point High School lock their doors after class has started. Tardy students are left to wander the halls for the entire class period. This zero-tolerance policy tells Native students that no one cares whether they are in the classroom. This policy likewise fails to account for cultural differences in the conception of time and, most important, many Native students' legitimate reasons for tardiness.¹³⁸

The District demands that students have a stable home life and ongoing parental support in order to participate in activities. Many Native students cannot rely on this kind of support and so are foreclosed from participation. For example, during their senior year, Wolf Point High School students fundraise for a graduation trip. Native Student #4, a senior, was raised by his grandmother until the age of eighteen and was then left on his own. At eighteen years old, he believed he did not need parental consent for the trip, but his teacher required it — even though he had no parent to ask. He was excluded from the trip because he did not have a signed parental consent form. This kind of school policy, common at Wolf Point, while facially neutral, actually targets only Native students, some of whose unconventional family structures make it harder for them to obtain the demanded paperwork.

The District's truancy policies also disproportionately exclude Native students from school activities. Wolf Point High School prohibits participation in the senior trip by students who have missed over fifteen days of school, even if they are still on track to graduate. This policy enables

¹³⁷ See OCR 2013, Wolf Point High School. Chronically absent students are those who have missed at least fifteen days of school in a school year. In 2013–14, eighty percent of Native Students (ninety-four out of 118 total), thirty-three percent of white students (sixteen out of forty-nine total), and fifty-nine percent of “Two or More Races” students (twenty-two out of thirty-seven total) were chronically absent.

¹³⁸ See *infra* Section III(A)(3)(a) for discussion of the “Indian time” stereotype.

the school to enlist Native students in raising money for the trip even when it knows that most of those students will not be able to go on the trip. This is widely viewed by the Native community as a tactic to reduce Native participation in the overwhelmingly white trip. In fact, the school does not raise enough money for all students to participate.

The schools' facially neutral truancy policies also target Native parents. If students miss a certain number of days of school, parents are threatened with criminal charges and the involvement of child welfare services. Yet Wolf Point schools do not promptly notify parents when they have suspended a student or when students are absent without excuse, making it impossible for parents to help ensure their kids are in school.¹³⁹ In these ways, the District subjects Native students and families to disproportionate mistreatment and discipline under the guise of generally applied policies.

D. District staff and administration treat Native students differently in school activities.

Native students in Wolf Point schools suffer unequal treatment in class and in afterschool programs. When they voice dissatisfaction with these practices they are punished.

1. Wolf Point schools deny Native students critical academic opportunities.

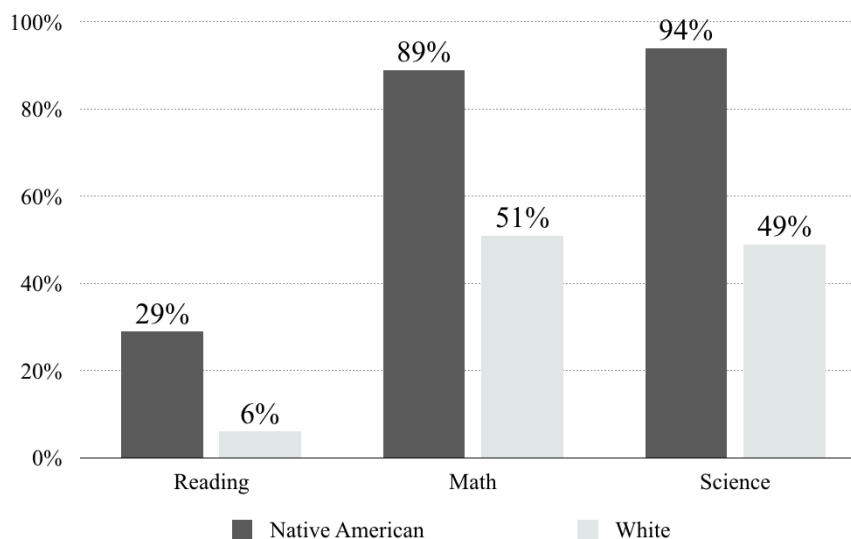
The District's culturally hostile learning environment and its exclusion of Native students from the classroom have a negative impact on Native academic performance. Native students at Wolf Point High School have abysmally low proficiency levels in reading, math, and science, especially in comparison to the higher-performing white students within the same school. In 2012–13, the most recent school year for which data is available, only seventy-one percent of Native students were proficient in reading, eleven percent were proficient in math, and five percent were proficient in science.¹⁴⁰ The white student population, receiving preferential treatment by teachers and administration, have far higher proficiency levels: ninety-four percent

¹³⁹ Interview by Melina Angelos Healey with Annette Linder in Wolf Point, Mont. (July 18, 2016). Annette notes the hypocrisy inherent in threatening parents with potential jail time for child neglect by calling social services if a child is absent for a certain number of days, and meanwhile frequently failing to notify parents when their child has been suspended, and dismissing them from school grounds alone.

¹⁴⁰ The most recent year for which reading, math, and science proficiency data is available through the Montana Office of Public Instruction ("OPI") is 2012–13. During that testing period, overall, seventy-one percent of Native students were proficient in reading (thirteen percent were "Advanced" and fifty-eight percent were "Proficient") and twenty-nine percent were below proficiency (thirteen percent were "Nearing Proficiency" and sixteen percent were "Novice"). Overall, eleven percent of Native students were proficient in mathematics (three percent were "Advanced" and eight percent were "Proficient") and eighty-nine percent were below proficiency (forty-seven percent were "Nearing Proficiency" and forty-two percent were "Novice"). Overall, five percent of Native students were proficient in science (zero percent were "Advanced" and five percent were "Proficient") and ninety-four percent were below proficiency (thirty-nine percent were "Nearing Proficiency" and fifty-five percent were "Novice"). Five percent of the Native students were not tested for reading and math, and eight percent were not tested for science. Montana OPI notes that percentages within student groups may not add up to 100% because of rounding. See MONT. OFFICE OF PUB. INSTRUCTION, GEMS DATABASE, <http://gems.opi.mt.gov/StudentAchievement/Pages/CRTProficiencyComparisons.aspx> (last visited Nov. 29, 2016) ("School Year" is "2012–2013"; "Grade" is "10th"; "Alternate Assessment" is "All"; "State/District/School" is "Wolf Point High School"; "Content Area" is "Reading" then "Math" then "Science").

of white students were proficient in reading, fifty-one percent in math, and fifty-one percent in science.¹⁴¹

**Percentage of Students Below Proficiency in Reading, Math, and Science
by Race at Wolf Point High School¹⁴²**



This alarming disproportionality results from a discriminatory education system in which Native students are discouraged from pursuing academic opportunities.

Wolf Point High School’s advanced courses that prepare students for college are also disproportionately white. According to the most recently available OCR data, seventy-eight percent of the students at Wolf Point High School were non-white, but only forty-six percent of students enrolled in calculus and only sixty-seven percent of students enrolled in chemistry were

¹⁴¹ *Id.* In 2012–13, overall, ninety-four percent of white students were proficient in reading (fifty percent were “Advanced” and forty-four percent were “Proficient”) and six percent were below proficiency (zero percent were “Nearing Proficiency” and six percent were “Novice”). Overall, fifty-one percent of white students were proficient in mathematics (thirteen percent were “Advanced” and thirty-eight percent were “Proficient”) and fifty-one percent were below proficiency (thirty-eight percent were “Nearing Proficiency” and thirteen percent were “Novice”). Overall, fifty-one percent of white students were proficient in science (thirteen percent were “Advanced” and thirty-eight percent were “Proficient”) and forty-nine percent were below proficiency (forty-four percent were “Nearing Proficiency” and five percent were “Novice”). Montana OPI notes that percentages within student groups may not add up to 100% because of rounding.

¹⁴² *Id.* (“School Year” is “2012–2013”; “Grade” is “10th”; “Alternate Assessment” is “All”; “State/District/School” is “Wolf Point High School”; “Content Area” is “Reading” then “Math” then “Science”). The proficiency data in this complaint is limited to white and Native American students, as there is no “Two or More Races” category, and data is unavailable for Hispanic and Asian students at Wolf Point High School. Montana OPI, in an effort to protect the identity of students, does not report proficiency data when 1) fewer than 10 students were reported in the grade or standard, or 2) all students were reported in a single performance category.

non-white.¹⁴³ In 2013, white students were four times as likely to be enrolled in calculus, and nearly twice as likely to be enrolled in chemistry, as their non-white peers.¹⁴⁴ This pattern of under-enrollment of non-white students also appears at the junior high level. White students were twice as likely as non-white students to be enrolled in Algebra I.¹⁴⁵ Of the fifteen students at Wolf Point Junior High held back in 2013, not a single one was white and of the thirty students held back at Wolf Point High School, only four were white.¹⁴⁶

Wolf Point High School offers Advanced Placement and college credit courses, which are theoretically open to everyone. Enrollment in these courses, however, is based on teacher recommendation, and is largely discretionary. With the exception of the more quantitative courses, such as calculus, selection is not based on grades. Teachers handpick students they like and point to class participation and other subjective assessments to justify selecting their favorite students. Native students are disproportionately excluded from these classes. One Native student reported that out of seventeen students in her Advanced Placement course one year, only four were Native.

Native Student #5 was enrolled during her junior year in the state's core required classes, but nothing else other than non-academic electives. Her guardian took notice and attempted to meet with the school principal or guidance counselor to enroll Native Student #5 in more challenging classes to prepare her for college. The school told her that it would schedule a meeting, but continually brushed her off. The administration then told Native Student #5 that her guardian was making trouble by trying to advocate for her, and even advised her to that if she ever felt threatened by this advocacy she should tell a counselor or the police. Native Student #5's guardian ultimately abandoned her efforts to meet with administrators about her child's schedule. The series of interactions convinced her that the school did not care about Native Student #5's education. Not only are Wolf Point schools failing to meet the academic needs of Native students, but they intentionally perpetuate inequality of opportunity.

2. Wolf Point schools deny Native students equal guidance and college counseling.

¹⁴³ See OCR 2013, Wolf Point High School. Non-white students are less likely to be enrolled in college and career readiness courses than white students. In 2013, only six out of the 170 total non-white student population were enrolled in calculus (3.5%); the other seven students enrolled in calculus were white out of the forty-nine total white student population (14.3%). During the same period, Wolf Point's chemistry class had twelve students. Four out of a total forty-nine white students (8.2%) and eight out of a total 170 non-white students (4.7%) were enrolled in chemistry. Specifically, the eight non-white students were Native American (n=4), "Two or More Races" (n=2), and Asian (n=2).

¹⁴⁴ *Id.*

¹⁴⁵ See OCR 2013, Wolf Point Junior High. Four of the eighteen students in algebra were white (22.2%), ten were Native American (55.6%), two were Asian (11.1%), and two were "Two or More Races" (11.1%). Thus, twenty-five percent of the white student population (four out of sixteen total) was enrolled in algebra, while only twelve percent of the non-white student population (fourteen out of 122 total) was enrolled. In 2013, although eighty-eight percent of enrolled students were non-white, only seventy-eight percent of the students enrolled in Algebra I in seventh or eighth grade were non-white.

¹⁴⁶ See OCR 2013, Wolf Point Junior High; OCR 2013, Wolf Point High School. Thirteen of the retained students at Wolf Point Junior High were Native American (86.7%) and the other two were "Two or More Races" (13.3%). At Wolf Point High School, four of the retained students were white (13.3%), two were "Two or More Races" (6.7%), two were Hispanic (6.7%), and twenty-two were Native American (73.3%).

Wolf Point schools fail to counsel Native students, leaving them adrift when they need guidance. Stories like the one involving National Honor Scholar Native Student #2, whose guidance counselor was quick to help her drop out of school rather than address her classmates' bullying, are common.¹⁴⁷ Native students are similarly brushed off by college counselors. Wolf Point High School's college advisors work with the top white students in the class to secure scholarships and neglect their duties to the rest of the student body. Most Native students' parents did not attend college and do not know how to assist their children with the application process.

The high school's college counselors advise Native students to apply only to Fort Peck Community College because that is the best they can hope to accomplish. The counselors do not encourage students to go to the much larger land grant school, Montana State University in Bozeman, and fail to inform Native students that the University has the same tuition waivers as the community college. Native students capable of getting into Montana State University do not apply because they assume they cannot afford it, and their college counselors do not inform them otherwise. Additionally, many colleges require certain school credits that Native students were either never advised to take or lacked any opportunity to take. For example, many colleges require three math classes for all incoming freshmen. Wolf Point High School, however, does not encourage Native students to take three math classes, and many do not realize their applications are deficient until it is too late. When Wolf Point counselors see the transcripts of these students, they disclaim any responsibility, claiming that the students' class registration is not part of their job. Many colleges also require a foreign language credit. The high school does not offer a foreign language, so families aware of the requirement arrange for their children to take a language credit online. For the families unaware of the requirement, typically Native families, the school provides no information or remedy. The District's counseling practices close academic opportunities to Native students.

3. Wolf Point schools' sports programs subject Native students to bullying, harassment, exclusion, and disproportionate discipline.

a. Basketball holds heightened importance in the Native community and provides opportunities for child development, excellence, and recognition.

In northeastern Montana, high school basketball is king, and as is the case in many rural Native communities, high school basketball is the Reservation's most celebrated institution.¹⁴⁸ One

¹⁴⁷ See *infra* Section III(B)(2).

¹⁴⁸ See JAMES SHANLEY et al., *A Renewed Tribal Government, and Economic and Social Development: Rediscovering Potential, 1960–1980*, in THE HISTORY OF THE FORT PECK RESERVATION ASSINIBOINE AND SIOUX TRIBES, 1800–2000, 474 (David Miller et al., ed., 2012).

As the Assiniboiné and Sioux look back through the last forty years of the twentieth century, reservation families can be pleased with themselves, the building of their communities, and their accomplishments, especially in the area of sports. High schools like Frazer, Brockton, Poplar, and Wolf Point have produced some of the best athletes in the state. Whether they run cross-country or compete at basketball, the athletes from the Fort Peck Reservation remain unsurpassed in their athletic prowess. Between Poplar and Wolf Point, they hold twelve state basketball championships. Frazer, Brockton, and Poplar are renowned for their state cross-country champions and their impressive runners.

Wolf Point school employee reports that “sometimes basketball is the only reason they come to school.” For many students, basketball is the only reason to come to and stay in school because they must keep their grades up to be eligible to participate in school sports. While the facilities of the Wolf Point High School, contained within a low-slung, shabby brick building, are unremarkable in almost every way, the basketball gymnasium is an expensive and gleaming cathedral to the sport.



Reservation high schools have produced some of the state’s best athletes.¹⁴⁹ Basketball also teaches Native children valuable lessons and provides them with the “excitement and energy” that are often lacking on the poverty-stricken Reservation. According to Native journalist Sarah Sunshine Manning, “Through basketball, many of us found our power, and we even learned valuable life lessons, sometimes otherwise unbeknownst to us outside of the game . . . [T]he energy of the game was reliable and always palpable.”¹⁵⁰ Native children find a home in this culturally

significant recreation, develop a healthy self-image, and discover their potential.¹⁵¹ The Reservation comes together and maintains hope through the sport. Even after the season ends, community members continue to play “reservation basketball,” which includes dirt courts in tribal gyms with Native tournaments or even games of “21,” “horse,” or “around the world” with family.¹⁵² The game is a way of life and a way to strive for the future. According to Manning, through basketball, “When our young relatives win, we all win.”¹⁵³

Basketball is significant among both Native and non-Native residents in the region; it is the most important sport in eastern Montana, and the most notable avenue for young people to achieve local fame, support, and access to collegiate scholarships.¹⁵⁴ Both Tribal and non-Tribal media is dominated by school sports coverage with a primary focus on basketball.¹⁵⁵ Wolf Point is one of

¹⁴⁹ SHANLEY et al., *supra* note x at 474.

¹⁵⁰ Sarah Sunshine Manning, *Love and Rez Ball, State Titles, and Community Hope*, INDIAN COUNTRY (Mar. 1, 2016) <http://indiancountrytodaymedianetwork.com/2016/03/01/manning-love-and-rez-ball-state-titles-and-community-hope-163595>.

¹⁵¹ Michael Powell, *In Navajo Nation, a Basketball Elder Earns Respect*, N.Y. TIMES (Jan. 1, 2017) https://www.nytimes.com/2017/01/01/sports/basketball/navajo-nation-raul-mendoza-arizona.html?emc=eta1&_r=0; Carmen Renee Thompson, *‘Rezballers’ hold nothing back on the court*, ESPN (Nov. 20, 2009) <http://espn.go.com/highschool/rise/news/story?id=4666620>.

¹⁵² See Powell, *supra* note 244.

¹⁵³ *Id.*

¹⁵⁴ During the Annual Elks Award Banquet, seniors receive awards and some even receive scholarships. THE WOLF POINT HERALD-NEWS 2015 Year in Review, <http://www.wolfpointherald.com/index.php/wp-news/local-news/5148-2015-year-in-review> (last visited Apr. 25, 2016).

¹⁵⁵ See Bill Vander Weele, *Lady Wolves Excel in Academics, Basketball*, THE WOLF POINT HERALD-NEWS, <http://www.wolfpointherald.com/index.php/wp-sports/5369-lady-wolves-excel-in-academics-basketball> (last visited Apr. 22, 2016).

the most remote and underpopulated areas of the United States, and school sports is the big game in town. High school basketball is among the main forms of recreation and entertainment. It is also the medium through which racial discrimination is very commonly visited on Native youth.¹⁵⁶

Unfortunately, racism against Native high school athletes is not rare in eastern Montana. In February 2017, for example, a radio host suggested that basketball tournaments should be racially segregated, writing on his website that “[t]he crowd is so unruly and disrespectful of the facility that it may be time for the [Montana High School Association] to proceed with an all Indian tourney.”¹⁵⁷ The same month, an employee at Reed Point High School was accused of turning Native fans away from a high school basketball game, saying, “We don’t have any workers yet so we are only letting white people in.”¹⁵⁸ Native students on Fort Peck excel at basketball and other sports, but face discrimination by coaches and school administration. The Native students who lead the teams to state and other championship games are not placed on the first string or are benched so that non-Native players can maintain the spotlight in those showcase games, where media coverage and recruiters are more likely to pay attention. Although Native students recognize this discrimination, they are often afraid to speak out for fear of potential consequences to their futures.¹⁵⁹

b. Coaches in the District use racist and culturally insensitive language.

Despite their reverence for and commitment to school sports, Native student athletes suffer racist abuse during practice and games. A Wolf Point High School varsity basketball coach repeatedly harassed Native Student #6 during practice. He mocked the student, who was also a runner, for lacking a “cross-country face” because she did not look like she was working hard enough. Native Student #6 and her peers found this astonishing because Native Student #6 worked exceptionally hard at sports. They found the comment culturally insensitive; Native people have different ways of demonstrating effort than the exaggerated expressions that can be the norm in other American cultures. The insult reflected an entrenched stereotype, reinforced over decades of racism in the community and its schools, of lazy Native people. Another Wolf Point High School basketball coach curses at her players and is harsher with Native students than non-

¹⁵⁶ See *infra* Section III(B); see also Healey, *supra* note 32, at 701–03. Coaches also use discipline to remove Native players from starting lineups. A student at Wolf Point High School came home devastated after her coach informed her in front of all of her teammates “she was failing math and would be ineligible to play.” *Id.* at 703. These situations have dire consequences. In the instance described, the student attempted suicide once she was kicked off of the team. *Id.* Another student committed suicide after being suspended from all activities for sixty days and not being able to participate in his athletic competitions. *Id.* at 702. Native students hold basketball and other sports up as a vital part of their lives. When the school denies them access to basketball, these young people can be demoralized. *Id.* at 701.

¹⁵⁷ Matt Hudson, *Tempers flare over deleted Cat Country post calling for separate Native tourneys*, BILLINGS GAZETTE (Feb. 22, 2017), http://billingsgazette.com/news/local/tempers-flare-over-deleted-cat-country-post-calling-for-separate/article_c4dd1511-f71c-500c-948e-fe5d0b8e07fb.html?utm_medium=social&utm_source=email&utm_campaign=user-share.

¹⁵⁸ Ed Kemmick, *Reed Point Superintendent Backs Worker Accused of Bias*, LAST BEST NEWS (Feb. 16, 2017), <http://lastbestnews.com/site/2017/02/reed-point-superintendent-backs-worker-accused-of-bias/>.

¹⁵⁹ See Section III(D)(3)(c) for discussion how student-athletes in the District are removed from teams as a consequence of speaking up against racism, resulting in the loss of college scholarships and other critical opportunities. Native students have resigned themselves to silence in the face of discrimination from their coaches.

Natives. One coach has used overt racial slurs such as “rez kids,” “prairie Indians,” and “dirty Indians” during practice.

A former head girls’ basketball coach at Wolf Point High School made his team watch videos of past teams playing. He lectured that the past teams, which were all white, were better than the current team because they had family support and the team members’ families were not drunk all the time. His comment belittled his Native players by his reference to their community’s struggles with alcohol and substance abuse. He said that his team did not play “rez ball,” disdaining the style of basketball enjoyed by Native people outside of school. He performed “war whoops,” putting his hand over his mouth and hollering in a deeply offensive mockery of Native culture. He ridiculed his Native athletes, teasing that they were doing “old Indian tricks.” Once, when music that he did not like was playing, he demanded that it be turned off, saying that he would “sooner listen to powwow music.” The Native students did not laugh at these jokes. The less the Natives students responded positively to him, the more poorly he treated them. He began to inflict regular emotional abuse upon one of his star players, Native Student #7, who tired of being polite during his racist rants. He labelled her the “cancer of the team” in an effort to discourage and humiliate her.

Racial discrimination and harassment in the District also take the form of prejudice against particular Native families because their names are associated by school officials with a familial history of crime or violence. Students with these notorious surnames are stigmatized. Teachers and administrators are intolerant of students’ digressions because of who their parents are.¹⁶⁰ During the 2012–13 basketball season, Wolf Point High School’s head girls’ basketball coach attempted to throw a basketball at Native Student #7, the team’s top player. The ball did not make contact, but the coach warned her that he would not miss the next time. One week later, he succeeded, striking her with a basketball from behind. She and her family were distressed that her relationship with the coach had thus deteriorated. Native Student #7 felt constantly berated and harassed; she would cry at the thought of basketball and needed years of therapy and counseling before she regained her strength. Her father complained about the coach throwing the basketball at his daughter to the superintendent of the District; another coach wrote to him saying that she and her colleague “battled our emotions knowing that we cant [sic] judge [Native Student #7] by her father,” revealing the coaches’ prejudices and disinclinations toward certain students based on their families.

c. Wolf Point schools’ sports programs discipline Native students more frequently and harshly than white students.

¹⁶⁰ See, e.g. Interview by Rebecca Gerome with Native Community Member #4 in Wolf Point, Mont. (Sept. 29, 2015). L___ is a bad name. I’m glad I carry the B___ name. L___ is a bad name only because of a young girl who was on meth so bad that she would take her two kids and go to houses and use them saying she needed diapers, milk, and a place to live. She went into one house and stole this lady’s debit card. I don’t know how she did it but she cracked the pin and got 28,000 dollars off the credit card and had her picture plastered all over. There’s bad names. It’s sad. It hurts my heart.

See, e.g. Interview by Rebecca Gerome with Native Community Member #3 in Wolf Point, Mont. (Sept. 29, 2015) (“A___ is not a very good name. They have a bad rap. . . . You can tell that A___ is not a white name, it’s not a white person. It’s a Native American name.”); See, e.g. Interview by Rebecca Gerome with Native Community Member #2 in Poplar, Mont. (Sept. 28, 2015). (“The way discrimination plays a role in school discipline is that it’s according to, “What family are you from?” Family names play a big role on the reservation.”)

Disparate discipline practices are especially evident in school sports. White students are rarely punished when they misbehave or commit errors during games while Native students are punished excessively or expelled from the team for similar behavior. During the 2014–15 Wolf Point High basketball season, only two Native boys were on the varsity team. The coach rarely allowed the boys to play and when he did would bench them for a single mistake. He did not bench white players who made the same or similar mistakes. The coach would not allow Native Student #20 to play games because of the way he dribbled, but he let white students continue to play even if they allowed turnovers of possession to the other team. These racially preferential practices have been reported for decades in the Wolf Point school system.

School staff harass Native students. During track in spring 2015, while travelling for a competition, Native Student #6 was placed in a motel room with a group of white students who bullied her and made her sleep on the floor. Native Student #6 reported this to her parents, who expressed their concern to the coaches. The coaches became angry with Native Student #6, demanding to know why she had told her parents and announcing that the situation was “none of [her parents’] business.”

In the fall of 2014, Native Students #8 and #9 were kicked off the Wolf Point High School girls’ basketball team because they had babies and, according to the head coach “needed to take care of them.” The coach did not claim that their status as parents in any way jeopardized their health and safety on the court, merely that it was not appropriate for them to participate in sports as young parents. In contrast, the following school year, 2015–16, one coach’s pregnant niece, a white student, was permitted to play volleyball and to attend games with the basketball team. Excluding pregnant or parenting students from extracurricular activities is not a formal school policy.¹⁶¹ Exclusion of pregnant and parenting students from school activities is, in itself, illegal discrimination under federal law.¹⁶² Excluding only Native students on those grounds is a racially discriminatory abuse of the coaches’ discretion.

The 2015–16 Wolf Point High School girls’ basketball season was particularly difficult for the Native students. By the season’s close, due to abusive and discriminatory coaching tactics, five out of the team’s six Native players had either been kicked off of the team or pushed out of Wolf Point High School altogether.

The coaching staff showed overt racial preferences for white players that year. One coach’s white niece had quit early in the season and missed approximately five practices. She was let back onto the team. She was allowed to start a game at district playoffs even though she was a freshman who had never played a varsity game before.

Meanwhile, the coaches’ abrasive and discriminatory tactics made the Native athletes feel uncomfortable, unwelcome, and harassed. During one practice, one of the coaches made Native

¹⁶¹ See Wolf Point Junior/Senior High School Extra-Curricular Activities Handbook (2015–2016).

¹⁶² Under Title IX, exclusion of pregnant and parenting students from any part of the educational program, including extracurricular activities, is illegal discrimination. See UNITED STATES DEP’T OF EDUC., DEAR COLLEAGUE LETTER AND ATTACHMENTS (June 25, 2013), <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201306-title-ix.pdf>.

Student #6 run laps, completely unattended, giving no reason. After fifteen to twenty minutes, the coach had forgotten Native Student #6 was running, and another student had to remind her to let Native Student #6 rejoin the team. Native Student #6 and her teammates wondered what she had done to deserve the punishment.

Later in the season, two of the team's Native students were cast off of the team for expressing their dismay at the coaching staff's discrimination. At the start of the season, four Native students, including Native Student #10, were told they would start on the varsity team that year. The girls set their hopes high, only to discover after tryouts that they had been bumped to junior varsity in favor of a group of non-Native players. Native Student #10, who was a sophomore at the time, did not complain about the change. She believed that if she worked hard and matured as a player, she would get the recognition she deserved. As the season progressed, she gradually earned more time in varsity games. But when the team made it to districts in Glasgow, Native Student #10 did not get to play. With only two weeks left in the season, her coach announced that it would be best for the team to start an inexperienced white freshman instead of Native Student #10. Native Student #10 returned home that night sick to her stomach.

Native Student #5 started the 2015–16 season on varsity. She was talented and worked hard to help the team get to district playoffs. The same coach, however, used harsh coaching tactics on her that he never used with white players. He got up close to her face to yell at her at every practice and game and threw his clipboard at her when she made minor mistakes. She began to have anxiety attacks. Many Tribal community members took note of his publicly abusive behavior and expressed concern for Native Student #5's wellbeing.¹⁶³ One Tribal Elder, Wilfred Max Bear, wrote a post on Facebook expressing dismay at this coach's abusive treatment of the Native players. He accused the coach of favoritism of white students while "quality" Native players languished on the bench.¹⁶⁴ Native Students #5 and #10 "liked" and shared the Elder's post.

Shortly after "liking" the post, Native Students #5 and #10, along with Native Student #6 (who had not "liked" or shared the post at all but was friends on Facebook with the other two students)

¹⁶³ See, e.g. Ruth Jackson, Written Statement (Mar. 4, 2016) (on file with author); Rich McDonald, Written Statement (Mar., 2016) (on file with author); Anonymous Grandmother, Written Statement (Feb. 16, 2016) (on file with author); and Arnold Wayne Shawl, Written Statement (Mar. 18, 2016) (on file with author).

¹⁶⁴ Wilfred Max Bear, FACEBOOK (Feb. 21, 2016, 8:00 AM) (on file with author) (Max Bear's full post reads):

The Lady Wolves ended up in 4th place at District 2B. I think that was awesome because they did so under the tutelage of an abusive coach. A couple of the Lady Wolves are allowed to play unscathed no matter how many shots they miss, how many turnovers they have committed [sic], and no matter how many other bad plays they make. On the other hand a few of the ladies are verbally attacked even before they reach the bench and are verbally abused while on the bench. Some even suffer anxiety attacks [sic] due to the abusive behavior. This abusive coach was given a technical foul a few games back and he sat down and behaved himself for awhile but he was up to his bad behavior in no time at all. In my opinion, this abusive behavior has to stop now. He should be fired and charged with child abuse because these girls are under the age of 18 years. And another bad move is that he has quality players riding the bench that should be used to relieve the starters. A strong bench is key to winning and Wolf Point has a strong bench. Every coach has favorite players and this person makes that really easy to see. I hope the Wolf Point High School administration is able to see his abusive and detrimental behavior and fires him before he traumatizes the girls for life.

discovered that they had been expelled from the team Facebook group, which provided essential information about practices and games. Then the coach, accompanied by the school's athletic director, informed Native Students #5 and #10 that they were kicked off of the team because they were "bad for the program," labelling their behavior as "conduct unbecoming" under the school handbook.¹⁶⁵ The officials ignored the part of the handbook that specifies the required procedures for addressing violations of conduct, including a hearing and appeals process.¹⁶⁶ They summarily expelled two of the six Native students from varsity basketball that season, and effectively eliminated a third, Native Student #6, by removing her from the team's Facebook page with the critical information on practices, team activities, and schedules. Shortly after, two of the remaining three Native players left the team and the school, certain that they would never be treated fairly.

Meanwhile, white students on the team engaged in their own public misbehavior on social media. Following the Wilfred Max Bear post that the Native players had done no more than "like," white teammates posted proposals that they get drunk together at a bar because of what was happening to the team. One white teammate documented her own drinking on Facebook. Another white student posted evidence of her gambling in a casino. Unlike the Native students, they were never disciplined for "conduct unbecoming."

The same tactics of aggression toward Native players continued into the most recent basketball season. The High School girls' basketball coach started the 2016–2017 season by pulling Native Student #23 out of class for a meeting with five non-Native team members (including three children of Board members) and himself, without informing Native Student #23 of the purpose. The coach instructed the five non-Native students to vote on whether or not Native Student #23 should be allowed to stay on the team, resulting in her removal. Native Student #23 subsequently transferred to Poplar High School, where she has been a standout player.

On February 11, 2017, the basketball coach verbally abused and gestured threateningly at Native players following a critical last minute opportunity to secure a victory in a season-ending game. As the final buzzer sounded with the game tied, the coach rushed off the bench and menaced Native Student #5, screaming and swinging his hands over her head. Only when Elders rose from the stands to protest his abuse of their student did the coach return to the bench. The Elders have watched the current generation of Native students grow up normalizing abusive and threatening behavior toward them, with their only options being to leave the District or to stay silent in the face of abuse.

These teachers, coaches, and administrators punish students of different races differently for the same conduct. They dole out excessively harsh punishments to Native students for minor misbehavior while ignoring altogether the more severe misconduct of white students. The effects of this disparate treatment can be devastating. According to Dr. Michael Uphues, who practiced medicine on Fort Peck for seventeen years, for many Native students "their only joy in life and their only way to stand out" is school athletics. When Wolf Point schools discriminate against Native student athletes, including through excessive discipline for "petty nonsense," they

¹⁶⁵ See Wolf Point Wolves Junior/Senior High School Extra-Curricular Activities Handbook (2015–16).

¹⁶⁶ *Id.*

“take away a sense of purpose.” This leads to diminishment of Native students’ “self-esteem” and “dreams” for the future. “When you take that away, there’s nothing left.”¹⁶⁷

d. Wolf Point schools’ sports programs favor white students.

Native people are often effectively foreclosed from the most viable route to success in the region — excellence in varsity athletics. High school basketball is the primary way to receive college scholarships and school awards in Wolf Point, and these most often go unearned to the children of local white families because of their relationships with those in power. Although Wolf Point High School is predominantly Native, its starting lineups are consistently white, dominated by graduates of Frontier Elementary School and the children of white School Board members and school employees.¹⁶⁸ Native students are told they are simply not good enough to play or that giving the white students more playing time is best for the team.

Even star Native athletes, once they have helped advance their teams for the season, are benched for high-profile games. In 2014, Native Student #7 was frequently sidelined during Wolf Point basketball games in favor of white students. When she was about to beat the three-pointer record of a white student from Frontier, the coach pulled her out of the game. When college scouts and recruiters attend games, coaches systematically replace the Native students who started every other game of the season with white children of School Board members or school employees. One Native Wolf Point graduate reports that when she attended Wolf Point, the coach pulled her out of games when recruiters came so that prominent white families’ children could play. That coach later wrote her a letter apologizing for this.

Coaches may claim that they favor some players based on talent and effort, not on race or family. These pretexts are revealed when the students who leave the District’s teams because they are not played go on to win state championships as key members of their new teams, excelling over the white players in head-to-head matches. For example, Native Student #11 was not allowed to play basketball at Wolf Point High School and was told that he would “never” be good enough for the team. He was so affected that he transferred to the all-Native Frazer School, where he became a star pupil and a starting player on a team that won state championships. Similarly, Native Student #12 helped the Wolf Point High School basketball team win the state title in the spring of his junior year, 2011, but was kicked off of the team his senior year in favor of a white freshman. When asked about this, the coach responded, “I’m not racist. I’m prejudiced.” Native Student #12 “wanted to kill himself,” but instead he changed schools, moving to Shepherd, Montana, where he went on to win the state title again with his new team.

Native student athletes who are not allowed to play on the Wolf Point teams despite talent and drive are unable to find joy and purpose in school life and they suffer academically. Some feel forced out and transfer to distant districts with fewer resources, at the expense and inconvenience of their families, in order to find equal opportunity. Those Native students whose families cannot provide transportation to another school district, or who are unable to transfer for economic or family stability reasons, often end up giving up on school altogether. Tribal

¹⁶⁷ Telephone Interview by Lucy Kissel with Dr. Michael Uphues (Apr. 24, 2017).

¹⁶⁸ Healey, *supra* note 32, at 705.

community member Bill Whitehead reports that many young people drop out because of the racism they experience in athletics, when “coaches . . . play their relatives, or sons and daughters of the people on the School Board. . . . [I]t happens all the time.”¹⁶⁹

e. Wolf Point schools’ sports programs exclude and push out Native students.

Policies in the school sports programs have a disparate, and often intentional, impact on Native students who come from families without the financial resources of the white families. Wolf Point High School implemented a “pay to play” policy recently, charging fees for sports participation on top of the costs of equipment and travel. A similar “arts fee” for art-related extracurricular activities is in place; participation in band, for example, requires payment with no waiver option. The school withholds students’ report cards if they do not pay the fee.

Many Native students at Wolf Point schools who are mistreated in athletics and other programs are, as a consequence, pushed out of the District in search of fair treatment.¹⁷⁰ Even students who have the support and care of their families feel compelled to leave what is, for many, a toxic school environment. Native Student #6, an honor roll student, was diagnosed with “situational anxiety,” a result of intimidation and unfair treatment by her coaches at Wolf Point High School. She switched to all-Native Frazer, a distant and lower-performing school than Wolf Point, in the middle of the semester. Despite having fewer resources there, she feels more comfortable in Frazer’s all-Native student body and has thrived at the school, including receiving Honorable Mention through her athletic conference. Native Student #7, too, despite her potential in school athletics, moved out of Wolf Point High School into a different school, disrupting her education and athletic career. Native Student #10 also fled to the all-Native Poplar High School after she was kicked off of Wolf Point High School’s basketball team. She reports a huge difference in the school environment; unlike at Wolf Point, she now feels that her teachers and all her classmates care about her success and her future.

4. Wolf Point schools favor white students.

While the District’s discipline and treatment of Native students are problematic, so is the scarcity of programs designed to meet Native students’ needs. The Department of Education allocates Title VII funding and the Bureau of Indian Education allocates Johnson O’Malley funding in order to fulfill the federal government’s “responsibility to the Indian people for the education of Indian children.”¹⁷¹ Yet the District perpetually mismanages these funds, failing to serve the students for whom the money was intended and to make good on the government’s responsibility.

Wolf Point High School’s classrooms are often segregated. As previously discussed, white students are preferentially placed in advanced track courses.¹⁷² Additionally, within classrooms, teachers place Native students at one classroom table and non-Natives at another. Teachers and administrators ignore the Native students and focus on the non-Native students. When Native

¹⁶⁹ Interview by Rebecca Gerome with Bill Whitehead in Poplar, Mont. (Sept. 30, 2016).

¹⁷⁰ See discussion, *infra* Section III(D)(c)-(d).

¹⁷¹ Indian, Native Hawaiian, and Alaska Native Education, 20 USCA § 7401 (Dec. 10, 2015).

¹⁷² See *infra* Section III(B)(1).

students perform poorly or act out, teachers or administrators enroll them in the OLC, a classroom for remedial learning that has become, essentially, a repository for the children the teachers prefer to avoid. The students in the OLC are almost all Native. As of December 2016, sixteen of the forty-two students in the senior class were failing.

Cookie Ragland, an OLC teacher, struggles to provide these students with quality remedial education, but gets little financial or other support from school administration. She has been ordered to discontinue her outreach involving community members in alternative education projects and her efforts to develop Native-centered curricula. She is not included in policy decisions regarding the OLC. Ms. Ragland has been thwarted in her efforts to make learning relevant to her students by taking them on field trips. A handbook and chain of command formerly governed the OLC's leadership, but those protections have disintegrated, permitting inequities to thrive unchecked with few voices to challenge them. The District's web of nepotistic leadership compounds this problem. At one point the OLC was moved into the Wolf Point Junior High and High School building. The administration required OLC students to enter its room through a door on the outside of the building, rather than through the school's main entrance with the rest of the students, reminding Ms. Ragland of the Jim Crow South, with the disfavored Native students using a separate "back door" entrance. The school's neglectful attitude toward the Native students in the OLC and its departures from procedural norms raises concerns about how these students are treated and what the District plans for their future.

5. Wolf Point schools retaliate against Native parents who demand equal treatment for their children.

When Native parents fight for equal opportunity for their children, the District retaliates. Native Student #6's mother tried diligently to engage with the head basketball coach and the athletic director to address their treatment of her daughter. When she went to the school for these meetings, the head basketball coach cursed at her, and a coach's wife confronted and harassed her. Another coach lashed out at her, saying, "Fuck your daughter." The coaches also harassed and demeaned Native Student #6 and her family when they advocated for other Native students. Ultimately, Native Student #6's mother received a letter from the District banning her from all Wolf Point school properties.

When her daughter was kicked off of the school basketball team for "liking" Tribal Elder Max Bear's Facebook post criticizing the coach's abuse of Native players,¹⁷³ Native Student #10's mother came to the High School to pick Native Student #10 up. Native Student #10's mother was upset at the injustice, and requested that a police officer come to the scene, so she could explain that the coaches were abusing their athletes. When a police officer arrived, he informed Native Student #10's mother that there was nothing he could do because the abuse occurred at basketball games outside of Wolf Point and therefore beyond his jurisdiction.

Several days later, a new fake Facebook account posted a picture of the police report describing the incident, in which the minor Native students involved were identified, their names not redacted. The posted picture showed a few digits of the fax number to which the report had been sent, and Native Student #10's mother traced the numbers to a residence belonging to a Wolf

¹⁷³ See Section III(D)(2)(c).

Point coach. She suspects that coaches in Wolf Point High School's sports program posted it to get back at her for complaining about her daughter's treatment.

These retaliatory events demonstrate the lengths that the District's leaders and employees go to humiliate Native families who ask for equal treatment of their children. They also help explain why so many Native families remain silent in the face of daily injustice at their children's schools.

6. Wolf Point schools violate Native students' due process rights in discipline.

Under *Goss v. Lopez*, students receiving a suspension of up to ten days are entitled to notice of the charges against them and an opportunity to present their version of events prior to their removal from school.¹⁷⁴ Longer suspensions call for even more formal proceedings.¹⁷⁵ The Wolf Point District Manual requires the District's schools to notify parents of a student's suspension or expulsion. According to the manual, "All suspension and/or expulsion proceedings will conform to the requirements of the State. Notification of all such proceedings will be sent to parents or guardians."¹⁷⁶ Furthermore, only a building administrator may order a suspension up to ten days.¹⁷⁷

In violation of these formal protections, Wolf Point schools send students home for days or weeks at a time without explanation, guardian notification, continued instruction, or a hearing. In February 2015, fifteen-year-old Native Student #13 was suspended from Wolf Point High School for three days and was publicly kicked off of the volleyball team because she had allegedly smoked marijuana. Her family, convinced that the allegations were false, had her take a drug test, which she passed. Yet the school refused to believe her when she protested her punishment with proof of its injustice.

In 2014, Native Student #3 was a few days away from his eighth-grade graduation. One of his friends, who had dropped out of school, was standing on the corner smoking. A teacher saw Native Student #3 approach his friend. While the teacher acknowledged that Native Student #3 was not smoking, the school expelled him for being in the presence of another student who was smoking.

Native Student #14 was also suspended from Wolf Point High School for smoking, without any evidence. Her suspension was based on two other girls' accusations, but school staff searched Native Student #14 and her classmates and did not find any cigarettes, and the girls did not smell of smoke. The school suspended Native Student #14 for three days anyway. The school informed Native Student #14's grandmother of the suspension only after it was in place. When her grandmother called the school to say that Native Student #14 should not have been

¹⁷⁴ 419 U.S. 565 (1975). If students pose a danger, they may be removed immediately, as long as the necessary notice and hearing follows. *Id.* at 582.

¹⁷⁵ *Id.* at 584.

¹⁷⁶ WOLF POINT SCH. DIST. POLICIES, SECTION 3 (STUDENTS) § 3300P, 1, https://issuu.com/montanaschoolboardsassociation/docs/wolf_point_school_district_policy_m?e=16838009/12506753 (last visited Jan. 26, 2017).

¹⁷⁷ *Id.*

suspended, the school principal hung up on her. Families and students who seek the explanations and procedures that the law and Wolf Point's own policies require are brushed off.

7. Wolf Point schools violate the rights of Native students with disabilities.

Under the Individuals with Disabilities Education Act (IDEA), schools must serve the educational needs of students with disabilities.¹⁷⁸ One of the most important guarantees of IDEA is a free appropriate public education (FAPE) to every qualified handicapped student.¹⁷⁹ Under FAPE, schools must place students with disabilities in an environment least restrictive to their learning process.¹⁸⁰ This includes following an Individualized Education Plan (IEP) developed and reviewed by a team once a year to measure a student's progress through annual goals.¹⁸¹ The team must complete IEPs annually for students with learning disabilities and attention deficit hyperactivity disorder.¹⁸² A team of teachers, evaluators, a school system representative, and a parent collaborate to create and follow the IEP. No changes may be made to the IEP without prior notice to the parents, the parent must receive a free copy of the IEP, and the school must receive written consent from the parent before the child is provided any services.¹⁸³ Under IDEA, if a student with a disability misbehaves and the behavior is related to her disability, the school cannot discipline the student for more than ten days out of the entire school year.¹⁸⁴ Furthermore, suspensions or expulsions longer than ten days of students with disabilities require a "manifestation determination" — a review by the school district, parents, and other members of the student's IEP team.¹⁸⁵ On the Reservation, students with disabilities are disproportionately Native,¹⁸⁶ and are not afforded their rights under federal law.

For example, Wolf Point's Southside Elementary School evaluated Native Student #15 and diagnosed him with autism. Since then, Native Student #15 has not received regular evaluations, and he and his family are not invited to regular IEP meetings. In the fall of 2015, a substitute teacher chased him out of a room he was not supposed to be in, yelling rudely at him. Because

¹⁷⁸ See 20 U.S.C. § 1415 (2010); see also CENTER FOR PARENT INFO. & RESOURCES, SUBPART F OF THE PART B REGULATIONS: MONITORING AND ENFORCEMENT, <http://www.parentcenterhub.org/repository/partb-subpartf/#300.604> (last visited Apr. 25, 2016).

¹⁷⁹ CATHERINE Y. KIM, DANIEL J. LOSEN, & DAMON T. HEWITT, THE SCHOOL-TO-PRISON PIPELINE: STRUCTURING LEGAL REFORM 57 (2010); 42 U.S.C.A. § 12131.

¹⁸⁰ KIM, ET AL. *supra* note 355, at 63 ("The law requires states to ensure that each child with a disability is educated in the 'least restrictive environment' with children who do not have disabilities in the regular classroom to the 'maximum extent appropriate.'").

¹⁸¹ *Id.*

¹⁸² See U.S. DEP'T OF EDUC., *A Guide to the Individualized Education Program*, <http://www2.ed.gov/parents/needs/special/iepguide/index.html> (last visited Jan. 26, 2017); See also UNDERSTANDINGSPECIAL EDUCATION.COM, *Understanding IEP Law and Special Education*, <http://www.understandingspecialeducation.com/IEP-law.html> (last visited Jan. 26, 2017).

¹⁸³ *Id.*

¹⁸⁴ See U.S. DEP'T OF EDUC., OFF. OF SPECIAL EDUC. PROGRAMS, IDEA REGULATIONS: DISCIPLINE, <http://idea.ed.gov/explore/view/p/%2Croot%2Cdynamic%2CTopicalBrief%2C6%2C> (last visited Apr. 25, 2016).

¹⁸⁵ See KIM, ET AL. *supra* note 355, at 60.

¹⁸⁶ See OCR 2013. In 2013–14, 85.7% of Wolf Point High School's IDEA students were Native or "Two or More Races," 100% of Wolf Point middle school's IDEA students were Native or "Two or More Races," 100% of Frazer middle school's IDEA students were Native, 81% of Northside Elementary Schools' IDEA students were Native, 93.3% of Southside Elementary School's IDEA students were Native, and 100% of both Frazer and Frontier elementary schools' IDEA students were Native.

of Native Student #15's autism, the encounter disoriented him; he sat in the back of the class afterward and would not speak. After the incident, he refused to return to school. Only on his third day of absence did the school call his family members to locate him. His grandmother tried to walk him to school, but ultimately she removed him from school completely because he exceeded the ten-day limit on absences. Social services removed Native Student #15 from her care because of his truancy.

Native Student #15 is now in fourth grade at Northside, and is still learning how to talk. He frequently appears to disconnect from his surroundings and retreat into his own thoughts. He receives good grades on his homework, but his grandmother does not believe he understands the work; she thinks the school is passing him through the system even though he is not receiving the education he needs. The school provided him with a "resource room," where they warehouse troublesome students, but no other services. Native Student #15's teacher is not a special education teacher. The school explained to his mother that it lacks funding for the special education resources Native Student #15 requires.

Wolf Point schools violate students with disabilities' protections from disciplinary exclusions. The District does not consider whether students' misbehavior may be related to their disabilities, denying them the due process IDEA guarantees. For example, Native Student #16 has been disciplined for behaviors that are a result of his medical problems for his entire educational career in the District. In 2013, while at Southside Elementary School, Native Student #16 ran into a non-Native child on the monkey bars. The school told his grandmother that he caused too much trouble on the playground and needed to go home. The school did not send the other child home; it blamed Native Student #16 for the incident and suspended him for three days. When he returned from his three-day suspension, the school principal told him that he would be suspended for the rest of the year if he misbehaved again. One day in physical education, Native Student #16 threw a ball and accidentally hit a classmate. The school kept its promise and suspended him for the year. He then enrolled in fourth grade at Northside Elementary School. While playing basketball there one day, he again threw a ball that hit a classmate. The principal came to the scene and did not believe that Native Student #16's pass was an accident. She told him that he was lying, so Native Student #16, upset, threw the ball again, hitting the principal and leaving a mark on her from her necklace. The principal filed a complaint against Native Student #16, and the School Board did not allow his grandmother to defend him. It placed Native Student #16 on probation for ninety days.

When Native Student #16 finally returned to school, his grandmother gave him a stress ball to use to help calm him down in upsetting situations. One day in class, he squeezed the ball, and his teacher sent him to the principal's office for it, claiming that he was not paying attention. The principal sent Native Student #16 home and did not allow him back for three weeks — without discussing the decision with his guardians. Continually, the schools disciplined him without notifying his grandmother. He would be sent home alone or with a police officer.

Had Native Student #16 been treated properly as a student with disabilities, his family might have worked with the school to establish an effective learning environment. Instead, he was suspended for most of the fourth grade. The District advanced him to fifth grade anyway. Constant discipline prevents Native Student #16 from learning the necessary material to progress

and the school provides no way for him to make up for this critical lost education. The school fails to even provide paperwork related to his disability.

Violations of the rights Native youth with disabilities affect students of all ages on the Reservation. Native Student #25, a student at the Northside School, was suspended four times in two months this semester. Native Student #25 had been diagnosed with ADHD and a traumatic brain injury. However, the school refused to create a 504 Plan¹⁸⁷ for him and continually suspended him — once doing so in front of other students — without affording him the protections that students with disabilities are entitled to.

At Frontier Elementary School,¹⁸⁸ five-year-old special needs Native Student #18 did not receive the care to which he was entitled. His kindergarten teacher told his mother that he was behind and not “smart enough” to catch up or excel. Yet the teacher responded by simply sending him to a special education setting once or twice a week for up to fifteen minutes. Instead of regularly providing him much-needed time outside of the regular classroom, she expected his parents to volunteer at the school to keep an eye on him.

Native Student #18’s mother worries about her son’s education as well as troubling stories of his physical and sexual abuse at the school. Native Student #18 told her one day that a boy at school was touching him. When she relayed this information to his teacher, the teacher responded that she would make sure the children no longer used the bathroom together, but she did not speak to Native Student #18’s abusive non-Native classmate. Native Student #18’s mother is sure that if the roles had been reversed, the teacher would have involved social services to resolve the situation. Native Student #18’s other classmates hit and bit him; his teacher excused this behavior because, according to her, Native Student #18 should behave differently and learn to speak so that he can express to adults that he is being abused. His mother attributes the behavior of the school and students in part to prejudice against his Native appearance.

The District violates federal rules governing the education of children with disabilities and disciplines students with disabilities without considering their needs.

IV. STATEMENT OF JURISDICTION

Fort Peck Indian Reservation schools are recipients of federal funding and therefore subject to the anti-discrimination prohibitions of Title VI of the Civil Rights Act of 1964, Title II of the Americans with Disabilities Act, and Section 504 of the Rehabilitation Act of 1973. Complainants allege that the discriminatory acts complained of occurred within 180 days of the filing of this Complaint or are ongoing.

¹⁸⁷ Section 504 of the Rehabilitation Act of 1973 prohibits discrimination against public school students with disabilities, including students with learning and attention issues. Schools must engage parents in creating a student’s 504 plan, which sets out the actions the school will take to ensure that the student makes educational progress.

¹⁸⁸ While Frontier is a separate school district, it is a feeder elementary school for the Wolf Point School District. *See infra* Section II(D)(3).

V. CONCLUSION

The Reservation's discriminatory treatment as well as its breach of disciplinary due process has resulted in exclusion of Native students from a fair and equal public school education. The actions of on-Reservation school district staff and administrators obstruct Native students' access to a safe learning environment. There is an urgent need for the Departments to review complainants' allegations of racial discrimination and violations of Title VI of the Civil Rights Act of 1964, Title II of the American with Disabilities Act, and Section 504 of the Rehabilitation Act of 1973. We ask that the Departments work with the Tribal community, the Fort Peck Tribal Executive Board, and the District to remedy these violations and to move forward to deliver an equal education to Native students, providing them with the learning and the respect to which they are entitled and of which they have long been deprived.



