UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
CENTRAL DIVISION

SAM ANTOINE, a minor, by and through LAVINA MILK, his legal guardian; RICHARD CHASING HAWK, a minor, by and Through ROSA MENDOZA, his legal guardian; CHARLES DUBRAY; MINDI FELIX, a minor, by and through DONNA EISENBRAUN, her mother; JESSE MILK, a minor, by and through JOANNE BATES, his mother; DEIDRICK OLD LODGE, a minor, by and through YVETTE IRON HEART, his mother; JENNIFER PENEAUX; JOHNATHON SCRUGGS, a minor, by and through CHRISTINE RINKER, his mother; JOSEPHINE TRAVERSIE, a minor, by and through REGINA TRAVERSIE-LAPOINTE, her mother; TAYLOR WHITE BUFFALO, a minor, by and through DALE AND BEATRICE WHITE BUFFALO, his parents; and all others similarly situated,	)	Civ. 06-3007
Plaintiffs,	)	
v.	)	
WINNER SCHOOL DISTRICT 59-2; MARY FISHER, Individually and as Superintendent of the Winner School District; BRIAN NAASZ, Individually and as Principal of Winner Middle School; and MIKE HANSON, Individually and as Principal of Winner High School,	)	SECOND AMENDED ANSWER
Defendants.	)	

Defendants respectfully submit this Second Amended Answer to Plaintiffs' Complaint. All averments set forth in Plaintiffs' Complaint are denied except those that are specifically admitted or otherwise qualified below. The paragraph numbers of this Answer correspond to the paragraph numbers in Plaintiffs' Complaint.

I. PRELIMINARY STATEMENT

1. This paragraph sets forth a summary of the Plaintiffs' legal theory but does not state an averment requiring an answer from these Defendants. To the extent any answer is required, Defendants admit the paragraph summarizes the Plaintiffs' legal theory.

2. Deny.

3. Defendants admit the school district is located adjacent to the Rosebud Sioux Indian reservation. Defendants admit that the student body is approximately 20% Native American. Defendants deny that they employ "almost no Native Americans as administrators, teachers or staff", as they employ two Native American teacher's aides, 1 Native American home school liaison and one Native American teacher. Defendants admit that they offer a class on Native American culture and heritage to high school students every two years. Defendants deny that they do not encourage Native Americans to participate in extracurricular and after school activities. The school district implements a program which buys clothes, music, bowling, musical instruments, home economics projects and attendance awards for Native American students. Defendants deny that they permit racially derogatory name-calling, teasing, bullying and pushing to unpunished. Defendants deny that district administrators and staff have been known to treat Native American parents with open disrespect.

4. Defendants deny that they punish Native American students for minor disciplinary infractions more harshly and more frequently than similarly situated Caucasian students as they discipline according to a discipline matrix and if there is any deviation from the discipline matrix, the circumstances are noted. Defendants are without sufficient knowledge to form a belief as to the truth of the rest of the averments in ¶ 4 of Plaintiffs' Complaint.

5. Deny.

6. Defendants admit that students are taken to a private area when an incident is being investigated. Defendants deny that students are not permitted to leave except in one case where the student was volatile and administrators did not want her to disrupt other students or have the student runaway. Defendants deny that children are ordered to sign written statements but admit that children are asked to sign them. Defendants admit that children are asked to describe what happened. Defendants deny that the children are not permitted to speak with their parents while drafting their statement. Defendants deny the rest of the paragraph.

7. Defendants admit that the principals provide the confessions to the Winner Police Department. Defendants are without sufficient knowledge to form a belief as to the truth of the averment regarding what happens to the confessions from that point. Defendants deny that two State's Attorneys serve as Defendants' legal counsel. Defendants are without sufficient knowledge to form a belief as to the truth of the averment as to who physically attaches the confessions to the delinquency petitions.

8. Defendants deny that the statements have no educational purpose as the information is used in determining how to apply the discipline matrix and determining whether intervention may be needed. Defendants deny that the statements are obtained to secure a conviction.

9. Defendants deny a racially hostile educational environment exists at the Winner School District, that it has racially discriminatory disciplinary policies, and that police-referral customs and practices push Native American youth out of Winner schools. Defendants deny that the students become demoralizaed and disengaged. Defendants admit that some, but certainly not all, students drop out, transfer or get involved in the criminal justice system, but deny that it

is due to Defendants' conduct or policies. Defendants deny that only two Native American students graduated from Winner High School in the last year that statistics are available.

10. Does not state an averment requiring an answer by these Defendants.

II. JURISDICTION AND VENUE

11. Admit.

12. Admit.

III. PARTIES

A. Plaintiffs

13. Defendants deny that Sam Antoine is 15 years old. He is 16 years old. Defendants admit that he is enrolled in the 9th grade at the Winner High School. Defendants have insufficient knowledge to form a belief as to the truth of the averment that Plaintiff is a member of the Rosebud Sioux Tribe but admit that American Indian ethnicity was checked on school records. Defendants admit that he appears in this action through Lavina Milk.

14. Defendants deny that Richard Chasing Hawk is 16 years old. Defendants admit that he is enrolled in the 9th grade at Winner High School. Defendants have insufficient knowledge to form a belief as to the truth of the averment that Paintiff is a member of the Rosebud Sioux Tribe but admit that American Indian ethnicity was checked on school records. Defendants admit that he appears in this action through Rose Mendoza.

15. Defendants admit that Charles Dubray is 19 years old. Defendants admit that he is enrolled in the 12th grade at Winner High School. Defendants are without sufficient knowledge to form a belief as to the truth of the averment that Plaintiff is a member of the Rosebud Sioux Tribe but admit that American Indian ethnicity was checked on school records.

16. Defendants deny that Mindi Felix is 13 years old and that upon information and belief, Mindi is 14 years old. Defendants admit that she is enrolled in the 7th grade at Winner Middle School. Defendants are without sufficient knowledge to form a belief as to the truth of the averment that Plaintiff is a member of the Rosebud Sioux Tribe but admit that American Indian ethnicity was checked on school records. Defendants admit that she appears in this action through Donna Eisenbraun.

17. Defendants admit that Jesse Milk is 13 years old. Defendants admit that he is enrolled in the 8th grade at Winner Middle School. Defendants are without sufficient knowledge to form a belief as to the truth of the averment that Plaintiff is a member of the Rosebud Sioux Tribe but admit that American Indian ethnicity was checked on school records. Defendants admit that he appears in this action through Joanne Bates.

18. Defendants deny that Deidrick Old Lodge is 14 years old and upon information and belief is 15 years old. To the best of Defendants' knowledge and belief, Defendants admit that Deidrick Old Lodge is enrolled in the 9th grade in Todd County, South Dakota. Defendants admit that he appears in this action through Yvette Iron Heart. Defendants are without sufficient knowledge to form a belief as to the truth of the averment that he left the Winner School District in March 2006 because of its policies and practices. Defendants are without sufficient knowledge to form a belief as to the truth of the averment that he would return if the policies and practices were to change.

19. Defendants admit that Jennifer Peneaux is 19 years old. Defendants admit that she is taking some senior level classes. Defendants have insufficient knowledge to form a belief as to the truth of the averment that Plaintiff is a member of the Rosebud Sioux Tribe but admit that American Indian ethnicity was checked on school records.

20. Defendants admit that Johnathon Scruggs is 15 years old. Upon information and belief, Plaintiff Scruggs is in the 7th grade at a public school in Anderson, Indiana. Defendants admit that he appears in this action through Christine Rinker. Defendants have insufficient knowledge to form a belief as to the truth of the averment that Plaintiff is a member of the Rosebud Sioux Tribe but admit that American Indian ethnicity was checked on school records. Defendants admit that Johnathon Scruggs was enrolled in the Winner School District until October 2005. Defendants are without sufficient information to form a belief as to the truth of the averment that Johnathon Scruggs moved to Indiana. Defendants deny racially discriminatory disciplinary practices. Defendants are without sufficient information to form a belief as to the truth of the averment that Johnathon Scruggs would return to the Winner School District.

21. Defendants admit that Josephine Traversie is 15 years old. Defendants admit that she is enrolled in the 9th grade at Winner High School. Defendants have insufficient knowledge in which to form a belief as to the truth of the averment as to whether Plaintiff is a member of the Rosebud Sioux Tribe but admit that American Indian ethnicity was checked on school records. Defendants admit that she appears in this action through Regina Traversie-La Pointe.

22. Defendants admit that Taylor White Buffalo is 13 years old. Admit that he is enrolled in the 7th grade at the Winner Middle School. Defendants do not have sufficient knowledge to form a belief as to the truth of the averment as to whether Plaintiff is a member of the Rosebud Sioux Tribe but admit that American Indian ethnicity was checked on school records. Defendants admit that he appears in this action through Dale and Beatrice White Buffalo.

B. Defendants

23. Admit.

24. Admit.

25. Admit.

26. Admit.

27. Admit.

28. Admit.

IV. CLASS ACTION ALLEGATION

29. Does not state an averment requiring Defendants to answer. To the extent an answer is required, Defendants admit Plaintiffs seek class certification. Defendants deny class certification is appropriate.

30. See ¶ 29.

31. See ¶ 29

V. FACTS RELATING TO WINNER SCHOOL DISTRICT

A. Winner School District

32. Defendants admit that Winner School District is located in Tripp County. Defendants are without sufficient information to form a belief as to the truth of the averment regarding the population of Tripp County.

33. Defendants deny that there are six schools in the Winner School District. Defendants admit that the three largest schools are located in the town of Winner. Defendants deny that there are three schools located outside of town as Beaver Creek School is closed.

34. Defendants are without sufficient knowledge to form a belief as to the truth of the averment regarding the information posted on schooltree.com. Defendants deny that there are

980 students enrolled in the district. Defendants deny that 19% of students are Native American. Defendants admit that 30% of Winner Elementary School's students are Native American. Defendants deny that there are 340 students in Winner Elementary School. Defendants deny that 15.5% of Winner Middle School students are Native American. Defendants deny that there are 290 students in Winner Middle School. Defendants deny that 14% of Winner High School students are Native American. Defendants deny that there are 320 students in Winner High School.

35. Admit.

36. Deny.

37. Defendants deny that Defendants refuse to remedy student-on-student racial harassment. Defendants deny that Caucasian students frequently call Native American students racially derogatory names. Defendants deny that when incidents are reported to Defendants, Defendants make little effort to stop them. Defendants are without sufficient information to form a belief as to the truth of the averment that the District punished one child for racial harassment in 2003-2004 and one in 2004-2005.

38. Defendants deny that Defendants "routinely" accuse Native American students of engaging in gang-related activities. Defendants deny that Caucasian students who engage in similar behavior are not subject to the same accusations. Defendants deny that during a basketball tournament hosted by Winner High School in November 2004 that Caucasian students wore bandanas with the school's consent.

39. Defendants admit that all seven members of the District's Board of Education are Caucasian. Defendants deny that other than one or two teacher's aides, all 92 administrators, teachers and staff employed by Winner School District are Caucasian. Defendants employ two

Native American teacher's aides, one Native American home school liaison and one Native American teacher.

40. Defendants admit that in August of 2002, the District cancelled all bus service to the neighborhood where most Native Americans reside because the federal government informed the district that Title VII dollars could not be used for the transportation. The only children that had been bussed were students from "Indian housing". Defendants are without sufficient knowledge to form a belief as to the truth of the averment of the distance between "Indian housing" and Winner Middle and High schools. Defendants deny that Indian students were unable to attend school until a bus operated by the Rosebud Sioux Tribe began driving children to school in the Fall of 2005 because the home school liaison and the special education bus driver would transport student to the schools.

41. Defendant is unable to respond due to Plaintiffs vagueness as to the number of Native American students participating on sports teams or after school extracurricular activities. Defendants deny that there were only six Native American middle school students that participated in school sports in the 2003-2004 school year. Defendants admit that the high school had twelve athletic teams but deny that the teams had between fifteen and twenty-five members as some of the teams had more than twenty-five members and some of the teams had less than fifteen. Defendants deny that the middle school had nine sports teams. Defendants deny the teams were composed of between fifteen and twenty-five students as most had more than twenty-five and some had less than fifteen. Defendants are without sufficient knowledge to form a belief as to the truth of the averment that Native American students who expressed interest in such activities do not feel welcome. Defendants deny that Native American students were explicitly denied access. Native American students (and Caucasian students and students

of any other race) were denied access for such reasons as not attending practice, not obtaining physicals or if they were ineligible.

42. Defendants are without sufficient knowledge to form a belief as to the truth of the averment as to the quotes from the United States Commission on Civil Rights. Defendants admit that the Winner High School offers an elective on Native American culture every other year. Defendants admit that the middle school offers no electives on Native American culture.

43. Defendants admit the OCR investigated discrimination allegations. Defendants admit the Winner School District implemented modifications to its disciplinary policies and procedures and that in 2004 the OCR affirmed the Winner School District was not discriminating against Native American students in the way students are disciplined.

44. Admit.

45. Upon Defendants best information and belief, the OCR withdrew its monitoring efforts in June 2004. Defendants deny that it was based on false and misleading evidence provided by the District and assert it was because the information confirmed no discrimination was occurring and monitoring was unnecessary.

46. Upon Defendants best information and belief, Native American families filed a complaint with the OCR in June of 2005. Defendants are without sufficient knowledge to form a belief as to the truth of the averment regarding the number of families. Defendants are without information as to when the OCR responded or other averments in ¶ 46.

47. Deny.

48. Deny that Defendants dissolved the Johnson O'Malley Board. Defendants deny that school administrators convened a new JOM Board without giving notice to all former Board

members of the community. Upon information and belief, Defendants deny that there have been no elections since 2001.

49. Defendants deny that "another Native American mother" complained about unfair disciplinary practices and was subject to intimidation by Defendants. Defendants deny that they pursued criminal charges against her. Defendants deny that they threatened to file a CHINS petition against the child.

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

50. Admit.

51. Defendants deny that the Middle School Handbook states that Middle School Administrators will notify local law enforcement but admit that the Handbook states that they may notify local law enforcement. Defendants admit that administrators may notify local law enforcement of fights involving swinging; falsely pulling fire alarms; tobacco, drugs and alcohol on school grounds and, depending on the dollar value, stealing; vandalism in certain cases and gang related activities.

52. Admit.

53. Defendants admit that they make a judgment as to whether a student has or has not violated a disciplinary rule. As to the statement regarding that they retain discretion to decide what type of punishment to impose, Defendants try to follow the discipline matrix. If they deviate from the discipline matrix, it is noted on the United States Office of Civil Rights paperwork.

54. Deny.

55. Defendants are without sufficient knowledge to form a belief as to the truth of the averment regarding the arrest and prosecution of a 10-year old Native American boy.

Defendants are without sufficient knowledge to form a belief as to the truth of the averment regarding the suspension of a Native American student. Defendants deny that they sought to have an eleven-year old girl declared a juvenile delinquent and placed on probation for one year. Defendants deny that they expelled and referred a twelve-year old boy to law enforcement for keeping lyrics to rap songs in his locker. Defendants are without sufficient knowledge to form a belief as to the truth of the averment that they sought the arrest and prosecution of a twelve-year old boy who had a small rubber-band toy.

56. Defendants are without sufficient knowledge to form a belief as to the truth of the averment regarding the Caucasian girl who slapped a Native American girl on the face with a belt. Defendants admit they did not seek the arrest or prosecution of a Caucasian boy who snapped another student with a ruler but did give the Caucasian student in-school suspension. Furthermore, the other student was the instigator and the other student was not "severely" learning disabled. Defendants are without sufficient knowledge to form a belief as to the truth of the averments in ¶ 56.

57. Defendants deny that the *End of Year Discipline Reports* confirm that Defendants punish Native American students more harshly and more frequently than Caucasian counterparts. Defendants deny that Native Americans are disproportionately punished for conduct requiring a subjective assessment. Defendants are without sufficient knowledge to form a belief as to the truth of the averment of whether, during the 2004-2005 school year, the Middle School suspended more than one in three Native American students for "insubordination" as compared to one out of every ten Caucasian students. Defendants admit that Native American youth are suspended more frequently than Caucasian counterparts; however, the OCR has determined that Caucasian and Native American students receive the same discipline for the same behavior.

Defendants deny that during 2004-2005 more than half of Native American Middle School student body was suspended compared with 17% of Caucasian student body as it was twenty-seven Native American Middle School students out of sixty-five. Defendants admit that during 2003-2004 school year 100% of out of school suspensions were Native American youth. Defendants are without sufficient knowledge to form a belief as to the truth of the averment as to whether they received 84% of the suspensions in 2004-2005.

58. Defendants deny the statement that Native American youth are far more likely to be arrested at school as the statement is too vague to formulate an answer and because Caucasian youth are every bit as likely to be arrested for the same behavior. Defendants are without sufficient knowledge to form a belief as to the truth of the averment in that the statistics listed differ from Defendants' statistics and the source of the statistics is not listed. Defendants deny the accuracy of the tables.

59. Deny.

D. Defendants' Pattern and Practice of Unlawfully Coercing Confessions

60. Defendants deny that Defendants act as agents of law enforcement. Defendants deny any "agreement" with the Winner City Police. Defendants admit that administrators contact the Winner City Police if a student has committed an offense which the discipline matrix indicates police should be called. Defendants deny that they specify the crime they want the student charged with. Defendants are without sufficient knowledge to form a belief as to the truth of the averment that they compile all the evidence necessary to prosecute and adjudicate the child a juvenile delinquent.

61. Defendants deny that they compile the evidence. Defendants deny that they have a long-standing agreement with the Winner City Police. Defendants admit that they have

students write down what happened and deny that they compel students to confess in writing. Defendants deny that they engage in conduct that offends fundamental concepts of fairness.

62. Defendants deny that they exploit their positions of authority or the students' characteristics. Defendants admit that prior to the arrival of the police, they separate the students involved in the incident. Defendants admit that they hand the student a form and ask them to write down what happened and sign the completed form in front of the principal. If a parent would ever request that the child not complete the form then the administrators would not ask students to complete one. If a parent requests to see their child, the administrator would allow them to do so. Defendants admit that the principals notarize the completed forms.

63. Admit.

64. Defendants admit that most statements consist of a few simple sentences. Defendants deny that students are neither counseled to describe the circumstances leading up to the alleged fight nor to include any mitigating factors or possible defenses as students are actually asked to write down everything that happened and everything that was said.

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

66. Defendants are without sufficient knowledge to form a belief as to students' belief that failure to obey the Defendant Principals' instructions can result in additional punishment. Defendants deny that Defendant Principals have characterized a refusal to draft or sign a written statement as "insubordination", a disciplinary infraction that has been punished with suspension,

loss of classroom credit, a bad grade, or in some instances, the school's filing of a Child in Need of Supervision (CHINS) petition against the student.

67. Defendants are without sufficient knowledge to form a belief as to the truth of the averment that few, if any, students understand the significance of signing the statement or the statement. Defendants admit that they do not inform the children that these statements will be used against them in delinquency or criminal proceedings. Defendants admit that they do not inform the children that they have the right to remain silent. Defendants admit that they do not inform the children that they have a right against self-incrimination. Defendants are without sufficient knowledge to form a belief as to the truth of the averment that few of the children understand the contours of their constitutional rights.

68. Defendants deny that they do not notify the students' parents of the child's arrest in a timely manner as parents are actually called within minutes of the police being called. Defendants admit that few, if any, of these children constitute a continuing threat or danger.

69. Defendants admit that when the police arrive at the school, Defendants hand them the signed forms and any supporting materials. Defendants are without sufficient knowledge to form a belief as to the truth of the averment that the police conduct any type of independent investigation into the charges. Defendants are without sufficient knowledge to form a belief as to the truth of the averment that, in most cases, the police never question the students.

70. Defendants are without sufficient knowledge to form a belief as to the truth of the averments.

71. Defendants are without sufficient knowledge to form a belief as to the truth of the averments.

72. Defendants admit that they do not maintain copies in the children's individual school files but that they do document the behavior and incorporate the information gained by the statement into a disciplinary log. Defendants deny that the signed and notarized confessions serve no education purpose. It serves to assist administrators in determining whether the student should be disciplined, and if so, what type of punishment is proper pursuant to the disciplinary matrix. Defendants deny that they serve only a law enforcement function.

73. Deny.

E. Harm Suffered by the Plaintiff Class

74. Defendants deny that there is a racially hostile educational environment, denies that it has unlawful discriminatory disciplinary procedures, denies that it has unlawful law enforcement referral customs and denies that its administrative practices interfere with and limit the ability of members of the Plaintiffs to participate in the educational opportunities afforded by the Winner School District. Defendants deny that Plaintiffs are targeted because of their race and ethnicity. Defendants are without sufficient knowledge to form a belief as to the truth of the averment regarding the self-confidence and self-esteem of Native American students. Defendants are without sufficient knowledge to form a belief as to the truth of the averment that the students express fear and frustration by acting out, talking back, or failing to attend classes which lead to additional suspensions from school and other disciplinary measures. Defendants are without sufficient knowledge as to form a belief as to the truth of the averment that during the 2004-2005 school year, two Native American High School students were placed on homebound status by their doctors as a result of the stress from the constant harassment at school.

75. Defendants deny that the academic performance of Native American students suffer. Defendants are without sufficient knowledge to form a belief as to the truth of the averment that children who had a "C" average while enrolled in the Winner School District have graduated from schools in other districts with honors.

76. Defendants are unable to respond to the term "many" as it is too vague. Defendants admit that students transfer to schools in other counties or simply drop out of school. Defendants admit that because the area is rural and sparsely populated, there are few educational alternatives. Defendants are without sufficient knowledge to form a belief as to the truth of the averment that students wishing to transfer are often forced to leave their families behind and board at their new schools. Defendants are without knowledge whether, in some cases, entire families move.

77. Defendants are without sufficient knowledge to form a belief as to the truth of the averment that children adjudicated delinquent find themselves spending months and sometimes years in juvenile detention and correctional facilities. Defendants are without sufficient knowledge to form a belief as to the truth of the averment that most are sentenced to between three and twelve months probation. Defendants are without sufficient knowledge to form a belief as to the truth of the averment that as a condition of their probation, they must regularly attend school and obey the school's disciplinary rules. Defendants report both Caucasian and Native American students, at the probation officer's request, to the probation officer when they need assistance with the student.

78. Defendants deny that they frequently rely on trivial school incidents to report students for violating the terms of their probation. Defendants deny that they reported a Native American Middle School student for falling asleep during study hall. Defendants admit that they

reported a Native American girl for grabbing the backpack of a Caucasian student who spit at her. Both the Native American student and the Caucasian student were disciplined the same. Defendant is without sufficient knowledge to form a belief as to the truth of the averments of whether both of these children were sent to a juvenile detention or correctional facility.

79. Defendants admit that enrollment statistics confirm that Native American children leave the Winner School District after they enter Middle School. Defendants are without knowledge as to whether it is "in large numbers" as the term is too vague. Defendants deny that Native Americans account for approximately 14% of the Winner High School student body. Defendants deny that one in five 9th grade students are Native American and that only one in twenty 12th grade students are Native American.

80. Deny.

81. Deny.

F. The Challenged Actions and Inactions as Defendants' Official Policy

82. Deny.

83. Defendants deny that any policies or practices are racially discriminatory. Defendants are without sufficient knowledge to form a belief as to the truth of the averment.

84. Deny.

85. Deny.

86. Deny.

87. Deny.

VI. FACTS RELATING THE INDIVIDUAL NAMED PLAINTIFFS

A. Sam Antoine

88. Defendants admit that Sam Antoine was 12-years old and in the 6th grade at the Winner Middle School. Defendants admit that Antoine swung his arm and fist and hit a Caucasian classmate who shoved him. Deny that he was called a "prairie nigger". Defendants admit that Defendant Principal Naasz contacted the Winner Police Department. Defendants deny that Defendant Principal Naasz requested that Sam be arrested and charged with criminal misconduct. Defendants admit that the Caucasian student was not arrested and charged because shoving does not call for arrest pursuant to the disciplinary matrix whereas punching does. Defendants are without sufficient knowledge to form a belief as to the truth of the averment as to whether, prior to this incident, Sam had any contact with the juvenile justice system.

89. Defendants deny that Defendant Naasz sequestered Sam in a conference room near his office and questioned him as Defendant Naasz brought both children into his office and questioned them at the same time. Defendants deny that Defendant Naasz used his position of authority, the fact that Sam was only 12-years old, Sam's respect for authority and Sam's fear of further punishment to compel Sam to draft and sign a statement. Defendants are without sufficient knowledge to form a belief as to the truth of the averment as to whether Sam believed that he had no choice but to comply. Defendants admit that Defendant Naasz notarized Sam's statement and the statements of the other two or three students.

90. Admit.

91. Defendants admit that when police arrived at the school, Defendant Naasz released Sam into their custody. Defendant Naasz is without sufficient knowledge to form a belief as to the truth of the averment as to the exact time that he attempted to contact Sam's

grandmother, Mrs. Milk, before releasing him to the Winner Police Department. Defendant Naasz is without sufficient knowledge to form a belief as to the truth of the averment as to when Ms. Milk learned of Sam's arrest.

92. Defendant Naasz denies that he followed the police officers and Sam to the police station. Defendant Naasz admits that once his own statement was notarized, he delivered the statements to the police station.

93. Defendant Naasz is without sufficient knowledge to form a belief as to the truth of the averment.

94. Defendant Naasz does not recall and is without sufficient knowledge to form a belief as to the truth of the averment of whether Mrs. Milk asked Defendant Naasz whether she should retain a lawyer. Upon information and belief, Defendant Naasz denies that he said "no" and told Mrs. Milk that Sam's prosecution was a "pretty routine procedure."

95. Defendants are without sufficient knowledge to form a belief as to the truth of the averment.

96. Defendants are without sufficient knowledge to form a belief as to the truth of the averment.

97. Defendants admit that Sam received two days of out-of-school suspension as per the discipline matrix. Defendants admit that Sam’s school records cite Sam as the “instigator” of the fight. Defendants deny that the records confirm that the Caucasian boy pushed Sam first.

98. Defendants admit that the Caucasian student was not suspended nor referred to law enforcement. Defendants admit that the written policies call for a minimum of two days suspension for pushing but that the Caucasian student bumped into Sam and apologized, he did

not "push". Defendants are without sufficient knowledge to form a belief as to the truth of the averment regarding Mrs. Milk's conversation with Defendant Naasz.

B. Richard Chasing Hawk

99. Defendants admit that in September 2003, Richard Chasing Hawk and a Caucasian student hit each other. Defendants admit that Defendant Naasz contacted the Winner City Police Department but denies that he requested that both boys be arrested and charged. Defendants are without sufficient knowledge to form a belief as to the truth of the averment that police records indicate that Defendant Naasz specifically asked that the boys be charged with Simple Assault. Defendants are without sufficient knowledge to form a belief as to the truth of the averment that prior to this incident, Richard had no contact with the juvenile justice system.

100. Defendants deny that Defendant Naasz placed Richard in Defendant Superintendent Fisher's office, and denies that he used his position of authority, and Richard's youth, respect for authority and fear of additional punishment to compel Richard to draft and sign a statement in which Richard admitted to hitting the Caucasian student. Defendant Naasz asked Richard to write down what happened. Defendants are without sufficient knowledge to form a belief as to the truth of the averment that Richard believed that he had no choice but to comply. Based upon information and belief, Defendants admit that Defendant Naasz notarized the statement.

101. Admit.

102. Upon information and belief, Defendants admit.

103. Defendants are without sufficient knowledge to form a belief as to the truth of the averment.

104. Defendants are without sufficient knowledge to form a belief as to the truth of the averment.

105. Defendants are without sufficient knowledge to form a belief as to the truth of the averment.

106. Defendants admit that the Caucasian student was also adjudicated delinquent but are without sufficient knowledge to form a belief as to the truth of the averment regarding the sentence imposed. Defendants admit that Defendant Naasz suspended both boys from school for two days.

107. Defendants admit that two months later Richard was involved in another fight and Defendant Naasz called the police but deny that he requested Richard's arrest and prosecution. Defendants admit that another Native American student stabbed Richard in the stomach with a pencil, breaking the skin. Defendants admit that Richard hit the boy in response.

108. Defendants deny that Defendant Naasz sequestered Richard in Superintendent Fisher's office. Defendants are without sufficient knowledge to form a belief as to the truth of the averment regarding whether Defendant Naasz handed Richard a form or stated: "You know what to do." Defendants are without sufficient knowledge to form a belief as to the truth of the averment that Richard believing that he had no choice but to comply, drafted and signed an statement in which he admitted to hitting the other child. Defendants are without sufficient knowledge to form a belief as to the truth of the averment that Richard's statement and three other statements were attached to and incorporated into the Delinquency Petition served upon Richard's family.

109. Defendants are without sufficient knowledge to form a belief as to the truth of the averment that the charges against Richard were dismissed in February 2004. Defendants are

without sufficient knowledge to form a belief as to the truth of the averment that the other Native American child was adjudicated delinquent and sent to a juvenile correctional facility. Defendants admit that both boys were suspended from school.

C. Charles DuBray

110. Defendants are without sufficient knowledge to form a belief as to the truth of the averment that Charles is part of a large and close-knit extended family. Defendants admit that in November 2000, Charles was 14 years old and in Middle School. Defendants are without sufficient knowledge to form a belief as to the truth of the averment that Charles and a cousin fought during lunch period over a shirt that one of them was wearing. Defendants are unable to admit or deny the last sentence of ¶ 110 as it is vague and ambiguous.

111. Defendants deny that David Nicolas placed Charles in a conference room next to his office and questioned him as it would have been in his office. Defendants deny that he compelled Charles to draft and sign an affidavit entitled "Affidavit in Support of Criminal Prosecution" in which Charles admitted to hitting his cousin. Defendants are without sufficient knowledge to form a belief as to the truth of the averment that Charles believed that he had no choice but to comply. Defendants are without sufficient knowledge to form a belief as to the truth of the averment that Principal Nicholas notarized the statement.

112. Defendants are without sufficient knowledge to form a belief as to the truth of the averments.

113. Defendants are without sufficient knowledge to form a belief as to the truth of the averments.

114. Defendants are without sufficient knowledge to form a belief as to the truth of the averments.

D. Mindi Felix

115. Admit.

116. Defendants admit that in April 2005 Mindi was in the 6th grade at the Middle School when she was playing tag and hit a Caucasian classmate. Defendants are without sufficient knowledge to form a belief as to the truth of the averment that the Caucasian classmate scratched another Native American student. Defendants admit that the Caucasian classmate was verbally fighting with a Native American friend. Defendants admit that Defendant Naasz contacted the Winner City Police as to those students who had been involved in punching as dictated by the disciplinary matrix. Defendants deny that Defendant Naasz requested the arrest and prosecution of the two Native American girls but not the Caucasian girl as the police decide who to arrest. The Caucasian girl was given in-school suspension for the verbal fight as dictated by the disciplinary matrix. Defendants are without sufficient knowledge to form a belief as to the truth of the averment that prior to this incident, Mindi had no contact with the juvenile justice system.

117. Defendants deny that Defendant Naasz sequestered Mindi in his office. Defendants admit that Defendant Naasz interviewed and recorded all three students. Defendants deny that he then ordered Mindi to draft and sign a statement describing the altercation. Defendants are without sufficient knowledge to form a belief as to the truth of the averment that Mindi did as Defendant Naasz requested because she was intimidated by Defendant Naasz, confused and fearing further punishment if she failed to comply. Defendants admit that Defendant Naasz notarized the statement.

118. Defendants are without sufficient information to form a belief as to the truth of the averment as the averment is too vague.

119. Admit.

120. Defendants admit that when police officers arrived at the school, Defendant Naasz gave them Mindi's statement, a statement he had drafted describing the altercation and the sworn statements of two other students. Defendants are without sufficient knowledge to form a belief as to the truth of the averment that the Winner City Police did not conduct an independent investigation.

121. Defendants are without sufficient information to form a belief as to the truth of the averment.

122. Defendants are without sufficient information to form a belief as to the truth of the averment.

123. Defendants admit that according to the discipline matrix, Mindi and the other Native American girl were suspended from school for two days. Defendants deny that the Caucasian girl was neither referred to law enforcement nor suspended as the Caucasian girl was given one day in school suspension per the discipline matrix because she was not swinging but the two Native American girls had been punching. The Caucasian girl was present when the police arrived.

124. Defendants admit that Defendant Naasz called police twice more for Mindi's fighting with another Native American classmate but deny that he requested her arrest or prosecution. Defendants deny that he "coerced" Mindi into writing a statement. Defendants are without sufficient information to form a belief as to the truth of the averment that the statement was used against Mindi in a juvenile delinquency proceeding.

E. Jessie [sic] Milk

125. Defendants admit that during the 2004-05 school year when Jesse was in the 7th grade at Winner Middle School he was suspended three times. Defendants deny that he was suspended twice for fighting with a Caucasian student who purposefully pushed him. Defendants admit that the Caucasian student was not punished because there was no fighting. Defendants deny that a P.E. teacher harassed and belittled Jesse for running slowly during class and Jesse was suspended for mumbling under his breath that the P.E. teacher was a "motherf---g racist."

126. Defendants are without sufficient knowledge to form a belief as to the truth of the averment as to why Jessie [sic] stopped going to class during the 2005-06 school year. Defendants admit that Jessie [sic] stopped going to class. Defendants admit that Defendant Naasz drafted a statement and sent attendance records to the state's attorney and letters to Joanne Bates per the Winner School District attendance policy which is listed in the handbook. Defendants are without sufficient knowledge to form a belief as to the truth of the averment that a bench warrant for Joanne's arrest was issued. Upon information and belief, Defendants admit that Joanne went to court and was fined $200 and 30 days in jail both of which were suspended and that she would need to pay the fine and go to jail if Jesse had any more unexcused absences or tardies.

127. Defendants admit that Defendant Naasz asked Jesse to take off his jacket. Defendants deny that the jacket was tied around his waist. Defendants deny that Naasz threatened to punish Jesse [sic] for "insubordination". Defendants admit that Naasz called Jesse's mother and discussed CHINS but deny that he threatened to file a CHINS petition.

F. Deidrick Old Lodge

128. Defendants admit that Deidrick is physically disabled and unable to use his right arm effectively. Defendants admit that he was diagnosed with learning difficulties and attention deficits. Defendants admit that he received special education services until he was nine. Test results indicated he no longer met the criteria for such services as he was tested by an evaluator and he did well enough on the tests that he no longer qualified for such services.

129. Defendants admit that in February 2003 Deidrick was eleven-years old and enrolled in the 6th grade at Winner Middle School. Defendants deny that the two Caucasian students were wrestling in the hallway as they were fist fighting. Upon information and belief, Defendants deny that one of the students pushed Deidrick. Upon information and belief, Defendants deny that the other student hit him. Defendants admit that that Deidrick hit one of the students but deny that it was a response. Defendants admit that Naasz contacted the Winner City Police Department. Defendants deny that he requested the arrest and prosecution of all three students. Defendants are without sufficient knowledge to form a belief as to the truth of the averment regarding whether Deidrick had had no prior contact with the juvenile justice system.

130. Defendants deny that Naasz sequestered Deidrick in a conference room near his office and told him that the other two boys were drafting statements describing what had happened and ordered him to do the same. Defendant Naasz talked to all three boys in his office and then separated them so they could write their statements. Defendants are without sufficient knowledge to form a belief as to the truth of the averment that because of Deidrick's youth, his respect for authority, his disabilities and his fear of further punishment, he believed he had no choice but to comply.

131. Defendants admit that Naasz typed new statements as the hand-written ones had poor handwriting and were typed in order to be legible. Defendants deny that he ordered but admit that he asked each of the boys to sign the typed statement. Defendants admit that Naasz did not inform the boys that the statements would be used against them in a delinquency proceeding or that they had a right to remain silent,

132. Defendants admit that when the police arrived, Naasz gave them the statements. Defendants are without sufficient knowledge to form a belief as to the truth of the averment that the Winner City Police conducted no independent investigation.

133. Defendants are without sufficient knowledge to form a belief as to the truth of the averment.

134. Defendants are without sufficient knowledge to form a belief as to the truth of the averment.

135. Defendants are without sufficient knowledge to form a belief as to the truth of the averment.

136. Defendants admit that in January 2005 when Jennifer Peneaux was in the 11th grade she got into a fight with another Native American student over a pair of jeans. Defendants admit that upon learning of the fight, Defendant Hanson contacted the Winner City Police Department. Defendants deny that he requested that both girls be arrested and charged with criminal misconduct.

137. Defendants admit that Hanson summoned both girls to his office and questioned them. Defendants deny that he exploited his position of authority, Jennifer's youth, her respect for authority and her fear of further punishment to compel Jennifer to admit to hitting the other student. Defendants admit that he typed Jennifer's admission into his computer and printed out

her statement. Defendants admit that he asked Jennifer to sign the statement. Defendants are without sufficient knowledge to form a belief as to the truth of the averment that Jennifer believed that she had no choice but to comply.

138. Admit.

139. Defendants are without sufficient knowledge to form a belief as to the truth of the averment.

140. Defendants are without sufficient knowledge to form a belief as to the truth of the averment.

141. Defendants are without sufficient knowledge to form a belief as to the truth of the averment.

142. Admit.

143. Defendants deny that John has "severe" learning disabilities. Defendants admit that prior to entering kindergarten, he was diagnosed as "mildly mentally disabled." Defendants admit (but the statement is somewhat taken out of context) that an Individualized Education Plan (IEP) was prepared by Defendants when John was in the 5th grade and states that he is "currently reading at the 1st grade level," "writing is stressful for him," and he "is difficult to understand during conversation speech because he mumbles, drops his endings and speaks too rapidly."

144. Defendants admit that in January 2005 when he was in the 6th grade at the Winner Middle School, a Caucasian classmate snapped a metal-edged ruler at him in a dispute over a science project during the last class of the day. Defendants admit that John responded by hitting the classmate with his fist. Defendants admit the science teacher reported the incident to Defendant Naasz, who contacted the Winner City Police Department. Defendants deny that he requested John's arrest and prosecution.

145. Defendants admit that before the police arrived at the school, Defendant Naasz placed John in a conference room next to his office and asked him to draft and sign a statement describing the altercation. Defendants are without sufficient knowledge to form a belief as to the truth of the averment that initially John refused. Defendants deny that Defendant Naasz told him that the police needed a signed statement and that John could not leave the conference room until he had drafted one, even if it took him "all day and night." Defendants are without sufficient knowledge to form a belief as to the truth of the averment regarding whether eleven-year old John believed he had no other choice and complied with Defendant Naasz' request. Defendants admit that once John had completed the statement, Defendant Naasz notarized it.

146. Defendants admit when John's mother came to pick him up at the end of the school day, she was unable to locate John. Defendants are without sufficient knowledge to form a belief as to the truth of the averment of whether when she asked the receptionist outside of Defendant Naasz' office where John was, she was told that John was busy. Defendants are without sufficient knowledge to form a belief as to the truth of the averment of whether when she asked to speak to Defendant Naasz, she was told that he was busy. Defendants deny that school administrators would not let her see John until he had completed the confession and Defendant Naasz had notarized it because John was gone by the time she arrived.

147. Defendants deny that the when the Winner City Police arrived at the school, Defendant Naasz directed them to arrest John and not the other student as the Winner City Police decided who to arrest. Defendants admit that Defendant Naasz gave the police John's statement, a statement Defendant Naasz had drafted and the statements of two other students who had allegedly witnessed the event.

148. Defendants are without sufficient knowledge to form a belief as to the truth of the averment that the Winner City Police conducted no further investigation into the incident. Defendants deny that the police officers drove John to the police station in their car with John's mother following in her car.

149. Defendants are without sufficient knowledge to form a belief as to the truth of the averment.

150. Defendants are without sufficient knowledge to form a belief as to the truth of the averment that John ultimately admitted to the charges against him and was adjudicated delinquent. Defendants admit that Defendant Naasz suspended him from school for two days.

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

152. Defendants are without sufficient knowledge to form a belief as to the truth of the averment that while in the 2nd grade, Josephine ("Josie") Traversie qualified for special educational services. Defendants admit that her school records do not indicate that she ever received them.

153. Defendants admit that in May 2005 when Josie was in the 8th grade at the Winner Middle School, a Native American classmate pushed Josie in a school hallway in between classes as Josie was coming at her and she pushed her away in defense. Defendants admit that Josie responded by hitting the girl. Defendants deny that the altercation took place before

Defendant Naasz who grabbed Josie by the arms and escorted her to a nearby detention room as Defendant Naasz was just down the hallway from the altercation took place and due to Josie's extreme agitation, Defendant Naasz hugged her arms to her side, picked her up and carried her to the detention room. Defendants admit that while Josie waited in the detention room, Defendant Naasz interviewed the other student, then spoke with Josie and then called the Winner City Police. Defendants deny that Defendant Naasz requested that Josie be arrested and prosecuted. Defendants admit that he did not seek prosecution of the other child as he did not seek the arrest or prosecution of either child, he just told police what happened.

154. Defendants deny that after contacting the police, Defendant Naasz asked Josie to draft and sign a statement stating that she had hit the other student as he asked her to draft a statement telling her side. Defendants admit that Josie refused and asked to use the restroom. Defendants deny that Defendant Naasz told her that she "had" to draft the statement and that she could not use the restroom until she had done so and admits that he would not allow her to leave the room as she was agitated and for fear of what might happen if she left the room (i.e., she would run away and the fear of further trouble).

155. Defendants are without sufficient knowledge to form a belief as to the truth of the averment as to when Josie started to draft the statement. Defendants admit that after she completed the statement, Defendant Naasz notarized it.

156. Defendants deny that Defendant Naasz made no effort to contact Josie's mother to inform her that her child was being arrested as Defendant Naasz tried calling the phone numbers.

157. Defendants admit that before the police transported Josie to the police station, Defendant Naasz gave them Josie's statement and a statement from the other student. Defendants are without sufficient knowledge to form a belief as to the truth of the averment that

in his statement, Naasz characterized Josie's initial refusal to draft and sign the statement as insubordination.

158. Defendants are without sufficient knowledge to form a belief as to the truth of the averment.

159. Defendants are without sufficient knowledge to form a belief as to the truth of the averment.

160. Defendants are without sufficient knowledge to form a belief as to the truth of the averment.

161. Defendants are without sufficient knowledge to form a belief as to the truth of the averment. Defendants admit that Defendant Naasz suspended her from school for two days.

162. Defendants deny that they requested Josie's arrest after she pulled a fire alarm. Defendants admit that Defendant Hanson called the Winner City Police, as listed in the discipline matrix, because Josie pulled the fire alarm. Defendants admit that they reported her to her probation officer twice. Defendants are without sufficient knowledge to form a belief as to the truth of the averment as to whether Josie was taken from the school to a juvenile detention facility on an emergency basis without a hearing and without informing her parents, where she remained incarcerated for several days. Defendants deny that the Caucasian student who spit at Josie was not punished, even though school policies call for a minimum one day suspension for encouraging a fight.

163. Defendants admit that in March 2006, Josie was sent to the principal's office. Defendants deny that Josie was "cited" for profanity when she laughed in class after a teacher accidentally said a curse word. Defendants admit that Caucasian children in her class also

laughed but were not punished as no one was punished and the Caucasian child was also sent to the office.

164. Defendants admit that Josie had an older sister, Amanda. Defendants admit that she was enrolled in Winner High School. Defendants deny that Defendants have racially discriminatory disciplinary practices and unlawful coerced confession practice. Upon information and belief, Defendants deny that Amanda dropped out of school the day after Josie was transported from school to a detention facility.

165. Defendants admit that in April 2004, Taylor was 11 years old and in the 5th grade. Defendants are without sufficient knowledge to form a belief as to the truth of the averment as to whether he was playing basketball with two Caucasian students and another Native American classmate as upon information and belief, he was playing basketball with one Caucasian student. Defendants admit that during the course of the game, one of the Caucasian classmates refused to turn the ball over to Taylor and instead pushed Taylor with the ball. Defendants deny that although Taylor asked the boy to stop, he pushed Taylor twice more as upon information and belief, he pushed him once more. Defendants admit that Taylor hit him once in the face with his fist. Defendants are without sufficient knowledge to form a belief as to the truth of the averment that the Caucasian classmate ran and told a teacher.

166. Defendants admit that both Taylor and the Caucasian student were escorted to the Defendant Naasz' office. Defendants admit that Defendant Naasz called the Winner City Police but deny that he requested that Taylor be arrested and prosecuted with criminal misconduct but not the Caucasian student. Defendants admit that according to the discipline matrix, shoving does not require police notification but punching does. Defendant Naasz told the police what happened, gave them the statements and the Winner City Police decided who to arrest.

167. Defendants admit that Defendant Naasz placed Taylor in a small conference room next to his office. Defendants deny that Defendant Naasz used his position of authority and the fact that Taylor is 11years old, Taylor's respect for authority and fear of further punishment to compel Taylor to draft and sign a statement in which he admitted to hitting the Caucasian student. Defendants are without sufficient knowledge to form a belief as to the truth of the averment that Taylor believed that he would be suspended from school if he did not comply with the Principal's commands. Defendants admit that Defendant Naasz notarized the statement.

168. Admit.

169. Defendants admit that both students were present when Winner City Police arrived. Defendants are without sufficient knowledge to form a belief as to the truth of the averment as to the exact conversation when Taylor's mother asked why he was not referred but admits that it was probably something about not throwing a punch. Defendants deny that although Taylor had not been involved in any prior disciplinary incidents at school, Defendant Naasz told Taylor's mother that the District had to send him to court because if they did not, he would "kill someone next."

170. Defendants are without sufficient knowledge to form a belief as to the truth of the averment.

171. Defendants are without sufficient knowledge to form a belief as to the truth of the averment.

172. Defendants deny that Defendant Naasz gave Taylor two days of in-school suspension as he received out of school suspension. Defendants admit that Taylor's school records note that he was the "instigator" of the incident because the software program that the

school uses only gives them two options, "instigator" or "victim," and Taylor was not the victim. They must choose one in order for the software program to record the information. Defendants deny that Defendant Naasz did not punish the other student as pursuant to the discipline matrix, the other student received two days of in-school suspension for pushing.

173. The answers to paragraphs 1 through 172 are incorporated herein by this reference.

174. Deny.

175. The answers to paragraphs 1 through 172 are incorporated herein by this reference.

176. Deny.

177. The answers to paragraphs 1 through 172 are incorporated herein by this reference.

178. Deny.

179. The answers to paragraphs 1 through 172 are incorporated herein by this reference.

180. Deny.

WHEREFORE, Defendants pray for judgment as follows:

A. For dismissal of Plaintiff's Complaint upon its merits;

B. For judgment in Defendants' favor against all claims set forth in Plaintiffs' Complaint;

C. For their costs and disbursements herein, including attorney's fees;

D. For any other appropriate relief.

JURY TRIAL IS DEMANDED ON ALL ISSUES SUBMITABLE TO A JURY

Respectfully submitted this 8th day of June, 2006.

GUNDERSON, PALMER, GOODSELL
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CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of June, 2006, I e-filed and first-class mail, postage prepaid, a true and correct copy of the Second Amended Answer to:

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