



November 28, 2018

*Sent via email and U.S. certified mail to:*

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Dear Superintendent Reedy:

Imagine you had a nightmare. In that nightmare, you sent your child to school like you do every day. However, on this particular day, your child's teacher coerced her students into eating dog food, wielded a weapon in front of her class, battered a student in front of your child while simultaneously offending your family's heritage and religion, and then turned to your child and disparaged her race in front of all of her peers.

This past Halloween, for one Navajo family ("the family") within the Albuquerque Public Schools ("APS") system, this was no nightmare – it was their reality. On that day, Cibola High School ("CHS") teacher, Mary Jane Eastin ("Ms. Eastin") engaged in criminal acts of violence and demeaned Native American students in unthinkable ways. Her conduct shocks the conscience and inflicted indelible injuries on several CHS Native American students. Equally important to our children receiving a quality education is their safety while doing so. It is unacceptable for the very professionals we trust to keep our children safe to perpetrate violence and verbal assaults against students. It is for these reasons that we write to you today.

Cibola High School – Halloween 2018

On October 31, 2018, a young Native American woman ("Student 1") arrived to CHS to find several of her peers dressed in racially offensive costumes that made a mockery of Native American dress and traditions and which reduced Native Americans to caricatures. Despite the distress that witnessing these types of Halloween costumes caused Student 1, she forged ahead with her regular school schedule. When she arrived to her Advanced Placement ("AP") English class taught by Ms. Eastin, she found her teacher dressed as Marie Laveau, a historic voodoo witch. In character, Ms. Eastin informed her class that they would be playing a game that day. She would ask students questions out loud. Those that answered correctly would be rewarded with marshmallows. Those that answered incorrectly would be given dog food. Ms. Eastin

encouraged her students not to worry, as the dog food was “organic.” Some of the students who answered incorrectly ate the dog food. Others refused.

At one point during the class, Ms. Eastin approached another female Native American student (“Student 2”) with a box cutter. The young woman had long hair combed into braids. Ms. Eastin asked Student 2 if she liked her braids. The student responded in the affirmative. Ms. Eastin then suggested that she was going to cut Student 2’s hair with the box cutter. No one thought she was serious. The teacher proceeded to put the box cutter down and exchanged it for a pair of scissors, which she used to cut approximately 3 inches of Student 2’s hair from her head and then sprinkled it on the desk in front of her.

Soon after that unconscionable event, Ms. Eastin turned to Student 1, who had fake blood on her cheek because she was dressed as Little Red Riding Hood. Staring directly at her, Ms. Eastin inquired, “What are you supposed to be, a bloody Indian?” In response to the collective gasps from her students, Ms. Eastin doubled down and stated, “What? She is bloody, and she is an ...” Ms. Eastin stopped short of finishing her sentence and allowed her racist comments to linger.

The family of Student 1 has sought assistance from the CHS and APS administrations. They have reached out to APS School Board member Peggy Muller-Aragon as well as CHS Principal Pamela Meyer (“Ms. Meyer”), requesting answers as to what steps they can take to keep their daughter safe. To their dismay, neither Board Member Muller-Aragon nor the CHS administration has offered any sort of assistance short of informing the family that the incident was “under investigation,” and that Ms. Eastin had been put on administrative leave. Not one APS official has taken the time to explain the investigation process, how the family can participate in the investigation, or to inform them whether Ms. Eastin will be allowed back into the classroom. What’s worse, when the family attempted to file a complaint of their own against the teacher, it was not accepted. To date, Ms. Eastin has not offered any sort of apology to their daughter.

Perhaps worst of all, neither APS nor CHS has created any sort of plan to ensure the students’ safety at school, despite the fact that some CHS students have made threatening comments to her and other Native American students because they are upset about Ms. Eastin’s absence. The victims of this incident and other Native American students at CHS need to know that they have done nothing wrong. These students need to be supported, they need to know they are valued, and they need to know that the administration at the school respects them and has taken measures to ensure their safety. However, when the family member of a Native American student at CHS went to Ms. Meyer to inform her that Native American students were being retaliated against, Ms. Meyer dismissed the family member by saying there is nothing she can do and that this incident could serve as a “learning experience” for the Native American students. What exactly is the lesson? That Native American students at CHS don’t matter? That their lives are not worth the same as those of other students? That their safety is not a concern? That because of who

they are, they are not valued? Is the lesson that they have no recourse when they are wronged?

Ms. Meyer should have done everything in her power to protect the students who were targeted by Ms. Eastin's deplorable conduct. Retaliation is a violation of APS policy.<sup>1</sup> One has to wonder how Ms. Meyer would have reacted if a White family had contacted the school with similar concerns about their child's safety.

### The Harms Inflicted by this Incident

Before October 31, 2018, Student 1 was outgoing and upbeat – an extrovert who enjoyed engaging with her friends and family. Since that day she has become withdrawn and reserved, and is saddled with sadness that causes her to cry often. Her family, one that is proud of their Diné heritage and adheres to their cultural traditions, has done everything in their power to build their daughter back up to who she was before this event, including seeking the assistance of a traditional medicine man. Nonetheless, the harms that Ms. Eastin so needlessly inflicted on Student 1 will remain for a long time.

With respect to Student 2, anyone with even an iota of cultural awareness knows that in Native American cultures hair is sacred – particularly for women. Some Native American tribes hold hair cutting ceremonies and some only cut hair to honor the loss of loved ones.<sup>2</sup> Beyond that, the cruel implications of Ms. Eastin's actions harken back to the era of Native American boarding schools, when the cutting of Native students' hair was a form of punishment inflicted by school masters in a racist attempt to strip children of their heritage and culture. Ms. Eastin's conduct not only constituted battery on a minor which will leave deep psychological scars, but it was also an assault on an entire culture. Her actions have offended an entire Native American community who are now demanding and deserving of answers.

### Systemic Problems within APS

Instances of overt racism are not isolated to Ms. Eastin's classroom, to CHS, or to any one high school within APS. Just last year, students at Volcano Vista High School ("VVHS") posted a repugnantly racist image on social media in which they photo-shopped Ku Klux Klan hoods on all of the students in the classroom except for two African American students.<sup>3</sup> Despite the harm caused by this incident, neither APS nor VVHS did anything

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<sup>1</sup> See Discrimination and Harassment: Students, <http://www.aps.edu/about-us/policies-and-procedural-directives/procedural-directives/j.-students/discrimination-and-harassment-students>.

<sup>2</sup> See Braudie Blais-Billie, *beyond braids: the true story of indigenous hair*, I-D VICE (June 23, 2017), [https://i-d.vice.com/en\\_us/article/mbvbj8/beyond-braids-the-true-story-of-indigenous-hair](https://i-d.vice.com/en_us/article/mbvbj8/beyond-braids-the-true-story-of-indigenous-hair).

<sup>3</sup> See Breanna Edwards, *Doctored Snapchat Photo Shows Black NM High School Student Surrounded by Classmates Wearing KKK Hoods*, THE ROOT (Aug. 31, 2017), <https://www.theroot.com/doctored-snapchat-photo-shows-black-n-m-high-school-st-1798670399>.

to institute systemic or structural changes within the school or district that would confront head-on the racism that pervades Albuquerque's public school system.

Another example comes from a different teacher at CHS who earlier this year required Native American students to read derogatory literature, which referred to Native Americans as "savages," "merciless heathen," "ravenous beasts," and "murderous wretches." In assigning these materials, the teacher failed to relate these passages back to our nation's history of racism and genocide against Native American people, thus leaving students to digest despicably racist literature with no context or explanation.

Yet another example can be found in the latest version of Glamour magazine, in which a graduate of La Cueva High School detailed her experience as a Native American student in our public school system:

These traditions make me proud to be Native, and yet, when I was growing up, society made me feel ashamed of my heritage. At school I was one of only 10 indigenous kids in a class of hundreds. My reservation, Sandia Pueblo, was just outside Albuquerque, New Mexico, yet most of my classmates knew nothing about Native people. I can't tell you how many times I've seen some oversexualized Pocahontas costume or been asked whether I live in a tepee. (The answer is no.) One time, when I dropped my books in the hallway, kids started dancing around me, making war whooping sounds. All I wanted in that moment was to cut off my long hair. It'd be so much easier to go to school if I were white, I thought.<sup>4</sup>

All of these examples should serve as a siren to APS administrators that swift and bold reforms are needed. The incident at CHS involving Ms. Eastin serves as a pivotal moment, coming on the heels of the *Yazzie & Martinez v. State of New Mexico* litigation.<sup>5</sup> APS should take the lead in the state to institute short and long-term measures aimed at effectuating systemic change that address both the implicit and explicit racism that pervades the district.

### Liability

To allow the incident involving Ms. Eastin to go unaddressed or, even worse, to sweep it under the rug, would be a further slap in the face to all students who have been victims

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<sup>4</sup> See Ria Thundercloud, *This is What the Beauty of Cultural Appreciation Looks Like*, GLAMOUR (June 13, 2018), <https://www.glamour.com/story/beauty-of-cultural-appreciation>.

<sup>5</sup> See *Summary of Yazzie/Martinez v. State of New Mexico*, NEW MEXICO CENTER ON LAW AND POVERTY (Sept. 1, 2018), <http://nmpovertylaw.org/graphic-yazzie-martinez-decision> (explaining the court's holding that dual language education, linguistically and culturally appropriate education, social services, and sufficient funding for teacher recruitment, retention, and training all fall within the scope of what is required for constitutionally adequate education pursuant to the New Mexico Constitution).

of racism within APS. We are not willing to let that happen. To say that Ms. Eastin's actions were inappropriate is an understatement – they were also criminal and she must be held accountable. The following is a non-exhaustive list of the legal violations Ms. Eastin committed:

1. Battery: By cutting Student 2's hair, Ms. Eastin committed criminal battery. "Battery is the unlawful, intentional touching or application of force to the person of another, when done in a rude, insolent or angry manner."<sup>6</sup>

2. Child abuse: By cutting Student 2's hair, Ms. Eastin committed child abuse. "Abuse of a child consists of a person knowingly, intentionally or negligently, and without justifiable cause, causing or permitting a child to be: (1) placed in a situation that may endanger the child's life or health; (2) tortured, cruelly confined or cruelly punished; or (3) exposed to the inclemency of the weather."<sup>7</sup>

3. New Mexico Indian Education Act (2003): In response to 100 years of forced assimilation practices, the NMIEA was enacted, in part, to address the glaring issues of racial discrimination affecting Native American students in New Mexico public schools. Its intent is to ensure that all Native American students are provided an education that is both relevant and responsive to their unique cultural and linguistic needs. Specifically, the purpose of the Act, among other things, is to "ensure equitable and culturally relevant learning environments, educational opportunities and culturally relevant instructional materials for American Indian students enrolled in public schools."<sup>8</sup> By cutting Student 2's hair and calling Student 1 a derogatory term, Ms. Eastin offended the spirit of the NMIEA. Cutting a Native American's hair evokes memories of the violence Native people have endured throughout our country's history, as well as the great lengths to which our nation has gone in its attempts to eviscerate the traditions and cultures of Native peoples in an effort to assimilate them, all which are the types of harms the NMIEA was designed to prevent.

4. First Amendment: By cutting Student 2's hair, Ms. Eastin, a government actor, infringed upon Student 2's First Amendment right to free exercise of religion. Courts have held that policies infringing upon a student's sincerely held religious beliefs regarding the length of her hair violate the Free Exercise Clause of the First Amendment to the United States Constitution.<sup>9</sup> Although there is no CHS or APS policy prohibiting Student 2 from wearing long hair, Courts would surely extend First Amendment protections to a student who had her hair cut by a teacher against her will.

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<sup>6</sup> NMSA 1978, § 30-3-4.

<sup>7</sup> NMSA 1978, § 30-6-1.

<sup>8</sup> NMSA 1978, § 22-23A-2(A).

<sup>9</sup> *A.A. ex rel. Betenbaugh v. Needville Indep. Sch. Dist.*, 701 F. Supp. 2d 863 (S.D. Tex. 2009), *aff'd*, 611 F.3d 248 (5th Cir. 2010).

5. Equal Protection: Both APS's history of inadequate responses to instances of racism and Ms. Eastin's despicable conduct with respect to Students 1 and 2 violate the students' Equal Protection rights under the Fourteenth Amendment to the United States Constitution and Article II, Section 18 of the New Mexico Constitution.<sup>10</sup>

6. Title VI of the Civil Rights Act of 1964: Ms. Eastin's use of a racial epithet and her differing treatment of Native American students as compared to White students support claims under Title VI because APS receives federal financial assistance.<sup>11</sup>

7. APS Policy: Ms. Eastin's actions of encouraging students to eat dog food, cutting Student 2's hair, and calling Student 1 a derogatory term constitute harassment under the APS policy. Harassment as defined in the APS Policy is, "considered to have occurred when conduct: 1) has the intent or effect of creating an intimidating, hostile or offensive educational environment, or 2) has the intent or effect of substantially or unreasonably interfering with a student's academic performance, or otherwise adversely affects a student's opportunities."<sup>12</sup> By calling Student 1 a derogatory term, Ms. Eastin was in direct violation of APS's anti-discrimination policy. That policy provides: "Individuals or groups are in violation of District policy if they engage in... [making demeaning or derogatory remarks or comments directly or indirectly to an individual or group because of his/her/their disability, race, ethnicity, color, gender, sexual orientation, national origin or ancestry, religion, age, veteran status or any other protected status as defined by law] ... toward an individual on school grounds, in the workplace, at school/work-sanctioned activities or in vehicles owned/dispatched by the District."<sup>13</sup> Without a doubt, Ms. Eastin's actions directly offend APS's policies on discrimination and harassment. Her actions certainly had the effect of creating an offensive educational environment, and the policy makes it clear that demeaning or derogatory remarks have no place in the classroom.

## Resolution

The ACLU of New Mexico has consulted with tribal community leaders, educators, concerned family members of APS students, the Native American Budget and Policy

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<sup>10</sup> See *Brooks v. Skinner*, 139 F. Supp. 3d 869, 892 (S.D. Ohio 2015) (principals violated students' equal protection rights by making racial comments and failing to adequately respond to racial harassment against them).

<sup>11</sup> *L. L. v. Evesham Twp. Bd. of Educ.*, 710 F. App'x 545, 548-59 (3d Cir. 2017) (claim of race discrimination under Title VI was supported against school, school board, teachers, and administrators where teacher's purported tacit acceptance of white student's use of a racial epithet, along with other instances in which students were being singled out and treated differently from white students at school, were sufficient to support an inference that school district's actions were discriminatory).

<sup>12</sup> The policy can be found at: <http://www.aps.edu/about-us/policies-and-procedural-directives/procedural-directives/j.-students/discrimination-and-harassment-students>.

<sup>13</sup> *Id.*

Institute, and the New Mexico Center on Law and Poverty about this matter. Collectively, we request that APS establish a plan to institute the following measures to protect the immediate and long-term safety of Native American students at CHS and APS at-large:

1. Immediate Requests:
  - a. An apology from Ms. Eastin to Students 1 and 2;
  - b. A safety plan for Students 1 and 2 and any other Native American student at CHS who expresses that he or she feels uncomfortable or unsafe at school due to the Halloween incident or its aftermath;
  - c. An announcement from the school that the events that took place on Halloween were inappropriate, and that any student or staff member who retaliates against Native American students will be subject to enforcement of the anti-retaliation clause of the school policy;
  - d. Regular communication with the impacted families concerning the investigation into Ms. Eastin; and
  - e. That Ms. Eastin be placed on a corrective action plan and required to engage in cultural competency and other relevant training before she is allowed to teach again.
  
2. Long-term Measures:
  - a. Cultural competency training for all APS administrators, teachers, school board members and staff;
    - i. Ongoing cultural competency training provided to all new APS administrators, teachers, school board members and staff;
  - b. Anti-oppression curriculum including education about the harms of racism put in place for students at the high school and middle school levels;
    - i. This type of curriculum would include instruction about the harms to Native Americans when non-Native American students wear Native American costumes on Halloween, for example;
  - c. Native American history courses offered to students at the high school level;
  - d. Broader APS recognition of Native American Heritage Month;
  - e. Pueblo Feast days added to the APS general calendar;
  - f. Training for all students on APS anti-bullying policies, and clear education on the concept of “retaliation”;
  - g. Implementation of classroom instructional materials that are vetted for linguistic and cultural diversity;
  - h. Ensuring the availability of school counselors who are linguistically and culturally diverse at each school within APS; and
  - i. While protecting student privacy, broader transparency surrounding civil rights complaints that are submitted to APS, and the outcomes of such complaints.

## Conclusion

Our country is in crisis. We are witnessing before our very eyes a resurgence of unabashed racism—the type of racism that does not bother to disguise itself, that is unapologetic, and that seeks to inflict maximum harm. We are at a decisive point in our nation’s history. Those at the helm of our educational institutions will play a key role in determining whether our country marches forward, or slides back into the dark recesses of its racist past. With respect to this incident at CHS and beyond, it is incumbent upon APS to take measures to protect families that entrust the district with what is most sacred to them – their children. In doing so, they pray that their children never have to endure the nightmare that the Native American families at CHS are currently living through.

We respectfully request a meeting with you within two weeks to discuss whether APS intends to begin a process for implementation of these action items. In addition, we would like to discuss the possibility that APS leaders and the parties involved in the CHS incident participate in a traditional “peace circle” to allow for healing and reconciliation.

This incident has not only sent shockwaves through our local Native American community, but through the entire Navajo Nation, Native American communities across the United States, and the First Nations community of Saskatchewan, Canada. Community members and leaders throughout North America have contacted the families affected by this incident. Your full engagement to meaningfully respond to these requests will send a clear message to the Native American community that you are serious about keeping their children safe in APS schools and about combatting insidious racism. On the heels of *Yazzie and Martinez v. State of New Mexico*, APS, as the largest school district in the state, can take the lead on instituting measures to ensure a constitutional education that adheres to the NMIEA and takes into account the diverse backgrounds of all of its students.

Sincerely,



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