UNITED STATES DEPARTMENT OF JUSTICE
EDUCATIONAL OPPORTUNITIES SECTION
ADMINISTRATIVE COMPLAINT

March 4, 2021

United States Department of Justice
Educational Opportunities Section
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001
(202) 514-4092

Via E-mail: education@usdoj.gov

PRELIMINARY STATEMENT

1. This is a complaint brought by Deseree Valle and Rebekah Kines on behalf of their minor sons, K.V. and J.K., Native American boys who attend Monahans-Wickett-Pyote ISD (MWPISD), a public school district in Monahans, Texas. Both K.V. and J.K. wear long hair to reflect their Native American heritage, ancestry, religious beliefs, and identity. However, MWPISD's hair-length rule prohibits boys (but not girls) from wearing long hair, and the District has refused to change this policy—or grant K.V. and J.K. an exception—despite the parents exhausting every level of MWPISD's internal grievance process.

2. If K.V. and J.K. were girls, MWPISD would allow them to wear long hair without repercussion. But because they are boys, MWPISD's policy mandates that they cut their hair. The District's requirement that boys—but not girls—cut their long hair in order to attend school plainly violates Title IX of the Educational Amendments of 1972, 20 U.S.C. §§ 1681–1688, and is sex discrimination in violation of equal protection of the laws, 42 U.S.C. § 2000c-6.

3. Instead of granting K.V. and J.K. a written exception from the hair-length requirement, the District has ordered both students to "prove" their Native American ancestry, heritage, and faith by demanding that they provide tribal membership cards to the District. School officials have even taken it upon themselves to call the Bureau of Indian Affairs to inquire into the families' race and national origin. MWPISD's refusal to allow K.V. and J.K. to wear long hair consistent with their faith and the District's efforts to require proof of ancestry constitute discrimination on the basis of sex, race, and religion in violation of Titles IV and VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000c-6–2000d et seq.

4. When Ms. Valle complained of unlawful discrimination against her son, K.V., the District sent the MWPISD Chief of Police to her house to tell her to "drop the hair issue" or she would be banned from campus. This action by MWPISD and its police chief violated Ms. Valle's right to be free from retaliation under Title VI and Title IX.

5. Both K.V. and J.K. seek to wear long hair without repercussion or retaliation by MWPISD, and their families ask that the District change its policies and practices to no longer discriminate against students based on sex or Native American ancestry and beliefs.

PARTIES

6. Deseree and Luis Valle are the parents of K.V., who is currently a fourth-grade student in MWPISD. Rebekah Kines is the mother of J.K., who is a first-grade student in MWPISD. Both families can be contacted through the undersigned counsel:

Brian Klosterboer
Staff Attorney
American Civil Liberties Union Foundation of Texas
P.O. Box 8306
Houston, Texas 77006

7. This complaint is against Monahans-Wickett-Pyote Independent School District. The contact information for MWPISD's superintendent and counsel are:

Chad Smith
Superintendent of Schools
Monahans-Wickett-Pyote Independent School District
606 South Betty
Monahans, Texas 79756

Dennis J. Eichelbaum
Managing Shareholder
Eichelbaum Wardell Hansen Powell & Muñoz, P.C.
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Plano, Texas 75024

JURISDICTION

8. This complaint concerns MWPISD's discrimination based on sex, race, and religion and MWPISD's unlawful retaliation in the course of administering a public-education program.

9. The Department of Justice Educational Opportunities Section has authority under Title IV of the Civil Rights Act of 1964 to investigate public school districts that deprive students of equal protection of the laws, including discrimination based on race, color, religion, sex or national origin. 42 U.S.C. § 2000c-6. It also has authority to investigate violations of Title VI and Title IX.

10. Neither of these families have sought relief from any other agency but are simultaneously submitting a complaint to the Department of Education's Office of Civil Rights.

FACTUAL BACKGROUND

I. MWPISD's Dress and Grooming Code

11. Both MWPISD Elementary Schools have identical dress and grooming codes in their Student Handbooks, which have been approved by the MWPISD Board of Trustees.[1] With regard to hair and facial hair, the dress code states:

> Hair must be neat and clean. There are to be no head or hair ornamentation: such as, unusual hair coloring, mohawks, fauxhawks, man-buns, rat-tails, initials, numbers, symbols, scalp designs, rollers or hairnets. Hair coloring must be of a natural hair color and cause no distraction. Cutting more than one part into the hair must result in the layer lengths having a difference of no more than two (2) inches. **Boys' hair must be cut as not to touch the eyebrows in front or extend beyond the top of the collar of a standard shirt in back. Additionally, boys' hair may not exceed the top of the ear and boys are not allowed to wear hair in a ponytail.** Hair may not be pinned, curled or gelled up to avoid this rule. Beards and mustaches are not allowed. Sideburns may not extend below the ear lobe in length and beyond the outer edge of the eyebrow in width. Designs cut into the eyebrows will not be permitted.[2]

12. The principal of each campus has broad discretion to determine if there has been a violation of MWPISD's dress and grooming code and may impose escalating consequences on students who are found not to be in compliance:

> If the principal determines that a student's grooming or clothing violates the school's dress code, the student will be given an opportunity to correct the problem at school. If not corrected, the student may be assigned to in-school suspension for the remainder of the day, until the problem is corrected, or until a parent or designee brings an acceptable change of clothing to the school. Repeated offenses may result in more serious disciplinary action in accordance with the Student Code of Conduct.[3]

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[1] Sudderth Elementary Student Handbook, MWPISD (2020-2021) at 40, *available at* https://ses.mwpisd.esc18.net/499948_3; Tatom Elementary Student Handbook, MWPISD (2020-2021) at 38, *available at* https://tes.mwpisd.esc18.net/499949_3

[2] *Id.* (emphasis added).

[3] *Id.*

II. MWPISD's Enforcement Against K.V.

13. K.V. is a fourth-grade student in MWPISD. Wearing long hair is an important part of K.V.'s Native American identity and is part of his ancestry and religious beliefs.

14. K.V. and his family moved to Monahans, Texas in December 2019. When K.V. arrived at MWPISD, no school official questioned his hair nor challenged his cultural or religious identity. K.V. wore long hair in accordance with his beliefs without any repercussion until this fall, when teachers and staff began telling K.V. that he needed to cut his hair. At first, no teacher or staff member contacted Ms. Valle about K.V.'s hair, but he came home from school crying on multiple days because of the comments made by school staff about his hair.

15. On September 24, 2020, Ms. Valle received a call from the Vice Principal, who informed her that K.V.'s hair did not comply with the dress code and that he would need to get a haircut. When Ms. Valle told the Vice Principal that K.V. is Native American and wearing long hair is part of his beliefs, the Vice Principal said that Ms. Valle would need to "prove" K.V.'s Native American heritage or tribal affiliation by getting a letter from a tribal leader.

16. Less than a week later, Ms. Valle submitted an ancestry report showing K.V.'s Native American heritage and explained that K.V.'s grandmother is a Papago Indian who practices Native American beliefs and blesses K.V.'s hair each spring but does not currently have a tribal leader. When Ms. Valle explained this to the Principal, she was told that this information was insufficient and K.V. would still need to cut his hair.

17. Ms. Valle then contacted Superintendent Smith to informally appeal this decision. On October 5, 2020, Superintendent Smith told Ms. Valle that K.V.'s hair was too long and compared it to allowing students to wear "ripped jeans." Despite K.V.'s Native American ancestry and

beliefs, the superintendent refused to grant any exception to the District's dress and grooming code to allow K.V. to wear long hair.

18. Based on the Superintendent's guidance, Ms. Valle felt compelled to concede to the District's demands and cut K.V.'s hair on or around October 6, 2020. K.V. sobbed when Ms. Valle did this, feeling that he was losing a part of himself, his heritage, and his religious beliefs.

19. After K.V. endured this traumatic experience, Ms. Valle sent an e-mail to the District complaining about discrimination against her son. In response to this e-mail, Officer Orlando Orona, the chief of police for the MWPISD-Police Department, went to Ms. Valle's home and told her that she needed to "drop the hair issue" or she would be banned from campus. Because the officer did not wear or turn on his body camera, there is no record of this conversation, but Ms. Valle felt intimidated and threatened by Officer Orona telling her to "drop" her complaints.

20. Although Ms. Valle felt daunted by Officer Orona's visit, she eventually filed a Level One complaint of discrimination with the Principal on October 15, 2020, in which she asked MWPISD to remove gender stereotypes from its dress and grooming code and to allow K.V. to wear long hair. This grievance was denied and Ms. Valle appealed to the Superintendent Chad Smith. Ms. Valle met with the Superintendent for a Level Two grievance conference on December 2, 2020. Superintendent Smith denied Ms. Valle's appeal on January 4, 2021, stating that he could not grant Ms. Valle's grievance since only the MWPISD Board of Trustees has the authority to change the District's dress and grooming code. Ms. Valle then appealed to the MWPISD Board of Trustees.

21. On February 22, 2021, Ms. Valle presented her Level Three grievance appeal to the MWPISD Board of Trustees. The Board took no action and did not issue any response to Ms. Valle's grievance.

22. As of the filing of this complaint, MWPISD's discriminatory dress and grooming code remains in effect. K.V. currently wears long hair but has been able to attend regular classes and is not currently being disciplined or suspended by MWPISD. However, at the end of January, a teacher told K.V. that his hair was too long, sparking concern that he will again be forced to cut it.

23. Because MWPISD's discriminatory policies remain in effect and K.V. has not been granted an exception to the dress and grooming code, he lives in fear that he will be forced to cut his long hair. K.V. no longer feels comfortable reporting incidents of bullying to his teachers, because he worries that they might retaliate against him and his family, and he has asked his mom not to come to campus out of concerns that she could be arrested by the campus police.

III. MWPISD's Enforcement Against J.K.

24. J.K. is a first-grade student in MWPISD. He is Native American and wears long hair as a way to express his heritage, ancestry, religious beliefs, and identity. Ms. Kines is a member of the Choctaw Nation and J.K.'s family has attended MWPISD schools for four generations.

25. Last school year, when J.K. started kindergarten, he was allowed to wear long hair without repercussion. But in January 2020, enforcement of the dress and grooming code started to change. When J.K. returned to school for the spring semester, the Principal called Ms. Kines and said that J.K. would need to cut his hair because it was too long.

26. When Ms. Kines informed the Principal that J.K. was Native American, the Principal asked for proof or documentation. Ms. Kines then provided her tribal membership card and a copy of J.K.'s birth certificate to the District. The Principal found this to be sufficient and did not require J.K. to cut his hair for the remainder of the semester. Although the school year was interrupted by the COVID-19 pandemic, J.K. was able to attend his kindergarten graduation in person in May 2020 and took a picture with the MWPISD Superintendent while wearing long hair.

27. This school year, J.K. returned to in-person school on or about August 27, 2020. Within three hours of him being back in school, a different principal called Ms. Kines and told her that J.K. would need to cut his hair because it was too long. Although J.K. was not pulled out of class, he was told by the physical education teacher in front of his peers and friends that his hair was too long. This embarrassed J.K. on his first day back at school and caused him to feel ostracized and singled out from his friends on his first in-person day of First Grade.

28. When the Principal called her, Ms. Kines asked about J.K.'s proof of Native American ancestry that she had submitted the prior school year, but the Principal told her that this was no longer sufficient. The Principal told her that MWPISD would no longer accept J.K.'s Native American heritage and beliefs as a reason not to cut his long hair.

29. Ms. Kines then contacted Superintendent Smith and held a meeting with him on or around September 1, 2020. During this meeting, the Superintendent told Ms. Kines that she had listed J.K.'s race as "White/Caucasian" on his school enrollment forms, and he therefore could not be considered Native American. Ms. Kines informed the Superintendent that even though part of J.K.'s family was white, she was a member of the Choctaw Nation and J.K. was also Native American. The Superintendent still denied Ms. Kines's request and told her that he could not grant any exception to the MWPISD dress and grooming code. However, the Superintendent said that Ms. Kines could appeal his decision by writing a letter to the MWPISD Board of Trustees.

30. The following day, the Superintendent informed Ms. Kines that sending a letter to the Board of Trustees would not be sufficient, and that she instead needed to submit a formal written complaint in accordance with MWPISD's grievance procedures. As Ms. Kines's grievance was pending, she asked that the District not take any action against her son, and Superintendent Smith

agreed that the District would not require J.K. to cut his hair while Ms. Kines pursued the District's internal grievance process.

31. Ms. Kines filed a Level One complaint of discrimination on September 9, 2020, in which she complained of discrimination against her son based on sex and his Native American heritage and beliefs. Ms. Kines held a Level One grievance conference on September 21, 2020, with the Principal, who denied the grievance on September 28, 2020.

32. Ms. Kines appealed this decision on October 4, 2020, to Superintendent Smith. On October 20, 2020, Ms. Kines participated in a Level Two grievance hearing with Superintendent Smith. During this meeting, the Superintendent told Ms. Kines that he had called the Bureau of Indian Affairs to ask about her son. According to the Superintendent, the Bureau of Indian Affairs had verified Ms. Kines's membership in the Choctaw Nation. The Superintendent then asked Ms. Kines about her tribal membership and asked what kind of benefits she received from having a tribal affiliation card. Ms. Kines felt that the Superintendent was very dismissive of her Native American heritage, identity, and beliefs, and he seemed to scoff at tribal membership as some kind of perk that could be used to receive benefits from the government.

33. At the end of the meeting on October 20, 2020, the Superintendent said that he considered J.K. to be "Native American enough" to wear long hair. Ms. Kines found this statement to be disparaging and similar to historically discriminatory tests used to measure race and ancestry.

34. Although the Superintendent implied that J.K. might be able to keep wearing long hair due to his Native American ancestry, this is not reflected in the Superintendent's Level Two grievance decision. Instead, the Superintendent denied Ms. Kines's grievance on October 28, 2020, and MWPISD has not granted J.K. any written exception to the District's dress and grooming code, despite Ms. Kines asking for one multiple times.

35. Ms. Kines filed her Level Three grievance appeal on November 6, 2020. She then presented her grievance appeal to the MWPISD Board of Trustees on November 16, 2020, in which she asked the Board to change its discriminatory dress and grooming code and to allow her son to keep wearing long hair. The Board took no action and has never responded to Ms. Kines's grievance.

36. As of the filing of this complaint, MWPISD's discriminatory dress and grooming policies remain in effect and J.K. has not been given any written waiver to continue wearing his long hair. Although he continues to wear long hair and is not currently being disciplined, J.K. and his family fear that the District could choose to enforce its dress and grooming policy at any time and could once again discriminate against them based on his sex and Native American ancestry and faith.

ARGUMENT

I. MWPISD Is Violating Title IX and the Equal Protection Clause.

37. MWPISD's hair-length policy that applies only to boys constitutes impermissible sex discrimination in violation of Title IX and the Equal Protection Clause.

38. Title IX is a broad remedial statute enacted to eradicate gender inequality and stereotypes in education. It provides: "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance," with certain enumerated exceptions. 20 U.S.C. § 1681(a). Title IX was designed to "protect[] individuals from discriminatory practices carried out by recipients of federal funds." *See Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274, 287 (1998).

39. The Supreme Court has held that, in light of Title IX's remedial purpose to eliminate sex discrimination, courts "must accord [Title IX] a sweep as broad as its language." *N. Haven Bd. of Educ. v. Bell*, 456 U.S. 512, 521 (1982) (quoting *United States v. Price*, 383 U.S. 787, 801 (1966)).

Title IX is absolute in its prohibition against "discrimination" in any program or activity that receives federal funds, subject to narrow, clearly enumerated exceptions. Although the statute contains certain defined exceptions (covering, for example, religious organizations, social fraternities or sororities, "voluntary youth service organizations," *see* 20 U.S.C. § 1681(a)(2)-(9) (2012), or separate living facilities, *see* 20 U.S.C. § 1686 (2012)), gender-differentiated dress or grooming codes are not among them.

40. In *Hayden ex rel. A.H. v. Greensburg Community School Corporation*, the Seventh Circuit held that a hair-length requirement that applied only to boys in interscholastic basketball violated Title IX. 743 F.3d 569, 583 (7th Cir. 2014). Because the policy drew a facial classification on the basis of sex—and denied participation to boys who did not comply with the hair code—the plaintiffs were entitled to judgment on their Title IX claim. *Id.*[4]

41. In *Bostock v. Clayton County, Georgia*, the U.S. Supreme Court further clarified that sex discrimination occurs whenever an individual is treated worse because of their sex. 140 S. Ct. 1731 (2020). Prior to this ruling, there was a line of Title VII cases in which gender-based classifications were considered permissible as long as they imposed "comparable burdens" or "equal burdens" on both men and women, but the Supreme Court has now clearly rejected this framework.[5]

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[4] In 2011, the U.S. District Court for the Southern District of Mississippi declined to dismiss a Title IX challenge to a sex-based dress code. *Sturgis v. Copiah Cnty. Sch. Dist.*, No. 3:10–CV–455, 2011 WL 4351355, *5 (S.D. Miss. Sept. 15, 2011). That opinion invited the parties to address how a sex-based dress code could comply with Title IX. *Id.* The defendant school district chose to settle rather than defend its policy. *Sturgis*, No. 3:10–CV–455, slip op. at 1 (S.D. Miss. May 1, 2012).

[5] In now-defunct cases like *Jespersen v. Harrah's Operating Co.*, courts decided that "[g]rooming standards that appropriately differentiate between the genders are not facially discriminatory" unless they "place[] a greater burden on one gender than the other." 444 F.3d 1104, 1109–10 (9th Cir. 2006) (en banc). In other words, as long as employers treated *groups* of men and women employees equally, then certain gender-specific grooming requirements did not run afoul of Title VII.

But in *Bostock*, the Court held that that private employers "discriminate" against someone "because of sex" when an employer "intentionally treats a person worse because of sex." 140 S. Ct. at 1740. For purposes of Title VII, then, it does not matter whether an employer's policies disadvantage an entire group

42. The Supreme Court's holding in *Bostock* articulates the proper standard for sex discrimination and is also applicable to schools subject to Title IX.[6] Under *Bostock*'s logic, students who are adversely affected by gender-specific grooming codes may state a claim for sex discrimination, even if school district policies impose parallel sets of requirements on boys as a group and girls as a group. The relevant question is whether the challenged policy harms the particular plaintiffs because of their sex.

43. By its own terms, MWPISD's short-hair rule applies to K.V. and J.K. only because they are boys. The rule harms K.V. and J.K. because it forces them either to be disciplined and miss out on educational opportunities or to cut their long hair and abandon a deeply held part of their identity, culture, heritage, and religious beliefs. MWPISD therefore discriminates against K.V. and J.K. on the basis of sex, in violation of Title IX and the Equal Protection Clause.

44. Last year, the U.S. District Court for the Southern District of Texas issued a preliminary injunction against a school district requiring boys, but not girls, to wear short hair. In *De'Andre Arnold v. Barbers Hill Independent School District*, the court held that the district's gender-specific hair-length restriction likely constituted unconstitutional sex discrimination under the Equal Protection Clause. No. 4:20-CV-1802, 2020 WL 4805038 (S.D. Tex. Aug. 17, 2020).

45. When the government treats people differently based on sex, it must provide an "exceedingly persuasive justification" for this differential treatment that is "substantially related to an important government objective." *J.E.B. v. Alabama ex rel. T.B.*, 511 U.S. 127, 135 (1994).

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of men and women employees. If a single employee is treated differently in part because of sex—and suffers an adverse employment action as a result—then that employee may now state a claim for sex discrimination.

[6] *See Rosa H. v. San Elizario Indep. Sch. Dist.*, 106 F.3d 648, 655 (5th Cir. 1997) (explaining that the Supreme Court and Fifth Circuit often rely on Title VII when interpreting Title IX's prohibition on sex discrimination).

The Supreme Court has uniformly applied heightened scrutiny to every gender-based classification that it has considered "in recognition of the real danger that government policies that professedly are based on reasonable considerations in fact may be reflective of 'archaic and overbroad' generalizations about gender." *Id.* (citing *Reed v. Reed*, 404 U.S. 71 (1971)).

46. Although sex stereotypes and overbroad generalizations based on gender may be "descriptive . . . of the way many people still order their lives," the Supreme Court has consistently "reject[ed] measures that classify unnecessarily and overbroadly by gender when more accurate and impartial lines can be drawn." *Sessions v. Morales-Santana*, 137 S. Ct. 1678, 1686 (2017). It is especially telling that the Supreme Court has applied this same heightened scrutiny to every government sex classification it has considered, without making any exception for the context of the military or public schools. *See, e.g., United States v. Virginia*, 518 U.S. 515, 533 (1996).

47. Under the Equal Protection Clause, MWPISD's justifications for its gender-based hair-length policy clearly fail to meet the "exceedingly persuasive" requirement uniformly required by the Supreme Court. MWPISD states in its FNCA (Local) that its dress and grooming code is designed to teach grooming and hygiene, instill discipline, prevent disruption, avoid safety hazards, and teach respect for authority.[7] Yet each of these provides no justification for imposing the hair-length rule only on boys—since each of these motivations applies with equal force to every student. If girls can wear long hair without jeopardizing their health, hygiene, safety, discipline, or respect for authority, then boys can too. This is the exact conclusion that the federal

[7] FNCA (Local), Monahans-Wickett-Pyote ISD (May 1, 2007), *available at* https://pol.tasb.org/Policy/Download/1202?filename=FNCA(LOCAL).pdf

court reached in enjoining the grooming code at issue in *De'Andre Arnold* under the Equal Protection Clause analysis.[8]

48. Any remaining justification for maintaining a hair-length rule applying only to boys is grounded in gender stereotypes that boys have to wear short hair to look "clean," "professional," or "masculine." But federal courts across the country have found that public school districts cannot force students to conform to gender stereotypes,[9] and a hair-length rule applying only to boys imposes antiquated notions of masculinity and femininity. A dress code based on gender stereotypes also sends a damaging message to boys that they cannot be feminine in any way, and this message harms all students by limiting their ability to express their gender and promoting rigid views of gender norms and roles.

49. Imposing gender-specific hair requirements is also intrinsically tied to racial, religious, and anti-LGBTQ discrimination, since people of various faiths, ethnic backgrounds, gender identities, and sexual orientations often wear long hair for various reasons.

50. MWPISD's hair-length rule, which expressly applies only to boys because of their sex, is based on outdated stereotypes and constitutes sex discrimination in violation of Title IX and the Equal Protection Clause.

II. MWPISD's Treatment of Native American Students Violates Title VI.

51. Title VI of the Civil Rights Act of 1964 prohibits race and ancestry discrimination by providing that "no person in the United States shall, on the ground of race, color, or national origin,

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[8] 2020 WL 4805038, at *9.

[9] *Whitaker By Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034, 1048 (7th Cir. 2017); *Grimm v. Gloucester Cty. Sch. Bd.*, 972 F.3d 586, 608 (4th Cir. 2020) (collecting cases).

be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance." U.S.C. § 2000(d) (1964).

52. There is evidence that MWPISD officials have engaged in intentional race discrimination against Native American students. When Ms. Valle asked for an exception for her Native American son to wear long hair, the Superintendent compared his hair to other students wearing "ripped jeans." When Ms. Kines sought a similar exception for her son, the Superintendent called the Bureau of Indian Affairs to inquire into and verify J.K.'s Native American heritage—a burden placed on no other student that is disturbingly similar to measures of race and heritage that have long been used to oppress Native American people. After conducting this investigation, the Superintendent told Ms. Kines that J.K. was "Native American enough" but still did not grant him a written waiver allowing him to wear long hair in accordance with his heritage and beliefs.

53. In addition to investigating evidence of intentional race discrimination, the Department of Justice is also empowered to remedy the discriminatory impacts of policies affecting Native American students. "Although Title VI itself only reaches intentional discrimination, the Supreme Court has held that federal agencies can redress, by regulation, actions that have an unjustifiable disparate impact on minorities, regardless of any intent to discriminate." *Meyers By & Through Meyers v. Bd. of Educ. of San Juan Sch. Dist.*, 905 F. Supp. 1544, 1573 (D. Utah 1995) (citing *Alexander v. Choate*, 469 U.S. 287, 293 (1985)).

54. By requiring Native American students to require formal proof of ancestry, heritage, and/or tribal affiliation, MWPISD is imposing policies and practices that subject these students to discrimination based on race, color, or national origin. Being required to "prove" your ancestry and identity can be deeply stigmatizing and is a burden that non-Native American students at MWPISD do not have to face.

III. MWPISD's Treatment of Native American Students Violates Title IV.

55. Title IV of the Civil Rights Act of 1964 authorizes the Attorney General to investigate complaints where students are deprived by a public school board of equal protection of the laws and to take steps to remedy discrimination based on race, color, religion, sex or national origin. 42 U.S.C. § 2000c-6.

56. As set forth above, MWPSID's policies and practices constitute discrimination based on sex and race, including in violation of Title IV. By prohibiting them from wearing long hair in accordance with their Native American beliefs, MWPISD has also engaged in impermissible religious discrimination in violation of Title IV.

57. Wearing long hair is an important and common practice of many Native American faiths. For K.V. and his family, who are Papago, it is imperative for his grandmother to bless his hair and only cut it once per year. None of MWPSID's purported goals in requiring boys to maintain short hair justifies denying K.V. and J.K. the ability to maintain their sacred religious practices. *See,.e.g.*, *A.A. ex rel. Betenbaugh v. Needville Indep. Sch. Dist.*, 611 F.3d 248, 71 (5th Cir. 2010) .[10]

58. MWPSID's demand that students prove their Native American heritage and faith also constitutes religious discrimination in violation of Title IV. The courts have made clear that those who hold and practice Native American religious beliefs enjoy the full set of religious-freedom protections set forth in law, regardless of their membership in any federally recognized tribe. *See, e.g., McAllen Grace Brethren Church v. Salazar*, 764 F.3d 465, 478 (5th Cir. 2014) (holding that "American Indian religion adherents" need not necessarily be "members of federally recognized

[10] MWPSID's policies and practices also violate the Texas Religious Freedom Restoration Act, Tex. Civ. Practices & Rem. Code § 110.003. *See Betenbaugh*, 611 F.3d at 272 (holding that holding public school could not require Native American kindergartener to cut his hair in violation of his religious beliefs).

tribes" to have protection under the federal Religious Freedom Restoration Act and other statutes); *Combs v. Corr. Corp. of Am*., 977 F. Supp. 799, 802 (W.D. La. 1997) (enjoining defendants from restricting the practice of a Native American religion only to those who could demonstrate a Bureau of Indian Affairs number or Native American ancestry).

59. One need not prove ancestry or genetic heritage to adhere to Native American religious beliefs. *See Pasaye v. Dzurenda*, 375 F. Supp. 3d 1159, 1170 (D. Nev. 2019) (noting that someone may have sincerely held religious beliefs in a Native American religion without establishing heritage or lineage because "several courts addressing challenges to similar Native American lineage requirements have found them unconstitutional under both the First Amendment and Equal Protection Clause"). Instead of being required to prove ancestry or tribal affiliation, Native American students are fully protected by state and federal law as long as they attest to their beliefs. *Cobb v. Morris*, No. 2:14-CV-22, 2018 WL 842406, at *8 (S.D. Tex. Jan. 11, 2018).

III. MWISD Has Engaged in Impermissible Retaliation.

60. Title IX and Title VI both prohibit covered entities from retaliating against people who complain of discrimination based on sex or race. *Jackson v. Birmingham Bd. of Educ.*, 544 U.S. 167 (2005).

61. A complainant demonstrates retaliation by showing that (1) the complainant engaged in protected activity, (2) the complainant suffered an adverse action at the hands of the school, and (3) there is a causal link between the protected activity and the adverse action. *Ollier v. Sweetwater Union High Sch. Dist.*, 768 F.3d 843, 867 (9th Cir. 2014). An adverse action is one that might have dissuaded a reasonable person from making or supporting a charge of discrimination. *Id.* at 868.

62. Here, Ms. Valle sent an e-mail to the school complaining that its dress and grooming policies constituted impermissible sex discrimination. Speaking out against sex discrimination is activity protected under Title IX. *Ollier*, 768 F.3d at 868.

63. After Ms. Valle complained of discrimination, the MWPISD Chief of Police went to Ms. Valle's house and told her that she needed to "drop the hair issue" or she would be banned from campus. This threat profoundly affected and intimidated Ms. Valle and her son, and having a police officer threaten a parent's ability to come to campus and attend school events would dissuade a reasonable person from continuing to assert their rights under Title IX or Title VI.

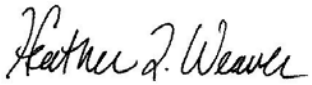
REMEDIES

64. The Valle and Kines families request that the Department of Justice's Educational Opportunities Section:

a. Investigate MWPISD to determine whether its dress and grooming code complies with Title IX and the Equal Protection Clause, both on its face and as enforced;
b. Investigate MWPISD to determine whether its dress and grooming code as applied to Native American students violates Title VI;
c. Investigate MWPISD to determine whether its dress and grooming code as applied to Native American students violates Title IV;
d. Take all steps necessary to remedy any unlawful conduct, as required by Title IV, Title VI, and Title IX, including but not limited to ordering MWPISD to adopt a gender-neutral dress code and train or retrain its employees with respect to religious freedom, race discrimination, and unlawful retaliation;
e. Secure assurances of compliance from MWPISD with respect to remedies for any unlawful conduct discovered; and

f. Monitor any resulting agreement with MWPISD to ensure compliance.

Respectfully Submitted,



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