No. 18058

The University of the State of New York

The State Education Department

Before the Commissioner

Appeal of CORY and SARAH McMILLAN, et al., on behalf of their children, from action of the Board of Education of the Cambridge Central School District regarding a team name, logo, and mascot.

Honeywell Law Firm, PLLC, attorneys for respondent, Jeffrey D. Honeywell and Paul M. Aloy, Esqs., of counsel

In 2001, Commissioner of Education Richard P. Mills issued a memorandum describing the State Education Department's position on public schools' use of Native American names, symbols, and mascots. This memorandum, the product of extensive study, "concluded that the use of Native American symbols or depictions as mascots can become a barrier to building a safe and nurturing school community and improving academic achievement for all students." Commissioner Mills noted that professional associations, the U.S. Census, the National Association for the Advancement of Colored People, the National Education Association, hundreds of P-20 institutions, and numerous professional sports teams denounced the use of such mascots. Commissioner Mills recognized that, while a role for local discretion existed, "there is a state interest in providing a safe and supportive learning environment for every child." He concluded by asking boards of education "to end the use of Native American mascots as soon as practical."

Twenty years later, petitioners[1] challenge the use by the Board of Education of the Cambridge Central School District ("respondent") of the name "Indians" and an accompanying school logo and mascot.[2] The appeal must be sustained.

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[1] In addition to those identified in the caption of this decision, the other petitioners are Alex Dery Snider, David Snider, Sara Diane, Jason Nolan, Deborah Jaffe, and Edwin Schiele. They bring this action on behalf of their children.

[2] Any references herein to the "name and logo" are for purposes of brevity and should be read to include the mascot.

Respondent's sports teams are known as the "Indians." Respondent has adopted a logo that portrays a Native American individual in profile. Respondent has not explained how or when the name and image came into being, but evidence in the record suggests that the mascot has been used since at least the 1950s.

At a December 10, 2020 board meeting, respondent's then-president announced that the board would consider the appropriateness of its name and logo. Respondent invited community input and discussed the issue at length over the next six months.

At a June 17, 2021 board meeting, respondent adopted a resolution "retir[ing] the nickname of Cambridge Indians and all Indigenous imagery associated with that nickname effective July 1, 2021." In support of the resolution, respondent indicated that the following institutions and organizations supported the elimination of Native American mascots:

- The National Congress[3] of American Indians;
- The Stockbridge-Munsee Mahican, Haudenosaunee, and St. Regis Mohawk Tribal Council;
- The Woape Foundation;
- The New York State Education Department;
- The National Association for the Advancement of Colored People
- The American Anthropological Association
- The American Psychological Association;
- The American Sociological Association;
- The Native American Education Association; and
- The Society of Indian Psychologists.

Respondent further suggested that its decision was consistent with its policy on Equity, Inclusion, and Diversity ("DEI").

At a board meeting held on July 8, 2021, respondent reversed course, adopting a "compromise" that permitted "the nickname of Indians to remain" and required "a review for potential changes and/or updates to the current imagery associated with it ...." Respondent's resolution directed "the [s]uperintendent to create a plan that [would] incorporate enhanced instruction about Native American culture, both past and present, and return to [respondent] with recommendations." This appeal ensued. Petitioners' request for interim relief was granted on August 23, 2021.

Petitioners contend that respondent's July 2021 resolution lacks a rational basis, is unaccompanied by reasonable support or explanation, and does not address the potential harm that Native American mascots pose to students. Petitioners maintain that exposure to the "Indians" name and logo

[3] Although the Board minutes use the term "Council," according to the record, this is a typographical error and should read "Congress."

causes psychological harm to their children, and all district students. Petitioners request an order vacating the July 2021 resolution and directing respondent to abide by its June 2021 resolution.

Respondent contends that certain petitioners lack standing and that two petitioners improperly verified the petition. On the merits, respondent argues that it acted within its discretion in maintaining the team name and logo.

First, I will address respondent's procedural contentions. Respondent contends that four of the petitioners lack standing as their children do not currently attend school in the district. Even accepting this allegation as true, however, respondent does not dispute that the other petitioners have standing to pursue this appeal on behalf of their children. Therefore, I decline to dismiss the appeal on this basis.

Respondent also objects to the fact that an affidavit of verification executed by petitioners Alex Dery Snider and David Snider was notarized by a non-New York State notary. However, a petition need only be verified by "at least one of the petitioners" (8 NYCRR 275.5 [a]). Respondent does not object to the affidavits of verification submitted by the other petitioners, which comply with 8 NYCRR 275.6. Therefore, I decline to dismiss the appeal based on this procedural objection.

I must also address two issues concerning the scope of the record. Following submission of their pleadings, petitioners submitted an "addendum" to the petition and two letters dated September 21 and October 15, 2021. Additional affidavits, exhibits, and other supporting papers may only be submitted with the prior permission of the Commissioner (8 NYCRR 276.5). Such submissions should not raise new issues or introduce new exhibits that are not relevant to the pleadings (*Appeal of Casey-Tomasi*, 57 Ed Dept Rep, Decision No. 17,301; *Appeals of Gonzalez*, 48 *id.* 405, Decision No. 15,898). Upon review of these documents, I decline to accept them into the record.

Additionally, Mr. John Kane has submitted a proposed *amicus curiae* brief. Section 275.17 of the Commissioner's regulations permits interested persons to file applications to submit memoranda of law *amicus curiae*. In considering whether to grant such applications, the Commissioner has historically adopted the standard applied by the New York Court of Appeals and required the interested party to establish at least one of the following criteria: (1) that the parties are not capable of a full and adequate presentation and that the interested party could remedy this deficiency; (2) that the interested party could identify law or arguments that might otherwise escape the Commissioner's consideration; or (3) that the proposed *amicus curiae* submission would otherwise be of assistance to the

Commissioner (*see* 22 NYCRR 500.23 [a] [4]; *Appeal of Touré, et al.*, 54 Ed Dept Rep, Decision No. 16,660).

I decline to accept Mr. Kane's submission as petitioners have fully and adequately presented their case. Additionally, Mr. Kane participated in the events described herein. His submission is in the nature of an affidavit and not a memorandum of law; as such, it should have been submitted with the petition. Therefore, I decline to consider the proposed *amicus* brief.

Turning to the merits, a board of education generally has discretion to determine "the propriety of [a sports] team name," mascot, or logo (*Appeal of Tobin*, 25 Ed Dept Rep 301, Decision No. 11,591). Such decisions will only be reversed upon a showing that a board abused its discretion (*id.*). A board may abuse its discretion if a team name, mascot, or logo inhibits the creation of "a safe and supportive environment that promotes achievement of the [learning] standards for all children" (New York State Education Department, "Public School Use of Native American Names, Symbols, and Mascots," Apr. 5, 2001; *see* Education Law §§ 1709, 1805). A board may also abuse its discretion if it changes its position without explaining "why [it] abandoned all of the benefits it previously asserted would be realized" from a prior course of action (*Appeal of Kaufmann et al.*, 57 Ed Dept Rep, Decision No. 17,250; *see also Appeal of Mathis and Dahlia*, 28 *id.* 347, Decision No. 12,132).

In an appeal to the Commissioner, a petitioner has the burden of demonstrating a clear legal right to the relief requested and establishing the facts upon which he or she seeks relief (8 NYCRR 275.10; *Appeal of P.C. and K.C.*, 57 Ed Dept Rep, Decision No. 17,337; *Appeal of Aversa*, 48 *id.* 523, Decision No. 15,936; *Appeal of Hansen*, 48 *id.* 354, Decision No. 15,884).

Petitioners have met their burden of proving that respondent acted arbitrarily by reinstating the "Indians" name and imagery in July 2021. The Commissioner has consistently invalidated actions where boards of education summarily reversed course without sufficiently explaining their reasoning (*Appeal of Kaufmann et al.*, 57 Ed Dept Rep, Decision No. 17,250; *Appeal of Mathis and Dahlia*, 28 *id.* 347, Decision No. 12,132). For example, in *Appeal of Mathis and Dahlia*, a board of education resolved to consolidate its three high schools into a single high school. Twenty months after this resolution, three new members were elected to the board. In a 4-3 vote, the board changed its resolution and decided to consolidate into two high schools instead of one. The Commissioner deemed this series of events arbitrary and capricious, concluding that the board's decision was not "the result of ... collective judgment and deliberation."

Similarly, in *Appeal of Kaufmann et al.*, the Commissioner reversed a board of education's decision regarding the building assignment of its sixth-grade students. Over the course of 17 months, the board had spent

significant time and resources developing a plan to move its sixth-grade students from elementary schools to middle schools. Following the election of a new board member, the board abandoned the sixth-grade reorganization plan. The Commissioner held that the board's "unexplained reversal of a school reorganization which it had been implementing for the prior 17 months" was "arbitrary, capricious, unreasonable and contrary to sound educational policy." The Commissioner also found that the board offered "no explanation as to why [it] abandoned all of the benefits it previously asserted would be realized from the ... configuration."

This reasoning applies with equal force to the instant appeal. Respondent spent several months considering the appropriateness of its team name, logo, and mascot. Respondent considered the opinions of the Cambridge community, professional associations, and Native American organizations. These efforts culminated in the June 2021 resolution, which cited the opinions, among others, of Native American tribes, professional and academic associations, the New York State Education Department, and respondent's DEI policy.

The July 2021 resolution, however, offered no meaningful explanation as to why respondent no longer found the information it had previously cited persuasive. It merely indicated that a single association (the Native American Guardian Association) and the "majority of the Cambridge community" supported retention of the name and logo. Respondent did not address or refute the evidence-based findings, including those of the American Psychological Association, that Native American team names and mascots cause psychological harm to students. The July 2021 resolution also failed to explain how the name and logo violated respondent's DEI policy in June 2021 but not a month later.[4] As such, I find respondent's unexplained reversal of its June 2021 resolution to be arbitrary and capricious (*Appeal of Kaufmann et al.*, 57 Ed Dept Rep, Decision No. 17,250; *Appeal of Mathis and Dahlia*, 28 *id.* 347, Decision No. 12,132). A board of education may change its mind on issues, even important ones. But such change must be accompanied by an "explanation as to why the board abandoned all of the benefits it previously asserted would be realized" from a prior proposal (*Appeal of Kaufmann et al.*, 57 Ed Dept Rep, Decision No. 17,250). This respondent has not done.

Even if respondent had not unreasonably changed its position, I would find that it abused its discretion by maintaining its name and logo. Commissioner Mills' position, which continues to represent the view of the State Education Department, has been affirmed by subsequent academic and legal developments. For example, petitioners submit a 2020 literature review

[4] That policy provides, in relevant part, that the district "is committed to creating and maintaining a positive and inclusive learning environment where all students, especially those currently and historically marginalized, feel safe, included, welcomed, and accepted, and experience a sense of belonging and academic success."

on studies of Native American mascots by Laurel R. Davis-Delano, *et al.* In conducting this review, the authors examined "[a]ll academic research that investigated psychosocial effects of Native American mascots." They found that each study "demonstrate[d] either direct negative effects on Native Americans or that these mascots activate[d], reflect[ed], and/or reinforce[d] stereotyping and prejudice among non-Native persons." Those findings remained consistent regardless of "the stated intent of those who support[ed] Native mascots (i.e., to 'honor' Native Americans)."[5]

The authors' findings are corroborated by a 2021 statement by the New York Association of School Psychologists (NYASP). In its "Statement on the Rights and Autonomy of Indigenous Persons," NYASP calls for an immediate end to the use of Indigenous symbols as mascots for schools and school-associated sports teams. NYASP explains that

> research studies have consistently shown that the use of mascots and Indigenous symbols and imagery have a negative impact on not only Indigenous [students], but all students .... Exposure to Indigenous mascots ... ha[s] been shown to have many negative effects on Indigenous individuals ... [and] indirect [negative] effects on non-Indigenous people who view the mascots.

"Based on the abundance of research, as well as similar position statements of other professional organizations," NYASP "opposes the use of Indigenous images" by educational entities due to their potential to "perpetuat[e] stereotypes and prejudices." NYASP further opined that the continued use of such "Indigenous symbols, personalities, and stereotypes as mascots" could violate the Dignity for All Students Act ("DASA").

This concern is well-founded. DASA, enacted in 2012, reflects New York State's commitment to promoting a positive learning environment in schools. It prohibits "the creation of a hostile environment by conduct or by threats, intimidation or abuse, ... that ... reasonably causes or would reasonably be expected to cause ... emotional harm to a student" (Education Law § 11 [7]; *see Appeal of J.S.*, 58 Ed Dept Rep, Decision No. 17,509 [directing a board of education to review and revise its DASA policy because it omitted the "emotional harm" prong]). Given the voluminous academic research analyzed within the above sources, it is certainly reasonable to conclude that the use of Native American mascots could violate DASA.

Additionally, the Board of Regents (BOR) has taken affirmative measures, consistent with DASA, to promote positive learning environments

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[5] Laurel R. Davis-Delano, et al., "The Psychosocial Effects of Native American Mascots: A Comprehensive Review of Empirical Research Findings," *Race, Ethnicity and Education*, Vol. 23 No. 5 (2020): 613-633, at 627, 630.

in schools. These are reflected in the BOR's Culturally Responsive-Sustaining Education Framework as well as its DEI policy. The BOR's DEI policy, for example, urges districts to consider the impact of district and school-wide policies and practices with a view to fostering respect, community-building, and inclusivity.[6]

Respondent's argument that its logo fosters respect for Native Americans is not supported by the evidence in the record. Petitioners have submitted proof that respondent perpetuates stereotypes by, for example, publishing a "Lil' Indians" newspaper, utilizing an image of "Little Hiawatha" in a district publication,[7] and sanctioning an employee's donning of a Plains Indian headdress. Respondent's *pro forma* denial thereof, bereft of any proof or explanation, is unpersuasive.[8]

In sum, petitioners have submitted sufficient evidence that respondent improperly reversed course between June and July 2021 without sufficiently explaining its reasoning (*Appeal of Kaufmann et al.*, 57 Ed Dept Rep, Decision No. 17,250; *Appeal of Mathis and Dahlia*, 28 *id.* 347, Decision No. 12,132). Petitioners have also demonstrated that respondent's use of the Indians team name, mascot, and logo inhibits the creation of "a safe and supportive environment" for all students. As such, petitioners have met their burden of proving that respondent's continued use of the "Indians" team name, logo and mascot constitutes an abuse of its discretion.

With respect to the appropriate remedy, I agree with petitioners that respondent's June 2021 resolution represents a prudent path forward. However, given the events described herein, including the granting of petitioners' request for interim relief, it is necessary to alter the date by which respondent originally planned to retire the logo. Therefore, I will postpone the date by which respondent must finally eliminate the use of its former team name, mascot and logo to July 1, 2022. Additionally, while not requested by petitioners, I encourage respondent to abide by its proposal, articulated in the July 2021 resolution, to offer "enhanced instruction" concerning Native Americans. Retiring the mascot is not an end in and of itself; it is a small but important part of increasing the nature and quality of Native American education.[9]

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[6] New York State Board of Regents, "Policy on Diversity, Equity and Inclusion," *available at* https://www.regents.nysed.gov/common/regents/files/521bra7.pdf (last accessed Nov. 29, 2021).

[7] While not explained in the record, I take notice that "Little Hiawatha" is an animated film released by Disney in the 1930s.

[8] Additionally, as indicated above, respondent has not explained the circumstances under which the logo and name were originally adopted.

[9] The Board of Regents, at its April 2014 meeting, adopted the New York State K-12 Social Studies Framework as the foundation for Social Studies instruction in New York State. This framework includes several learning standards concerning Native American education. (New York State Education Department, "Curriculum and Instruction – Social Studies," available at http://www.nysed.gov/curriculum-instruction/social-studies [last accessed Nov. 29, 2021]).

Petitioners' position was best captured by the valedictorian of respondent's Class of 2021. I conclude with her words:

> If the board formally votes to keep the mascot[,] it signals that the harm and offense many Indigenous people feel from it does not matter—an example that students will see. If the school is willing to ignore the harm it is causing people, then what is it teaching the students to do?
>
> Vote to remove the mascot.
>
> The courage to change is a most beautiful thing.

THE APPEAL IS SUSTAINED.

IT IS ORDERED that respondent's July 8, 2021 resolution "CCS NICKNAME & IMAGERY RESOLUTION v.2" is hereby annulled; and

IT IS FURTHER ORDERED that the Board of Education of the Cambridge Central School District eliminate the use of its former team name, mascot and logo in accordance with its resolution dated June 17, 2021, by no later than July 1, 2022.

IN WITNESS WHEREOF, I, Betty A. Rosa, Commissioner of Education of the State of New York, for and on behalf of the State Education Department, do hereunto set my hand and affix the seal of the State Education Department, at the City of Albany, this 29th day of November 2021.

Commissioner of Education