

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
CENTRAL DIVISION

SAM ANTOINE, a minor, by and through)	Civ. 06-3007
LAVINA MILK, his legal guardian;)	
RICHARD CHASING HAWK, a minor, by and)	
Through ROSA MENDOZA, his legal guardian;)	
CHARLES DUBRAY;)	Judge Charles B. Kornmann
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 PENEAX;)	
JOHNATHON SCRUGGS, a minor, by and)	
through CHRISTINE RINKER, his mother;)	
JOSEPHINE TRAVERSIE, a minor, by and)	
through REGINA TRAVERSIE-LAPOINTE,)	
her mother; TAYLOR WHITE BUFFALO,)	
a minor, by and through DALE AND BEATRICE)	
WHITE BUFFALO, his parents; and all others)	
similarly situated,)	
)	
Plaintiffs,)	
)	
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,)	
)	
Defendants.)	

AMENDED CONSENT DECREE

WHEREAS, Plaintiffs filed the instant class action lawsuit, referenced as *Sam Antoine, et al. v. Winner School District, 59-2 et al.*, Civ. 06-3007, in the United States District Court, District of South Dakota, Central Division, on March 24, 2006, and Defendants denied each and every allegation of said Complaint on April 20, 2006; and

WHEREAS, to avoid the time and expense of trial, Plaintiffs and Defendants entered into mediation before the Honorable Magistrate Judge John E. Simko and reached an Agreement that was made binding by the Court's approval of a Consent Decree (hereinafter, "Original Consent Decree") entered on the docket on December 10, 2007, (ECF No. 64), in which the Winner School District ("the District") agreed to undertake various activities to improve the educational experience of Native American students within the District; and

WHEREAS, the Parties acknowledge that certain benchmarks and item goals, developed pursuant to the Original Consent Decree's "co-construction process," should be revised to better allow the District to achieve them, and to ensure implementation of the Original Consent Decree, the Parties have met, conferred, and agreed to amend the Original Consent Decree; and

WHEREAS, the Benchmark Committee ("BMC") met and revised the Parties' benchmarks and item goals in a collaborative multi-day meeting during May and July of 2013;

THEREFOR, the Parties have agreed to amend the Original Consent Decree and restate the "benchmarks" and "items," and it is the Parties' intention that this Amended Consent Decree reflect the current and complete Agreement between the Parties, and that this Amended Consent Decree supersede the Original Consent Decree and govern the Parties' actions as of the 2013-2014 academic year forward.

The Court having considered all papers filed and proceedings described herein and otherwise being fully informed and good cause appearing therefore, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

- A. Upon execution and entry on the docket of this Amended Consent Decree, the activities previously identified in the Original Consent Decree as "benchmarks" shall be referred to as "actions," and the outcomes previously identified in the Original Consent Decree as "item goals" shall be referred to as "outcome measures." All other definitions contained in the Original Consent Decree are incorporated by reference into this Amended Consent Decree.
- B. The District is obligated to attempt to accomplish the actions and outcome measures set by the BMC during the May and July 2013 meetings in Winner delineated in the chart below for the next two (2) years—the 2013-2014 and 2014-2015 school years. If the District meets the entire outcome measures during each of those two (2) years, it shall be released from this Amended Consent Decree in its entirety. If the District meets some, but not all, of the outcome measures for each of those two (2) years, it shall be released from any further obligation to meet those particular outcome measures (and associated actions), but shall continue attempting to accomplish those outcome measures (and associated actions) it did not reach for an additional two (2) years—the 2015-2016 and 2016-2017 school years.
- C. The BMC shall convene annually to evaluate the success or failure of the actions taken by the District to achieve the outcome measures during the previous year. If the District

fails to meet any outcome measures at the end of the 2013-2014 and 2014-2015 school years, the BMC shall convene in the summer of 2015 to evaluate the actions taken with respect to the failed outcome measures during the previous two (2) years, and propose new or amended actions for the District to implement. The District shall then be obligated to act in good faith to achieve the remaining outcome measures for the next two (2) years – the 2015-2016 and 2016-2017 school years – by undertaking the modified or original actions approved by the BMC.

- D. Plaintiffs may file a motion to hold the District in contempt of court if, but only if, it is apparent that the District is not working in good faith to accomplish the outcome measures, and the Court may grant Plaintiffs’ motion if they establish that the District has failed to act in good faith in attempting to comply with this Amended Consent Decree. This “good faith” standard shall be defined as: The District shall use all reasonable efforts to comply with the outcome measures and their related actions, and if the District is unable to comply, it must document and explain its basis for believing that there is nothing it reasonably could have done to comply.

The District must endeavor to accomplish the following outcome measures and actions:

Topic	Outcome Measures & Actions
Native student graduation rates	<p>Outcome measure: During the next two school years – 2013-2014 and 2014-2015 – the Native student graduation rate shall be at least 55%, as measured by the state, and if it drops below that figure, the BMC shall meet annually to review and determine whether further activities are necessary to improve graduation rates. If the 55% outcome measure is not reached during those two years, the District must work in good faith for two more years to reach the Native student graduation rate of 55%.</p> <p>Actions: The District shall implement the following activities and provide the monitor with data and information related to each:</p> <ul style="list-style-type: none"> • Quarterly communication with the Rosebud Sioux Tribal Education Department (“RSTED”) personnel about Native students and their paths to graduation, which includes a report on Native seniors, after every grading period • Collaboration with RSTED on home visits and in-school student visits • Alternative school • Credit recovery programs, which include the summer and school-year programs • Bus transportation for Native students in the Ideal and Winner housing communities

	<ul style="list-style-type: none"> • Attendance incentives • Early Warning System (“EWS”)¹ and its interventions, which include individual intervention plans, Friday School, teacher-to-student tutoring, and Teacher Assistance Teams • Academic counseling • Math and science waivers
Native student suspensions	<p>Outcome measure: The number of Native students receiving ISS and OSS in both the middle and high schools shall not exceed 40 for the 2013-2014 school year and 36 for the 2014-2015 school year. If these outcome measures are not met, the BMC shall meet annually to review and determine whether further activities are necessary to improve them and the District must work in good faith for two more years to reach the outcome measures set forth above for middle and high school ISS and OSS rates.</p> <p>Actions: The District shall implement the following activities and provide the monitor with data and information related to each:</p> <ul style="list-style-type: none"> • Annual bullying training • Conflict resolution, to include either the Native American Advocate and/or parent/guardian • Mediation, to include either the Native American Advocate and/or parent/guardian • EWS and its interventions, which include individual intervention plans, Friday School, teacher-to-student tutoring, and Teacher Assistance Teams • Annual cultural sensitivity training for all staff, with assistance from RSTED personnel • Individual counseling • Middle school boys’ group, with RSTED assistance • Middle school girls’ groups, to start by the first week of October each year • Collaboration with RSTED on home visits • Additional monitoring coverage of high incident areas at the schools,

¹ EWS is a districtwide “Response to Intervention” (“RTI”) system used to identify students struggling with academic subjects, behavior or attendance and to match those students with the appropriate resources, supports and interventions to improve in those areas prior to a referral for a special education evaluation and with the goal of decreasing drop out rates and improving graduation rates for the district.

	including physical space between buildings on campus
Native students with multiple disciplinary incidents	<p>Outcome measure: The number of Native students at the middle and high schools combined with three or more disciplinary incidents shall not exceed five for the 2013-2014 school year and four for the 2014-2015 school year. If these numbers are exceeded, the BMC shall meet annually to review and determine whether further activities are necessary to improve these figures. If they are not improved during those two years, the District must work in good faith for two more years to reach the outcome measures set forth above.</p> <p>Actions: The District shall implement the following actions and provide the monitor with data and information related to each:</p> <ul style="list-style-type: none"> • Annual bullying training • Conflict resolution, to include either the Native American Advocate and/or parent/guardian • Mediation, to include either the Native American Advocate and/or parent/guardian • EWS and its interventions, which include individual intervention plans, Friday School, teacher-to-student tutoring, and Teacher Assistance Teams • Annual cultural sensitivity training for all staff, with assistance from RSTED personnel • Individual counseling • Middle school boys' group, with RSTED assistance • Middle school girls' groups, to start by the first week of October each year • Collaboration with RSTED on home visits • Additional monitoring coverage of high incident areas at the schools, including physical space between buildings on campus
Student achievement	<p>Outcome measure: During the next two school years – 2013-2014 and 2014-2015 – the District shall ensure that its Native American students achieve the statewide average score for Native Americans on the South Dakota state-mandated achievement tests at the elementary school, middle school, and high school levels. If that figure falls below South Dakota's statewide average at any level, the BMC shall meet annually to review and determine whether further activities are necessary to improve achievement. If achievement is not improved during those two years, the District must work in good faith for two more years to reach the above outcome measures.</p> <p>Actions: The District shall implement the following activities and provide the</p>

	<p>monitor with data and information related to each:</p> <ul style="list-style-type: none"> • EWS and its interventions, which include individual intervention plans, Friday School, teacher-to-student tutoring, and Teacher Assistance Teams, with RSTED personnel attending monthly EWS summary meetings • SPED referrals • Breakfast program • Practice Smarter Balanced testing • Incentive and awards programs • Summer school • Alternative school • Academic counseling • Annual cultural sensitivity training for all staff, with assistance from RSTED
Native American Advocate Job Description	By the end of the 2013-2014 school year, the District shall review and, if necessary, revise the Native American Advocate job description, and roles and responsibilities.
Disciplinary matrix and EWS	By the end of the 2013-2014 school year, the District shall review the disciplinary matrix and, as appropriate, integrate it more closely with interventions from the District's EWS.
Reporting requirements	The District shall continue all existing reporting associated with the disciplinary outcomes and actions for the 2013-2014 and 2014-2015 school years, including but not limited to: disciplinary interviews of Native students, Native American Advocate reporting, disaggregated behavioral infractions, and evaluations of Native students with three or more disciplinary incidents. ² If the District fails to meet the outcome measures for suspensions or multiple disciplinary incidents in the 2013-2014 and 2014-2015 school years, the District shall continue reporting the discipline-related activity through the 2015-2016 and 2016-2017 academic years
Extracurricular activities, which include those activities approved by the Winner School Board and which involve a	Outcome measure: During the next two school years – 2013-2014 and 2014-2015 – the participation rate for Native students in approved and active extracurricular activities, not including the Lakota Club, shall be at least 65% for middle school Native students and 55% for high school Native students. If the rates fall below those figures, the BMC shall meet annually to review and determine whether further activities are necessary to improve it. If the rates are not improved during those two years, the District must work in good faith for two

² Paragraphs 3-5, *infra*, detail recordkeeping requirements for disciplinary interviews of Native students. Paragraphs 6-8, *infra*, detail reporting requirements for evaluations of Native students with three or more disciplinary incidents.

coach or advisor, not including Lakota Club	<p>more years to achieve the above Native student participation rates.</p> <p>Actions: The District shall implement the following activities and provide the monitor with data and information related to each:</p> <ul style="list-style-type: none"> • A meeting each fall for 6-12 students and parents/guardians to allow coaches, advisors, and the activities' director to present information about middle and high school extracurricular activities and the benefits of participation in them • A meeting each fall for 6-12 students to present information on how students can propose starting their own club or activity • Explore offering an elementary-school-age skills-development clinic or clinic, for appropriate sports • Explore ideas to transport students home after school activities and athletics are finished • Attempt to recruit a Native volunteer coach for a middle or high school sports' team, per District policy • Offer the Lakota Club each year with assistance from personnel at RSTED • Make Winner facilities available to outside groups for sports camps, clinics, etc., with advertising assistance from RSTED • Native American Advocate to send out and collect various documents related to extracurricular activities, such as flyers, registrations, etc. • The Superintendent's Advisory Committee ("SAC")³ shall collaborate with Winner/Ideal community officers and youth coordinators on ways to encourage Native student extracurricular participation
Parent participation	<p>Outcome measure: During the next two school years – 2013-2014 and 2014-2015 – the Native parent attendance rate at parent and teacher conferences in the fall and spring semesters at both the middle school and high school shall be at least 50% for each school. If that figure falls below 50%, the BMC shall meet annually to review and determine whether further activities are necessary to improve participation. If parent participation is not improved during those two years, the District must work in good faith for two more years to reach the outcome measures set forth above.</p> <p>Actions: The District shall implement the following activities and provide the monitor with data and information related to each:</p>

³ Definition *infra* ¶¶ 17-20.

	<ul style="list-style-type: none"> • Incentive programs, in collaboration with RSTED • Transportation • Phone calls to Native parents, with School Reach as an opt out option • Use of media or public service announcements such as School Reach, newspaper, and radio • Mailings home to parents/guardians
Native student attendance rate	<p>Outcome measure: During the next two school years – 2013-2014 and 2014-2015 – the combined attendance rate shall be at least 92% for middle school and high school Native students, as measured by the state, and if it falls below that figure, the BMC shall meet annually to review and determine whether further activities are necessary to improve it. If the rate is not improved during those two years, the District must work in good faith for two more years to reach the 92% Native student attendance rate.</p> <p>Actions: The District shall implement the following activities and provide the monitor with data and information related to each:</p> <ul style="list-style-type: none"> • EWS and its interventions, which include individual intervention plans, Friday School, teacher-to-student tutoring, and Teacher Assistance Teams • Refrain from referring students and/or their parent/guardian to the state’s attorney before first conducting an intervention through RSTED • Collaboration with RSTED on home visits • Conflict resolution, to include either the Native American Advocate and/or parent/guardian • Mediation, to include either the Native American Advocate and/or parent/guardian • Breakfast program • Annual anti-bullying training • Attendance coordinator/office to make phone calls to the homes of absent students daily • Bus transportation for Native students from the Ideal and Winner housing communities • Attendance awards and incentives • Middle school boys’ and girls’ groups

Native student dropout rate	<p>Outcome: During the next two school years – 2013-2014 and 2014-2015 – the total number of Native high school students who drop out because of racial tension or unsatisfactory school climate shall not exceed four (4), and if it exceeds that figure, the BMC shall meet annually to review and determine whether further activities are necessary to improve the rate. If the rate is not improved during those two years, the District must work in good faith for two more years to achieve the Native student dropout rates listed above.</p> <p>Actions: The District shall implement the following activities and provide the monitor with data and information related to each:</p> <ul style="list-style-type: none"> • Native American Advocate to conduct interviews to gather information related to drops and transfers, with a revision to the document used for this purpose • Annual bullying training • Conflict resolution, to include either the Native American Advocate and/or parent/guardian • Mediation, to include either Native American Advocate and/or parent/guardian • EWS and its interventions, which include individual intervention plans, Friday School, teacher-to-student tutoring, and Teacher Assistance Teams • Annual cultural sensitivity training for all staff, with assistance from RSTED personnel • Individual counseling • Middle school boys' and girls' groups • Alternative school • Bus transportation for Native students from the Ideal and Winner housing communities • Attendance coordinator/office to make phone calls to the homes of absent students daily
District complaint process	<p>By the end of the 2013-2014 school year, the District, in consultation with the Native American Advocate, shall review the current process for making complaints – about teachers and school leaders, policies, and classroom practices – and provide a report to the monitor on its discoveries and possible improvements to the complaint process.</p>
Family Educational Rights and	<p>By the end of the 2013-2014 school year, the school shall have a FERPA-related policy in place; shall provide staff training on it, as part of the beginning-of-school in-service; shall explain to students the policy; and shall address any</p>

Privacy Act (“FERPA”) ⁴ enforcement	individual issues with staff that are related to FERPA, as necessary, and take appropriate action, as necessary.
Native teacher recruitment	During the 2013-2014 school year, SAC shall invite RSTED personnel to discuss Native American teacher recruitment and retention and the District develop a report for the monitor that identifies best practices to implement at the District to recruit, hire, and retain Native teachers. Those best practices shall be implemented by the District in the 2014-2015 school year.
School-sponsored events	At least once annually, the District shall undertake Lakota awareness activities, consistent with the District’s Lakota Awareness Policy 8.21, and document each event’s description, along with the dates on which each took place.
Annual meeting of BMC	For each year this Amended Consent Decree is in place, the BMC shall hold an annual meeting and record agendas and notes, and the names of those present.
Annual presentation to the RSTED Education Committee	For each year the Consent Decree is in place, the District’s School Board President shall be present at the District Superintendent’s report to the RSTED Education Committee. The committee must approve the annual report.
Lakota Studies class	Offered every semester for each year the Consent Decree is in place Number and race or ethnicity of enrolled students

STUDENT AFFIDAVITS

1. Defendants shall not require any student to make any statement, whether in the form of a written affidavit or otherwise, that may be used against him or her in a juvenile court proceeding or criminal proceeding.

DISCIPLINARY INTERVIEWS AND POLICE REFERRALS

2. If a child commits an offense for which a school official may refer him to law enforcement, that school official must: (a) immediately notify an adult family member or guardian of the accused student; (b) promptly cease any further interview of the student until the adult family member or guardian arrives; and (c) inform the student that anything he or she says can be used against him or her in a criminal court and that the student has no obligation to speak.

DISCIPLINARY RECORDKEEPING

3. For each disciplinary incident, the Principals or their designees shall record, in writing, the name, race, gender, and grade of the student; the date, time, and location of the incident; a description of the incident to the extent possible consistent; the discipline category within which the misconduct falls; the punishment imposed; and the staff member who made the initial disciplinary referral.

⁴ 20 U.S.C. § 1232g.

4. If the incident involved a Native American student and the Native American student was referred by a school official to law enforcement, the Principals or their designees also shall record whether the child's due process rights were protected and if so, how.
5. Defendants shall send a copy of each incident report to the family or guardian of each student involved in the incident within five (5) days of the incident, with any other students' names redacted. Defendants shall submit copies of all incident reports to the Monitor and Plaintiffs' Counsel on a monthly basis for the duration of the Decree.

EVALUATIONS FOR STUDENTS WITH THREE OR MORE INCIDENTS OF MISCONDUCT

6. With respect to every student punished three or more times during an academic year, Defendants shall conduct an evaluation of the student, with the participation of the student's parent or guardian, the Principal, the Native American Advocate, and Special Education personnel within ten (10) days of the third disciplinary incident to determine whether the student has particular needs that are causing him or her to misbehave.
7. The Principals or their designees shall record the results of the evaluation in writing and shall include in their reports the date of the evaluation, the names of those who attended, efforts made to contact the parents if the parents were not present, any conclusions reached, and any steps to be taken in the future.
8. Defendants shall provide copies of the all such reports to the Monitor and to Plaintiffs' Counsel at the end of each month. Defendants shall not be responsible for any fees associated with Plaintiffs' Counsel's review of the monitor's reports, except as provided for in Paragraph 27.

ANNUAL TRAINING OF STAFF REGARDING STUDENTS' PROCEDURAL DUE PROCESS RIGHTS AND LAW ENFORCEMENT REFERRALS

9. Defendants shall provide annual training, at the beginning of each academic year, to Winner Middle School and Winner High School staff and faculty, on the constitutional due process rights of students. Defendants shall request that a legal expert on the constitutional due process rights of students conduct this Training.
10. Defendants shall make attendance at this training mandatory for all school administrators authorized to make law enforcement referrals, and one representative of the Winner School Board.
11. Defendants shall submit the agenda of the training, any written materials distributed at the training, and a sign-in sheet of all participants of the training to the Monitor within thirty (30) days of the training.

TEACHER TRAINING ON INDIAN EDUCATION AND EDUCATIONAL EQUITY

12. The District shall train all teachers on culturally-sensitive pedagogy and curriculum-enhancement, with ongoing training and support. The District shall collaborate with RSTED and the South Dakota Department of Education in order to secure training for teachers and staff in these areas. The District shall also secure additional training for building leaders on culturally-sensitive and minority issues related to school administration from a recognized expert in this field.

THE NATIVE AMERICAN ADVOCATE

13. The District shall retain a Native American Advocate who meets the legal qualifications for employment by the District. The Native American Advocate shall be a full-time employee of the District and shall be provided with an office at either the Middle School or the High School and shall work to implement the position's job description to act as a resource for the District and liaison and voice for Native American students and parents with the District.
14. The Native American Advocate, if present at school that day, shall be involved in every interview for disciplinary purposes of a Native American student by the Principal of the Middle or the High School (or his or her designee) in the Principal's Office.
15. The Native American Advocate shall prepare a written report for each Native American disciplinary incident. The written report for each disciplinary incident shall include the name, race, gender, and grade of the student; the date, time, and location of the incident; a description of the incident to the extent possible, and any other information the Native American Advocate wishes to report. If the Native American student was referred by a school administrator to law enforcement, the Native American shall record whether proper Due Process steps were followed.
16. The Native American Advocate shall encourage and assist any adult family member or guardian who responds to a call from a Principal concerning the referral of a student to law enforcement to record whether, in the adult family member's or guardian's view, proper Due Process steps were followed.

SUPERINTENDENT'S ADVISORY COMMITTEE

17. The District shall maintain a Superintendent's Advisory Committee ("SAC"), which shall consist of 14-16 members, one of whom shall be the Native American Advocate, a portion shall be Native Americans representing Native American students in the District, RSTED personnel and Winner School District personnel, and at least half of all SAC members are Native American.
18. The SAC shall meet at regular intervals four times during each academic year to advise, discuss, and recommend to the Superintendent matters of importance, including matters involving this Consent Decree, regarding the Winner School District and the Native

American students/communities.

19. The SAC shall send written minutes of all meetings to the Monitor and Plaintiffs' Counsel. The minutes should reflect the date of the meeting, the name of the SAC members who attended the meeting, all matters discussed and include all documentation that was handed out at the meeting.
20. Defendants shall not be responsible for any attorneys' fees associated with Plaintiffs' Counsel's review of these SAC reports, except as provided for in Paragraph 27.

LOCAL INDIAN EDUCATION COMMITTEE ("JOM BOARD")

21. The District shall not administer the application and/or grant funding for the Johnson O'Malley Act; rather, it shall continue its practice of allowing RSTED and local Indian Education Committee personnel to govern those programs. Defendants shall comply with all federal laws, rules, and regulations regarding the Local Indian Education Committee under the Johnson O'Malley Act. The Local Indian Education Committee shall develop its own charter and by-laws as it is entitled to pursuant to federal law. Defendants shall refrain from establishing the Local Indian Education Committee's meeting agendas, budgets, and membership, and the District's staff shall not run meetings of the Local Indian Education Committee.

THE ROSEBUD SIOUX TRIBAL EDUCATION DEPARTMENT

22. The Winner School Board shall invite to its monthly board meeting RSTED personnel so they may make presentations, if RSTED so elects. If RSTED elects to make an appearance, it shall follow regular Board procedures, including providing a short summary of the intended presentation in advance.
23. The President of the Winner School Board and/or the Superintendent shall make a presentation to the Rosebud Sioux Tribal Education Committee each academic year.
24. The District shall continue to work in collaboration with RSTED representatives to help implement the goals and actions in this Amended Consent Decree.

ATTORNEYS' FEES AND COSTS

25. In the event that Plaintiffs successfully hold the District in contempt of court for failure to work toward this Amended Consent Decree's outcome measures in "good faith", as that phrase has been defined above, Plaintiffs shall be entitled to reasonable attorneys' fees and costs incurred in connection with that motion.
26. After four years from the beginning of the 2013-2014 school year, any obligation the District still has under this Amended Consent Decree shall terminate without further negotiation or court intervention unless the Plaintiffs have proved that the District has failed to act "in good faith" to implement the actions contained in this Agreement.

27. Plaintiffs reserve the right to petition for attorneys' fees and costs associated with the defense of a motion to terminate the Consent Decree, if that motion is unsuccessful. Defendants reserve the right to challenge such a petition.

DISCLOSURES OF EDUCATION RECORDS

28. This Amended Consent Decree constitutes a court order authorizing Defendants to disclose information protected by FERPA, 20 U.S.C. § 1232g(b)(2)(B), for the purpose of effectuating this Consent Decree to (a) the Monitor; (b) RSTED; (c) any other Expert retained pursuant to this Consent Decree; (d) Plaintiffs' counsel; and (e) SAC members.
29. Each of the entities and/or individuals receiving information protected by FERPA pursuant to Paragraph 28 shall enter into a confidentiality agreement with Defendants prior to receiving such records, consistent with 20 U.S.C. § 1232g(b)(4)(B) if they have not already done so.

MISCELLANEOUS PROVISIONS

30. The Court shall continue to retain jurisdiction over the Parties and this Amended Consent Decree, and if any motion regarding non-compliance or discharge is brought, the Court shall defer to the expertise of the Monitor, unless the Court is convinced that the outcome measure or activity at issue is unrealistic, unreasonable, likely to be ineffective, or arbitrary and capricious. In making this determination, the Court shall take into account the overall goals of the Original Consent Decree, which are to ensure that Native American students are treated equally with all other students, and with appropriate cultural sensitivity, consistent with the educational and pedagogical needs of the District.
31. Failure by either party to enforce any provision of this Amended Consent Decree shall not be construed as a waiver of the party's right to enforce other provisions of this Amended Consent Decree.
32. All undersigned counsel of record for the Parties hereby represents their authority to enter into and execute this Amended Consent Decree on behalf of their respective clients.

SIGNED on the date indicated below:

COURTNEY BOWIE
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Date: [], 2014

COUNSEL FOR PLAINTIFF CLASS

Pursuant to stipulation, and for good cause shown, IT IS SO ORDERED.

Hon. Charles B. Kornmann
United States District Judge

Dated this ____ day of _____, 2014.