Open Letter to the C-F Community
About Our Mascot

Kevin Kelly, Superintendent
May 11, 2022

Our Greatest Strength

Camden-Frontier Schools' greatest strength is our broad-based community support founded on shared traditions across generations of students and graduates. This is plain to see every day and at every event.

The Redskin mascot is an undeniable part of those shared traditions. For most C-F graduates and district residents, the mascot represents strength, determination, bravery and other positive characteristics that we want our students to aspire to in life. The mascot was not and is not meant to denigrate or insult anyone or any group.

Unfortunately, over time, the mascot – like all Native mascots – has come to symbolize something very different to some individuals and organizations. This has led to continued and more frequent objections to the mascot which are now threatening to directly impact our core mission of educating our community's children.

Why Now?

The mascot issue has come up at the board of education-level historically every 6-8 years going back to the 1990's. In 2017, Mr. Riley effectively addressed a formal complaint by citing the widespread us of the Redskin mascot across professional, college and high school sports. Objections to the mascot were also raised by the Michigan Department of Education in 2003 and 2010.

More recently, in early 2020, the Michigan Coalition Against Racism in Sports and Media (MCARSM) formally asked Camden-Frontier to change our mascot. During board-directed initial discussions with the group's leadership, they laid out a strategy that included filing lawsuits against the District in both state and federal court over the mascot if we decided not to make the change. They also offered up to $70,000 in possible funding through the Native American Heritage Fund to pay for the costs of making the change (athletic jerseys, scoreboards, signs, etc.) if we did so voluntarily.

A month later the coronavirus pandemic began. At the direction of the Board, I informed MCARSM that we would not be discussing the mascot issue until after the pandemic was over. MCARSM agreed to this pause without protest.

Last summer, the MCARSM representative again contacted the District requesting the change to the mascot. With the pandemic slowly winding down, I again informed the Board of the request and asked the District's lawyers to give us their opinion on the issue, specifically how and if the District could be sued. That document, which made legal exposure clear, is attached.

In February 2020, when the issue first arose during my tenure, there were four "Redskin" districts in Michigan. Since then, each of the other districts has voted to retire their mascot for something new in the face of mounting public and legal pressure. Simultaneously, a record number of professional, college and high school teams have also changed their Native American mascots including, most significantly, the Washington Redskins. The final Michigan school district to do so was Sandusky Schools on April 18 which left C-F as the last Redskin school district

in the state. Within days, C-F was contacted by numerous news outlets and, once again, the Michigan Coalition Against Racism in Sports and Media.

What is at Stake?

For over 30 years, Native American advocacy groups have mounted countless successful campaigns to change Native-based mascots in schools and organizations across the county. From educational outreach to civil lawsuits, these organizations are both sophisticated and well-funded. Since 2017, their work has gained unprecedented momentum resulting in mascot changes across the country at a record pace.

As outlined by the leaders of the Michigan Coalition Against Racism in Sports and Media (MCARSM), we should expect the following to take place if C-F chooses not to change mascots:

- Protests at our school board meetings
- Protests at athletic and other school events
- Increased negative regional, state and national press scrutiny
- Filing of a formal complaint with the Michigan Department of Education
- Filing of a state lawsuit under the Elliott-Larsen Civil Rights Act
- Filing of a federal lawsuit under Title VI of the Civil Rights Statute

Defending the district against these actions, especially an MDE complaint and state and federal lawsuits, will be exceptionally costly. Depending on the complexity and duration of the cases, the District should be prepared to invest tens or even hundreds of thousands of dollars in legal defense.

Funding for our legal defense will come from our general fund. As costs mount over time, budget cuts and sacrifices in other areas will be required to remain financially solvent. Possible impacts could include:

- Larger class sizes resulting from teacher layoffs
- Fewer educational supplies and materials
- Aging technology that cannot be replaced
- Stagnant wages for employees
- Cuts to athletics and extracurricular programs

What are Our Options?

At this time, there are no laws that require any school to change mascots nor can any group or organization force us to do so unless they are victorious in a courtroom. This means we have options: we can refuse to make a change and await the consequences or we can act proactively and avoid those consequences and their costs.

One option that was previously available to us is no longer: we cannot simply ignore this issue. Like it or not, our society has changed significantly since 2017 – not to mention the 1950's – meaning litigation and legal defense costs are unavoidable if we do not address the mascot issue. When the nation's capital had an NFL team with the same mascot, we could ignore complaints. When dozens of other districts in the state had Native mascots, including several Redskins, we could ignore complaints. When there was little or no organized resistance to the mascot, we could ignore complaints. None of those things are the case any longer and ignoring the issue will only intensify the negative consequences we are facing.

This means our board of education must choose a course of action. As the superintendent, it is my obligation to recommend a course of action to the board which I did earlier today. That recommendation is attached.

Conclusion

With the pandemic in the rearview mirror, the future at Camden-Frontier is bright. We have attracted dynamic young teachers to the district in recent years and continue to benefit from the experience and dedication of our veteran staff members. We have invested COVID-relief funds in 1:1 technology, new curriculum, new furnishings and equipment and more. The school is supported by an enthusiastic and committed community of graduates and parents. The future is indeed bright for our school community. The only thing jeopardizing this future is the mascot issue.

Like the members of the board of education, I take absolutely no joy in addressing this issue. We would all prefer to be focused on teaching and learning. That option, however, will remain out of our grasp until this issue is settled once and for all. For that to happen, the difficult decision to change mascots is required.

To: Board of Education

From: Kevin Kelly, Superintendent

Date: May 11, 2022

Re: School Mascot

True leadership involves making difficult, complex and unpopular decisions. The C-F mascot issue is one such case.

The facts surrounding the mascot issue are clear: its continued use will lead to eventual lawsuits and/or state-level civil rights complaints costing the district potentially hundreds of thousands of dollars. Over time, the issue will continue to distract the board and administration, divide the staff and district residents, and undermine our collective love of this school and its traditions. As a result, children will pay the price.

These are not opinions, they are facts. I take no joy in communicating them and, in spite of my best efforts to forestall and defuse this issue over the last 2+ years, doing so is no longer an option. Damage is being done and it will continue until the Board leads the district out of peril.

It is therefore my obligation to recommend that Camden-Frontier retire the "Redskin" mascot beginning no earlier than the 2023-2024 academic year. This recommendation is based on the following:

1. *The District's continued use of the mascot creates legal exposure under Title VI of Federal Civil Rights Statue*
2. *Continued use creates legal exposure under the State of Michigan's Elliott-Larsen Civil Rights Act*
3. *Continued use creates the potential for a challenge from the Michigan Department of Education under their 2003 and 2010 resolutions pertaining to Native American mascots*
4. *The legal cost of defending the District in each of the above actions could be hundreds of thousands of dollars or more depending on the duration of the cases. These financial resources will come from the general fund causing irreparable harm to educational programming and our students.*
5. *Up to $70,000 in grant funding may be available to cover the cost of rebranding athletic facilities and uniforms from the Native American Heritage Fund. This opportunity, however, can be rescinded at any time.*
6. *Continued defense of the mascot represents an avoidable drain on administrative, staff and board resources; these resources would be best invested in meeting the academic and social/emotional needs of our students.*
7. *Public protests and negative media scrutiny are inevitable if a change isn't made. Statewide coverage could lead to national coverage. Not only does this obscure the good work our teachers and students are doing every day, but it will likely have a negative impact on recruiting, hiring and enrollment.*

In this difficult situation, the easy and popular thing to do is reject this recommendation and enjoy the temporary feeling of victory it will provide. It is plainly clear, however, that doing so will place the education of our students in serious jeopardy. As the leaders of this District, we have an ethical, moral and legal obligation to prevent that from happening.

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September 20, 2021

Confidential: Attorney-Client Privileged Communication

Board of Education of the
Camden-Frontier Schools
c/o Superintendent, Kevin Kelly
4971 W. Montgomery Road
Camden, MI 49232

Via Email

Re:

Dear Board Members:

This is in response to Superintendent Kevin Kelly's recent request for an opinion regarding the potential legal exposure and risk of liability to the Camden-Frontier Schools regarding the High School mascot. The District's High School mascot is the "Redskins."

For the reasons explained below, the "Redskins" mascot could expose the District, its school officials including Board members, to potential liability for violating federal and state civil rights laws.

1) Federal Civil Rights Statute: Title VI

If the "Redskins" mascot creates a racially hostile environment, the District could be liable for discrimination under Title VI of the Civil Rights Act of 1964, as amended.

Title VI provides in relevant part: "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 42 USC 2000d. This language has been used in several jurisdictions, especially in courts under the Second Circuit, to mean that the "discriminatory actions proscribed by Title VI include exclusion from educational benefits or programs, which 'include[s] an academic environment free from racial hostility.'" *DC v Copiague Union Free Sch Dist*, 2017 US Dist LEXIS 113253 * 29 (EDNY, 2017). The question then arises whether the mascot is the source of racial hostility thereby violating Title VI.

To establish a *prima facie* case of racial harassment, Plaintiffs must demonstrate each of the following elements:

> (1) the racial harassment was so severe, pervasive, and objectively offensive that it could be said to deprive the plaintiff of access to the educational opportunities or benefits provided by the school,
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> (2) the funding recipient had actual knowledge of the racial harassment, and
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> (3) the funding recipient was deliberately indifferent to the harassment.
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> *Patterson v. Hudson Area Schools,* 551 F.3d 438, 445 (6th Cir. 2009).

In 2013, the Michigan Department of Civil Rights (MDCR) filed a complaint with the Department of Education's Office of Civil Rights (OCR) against 35 schools in Michigan, alleging discrimination under Title VI for the continued use of American Indian mascots. OCR Docket #15-13-1120 thru #15-13-1154. In response, the OCR informed the MDCR that it was dismissing the complaints. *Id*. OCR clarified that

> in complaints involving mascots, names, and other associated imagery, OCR examines whether the complaint allegations are sufficient to constitute a racially hostile environment. A racially hostile environment is one in which racially harassing conduct takes place that is sufficiently severe, pervasive or persistent to limit a student's ability to participate in or benefit from the recipient's programs or services.

Id. The MDCR argued that "empirical evidence supports that race-based athletic nicknames and associated activities . . . are psychologically harmful to American Indian students attending schools with race-based nicknames and that their use denies such students equal access to educational opportunities." *Id*. However, the OCR held that specific examples of race-based incidents and the identification of specific students or individuals who have been harmed are required to support a Title VI claim. *Id*.

In order for a race-based mascot to violate Title VI, there must be specific examples of how the mascot created a racially hostile environment, resulting in sufficiently severe, pervasive, or persistent racially harassing conduct that limits one's ability to participate or benefit from the school's programs or services.

It's possible a student could show that the "Redskins" mascot created a sufficiently severe, pervasive, or persistent racially harassing conduct (e.g., the student was bullied multiple times on account of Native American heritage). A student may also show that the mascot adversely affected the student's ability to participate or benefit from the school's programs and services (e.g., affected the student's grades, attendance, or refused to play sports due to the name on the jersey). If a student shows a preponderance of evidence of both, then the District would potentially be liable for a racially hostile environment that violated Title VI.

Often, cases are brought under both Title VI and the state's civil rights act.

2) State Civil Rights Statute: Elliot-Larsen Civil Rights Act

The Elliott-Larsen Civil Rights Act (ELCRA) is Michigan's Civil Rights statute and has a similar provision to the protection under Title VI. ELCRA states in relevant part:

> The opportunity to obtain employment, housing and other real estate, and ***the full and equal utilization of public accommodations, public service, and educational facilities without discrimination*** because of religion, race, color, national origin, age, sex, height, weight, familial status, or marital status as prohibited by this act, is recognized and declared to be a civil right.

MCL 37.2102(1). (emphasis added). Additionally, an educational institution may not discriminate or deny a person full use or benefit or equal enjoyment of services, activities, or programs of the institution or public accommodation based on race. MCL 37.2302(a), 37.2402(a).

While there are no ELCRA directly on point (i.e., no cases involving race-based mascots for racially hostile environment), two cases are analogous and could be persuasive to courts if the mascot is challenged.

The first case is *Owen v L'Anse Area Schools*, 2001 US Dist LEXIS 19287 (WD Mich 2001). A Jewish employee alleged that students left harassing messages, such as "White Power" and "KKK" in and around his classroom, and a noose on his classroom door. The employee resigned, and sued claiming the school created a hostile environment on account of his religion. The school district filed a motion for summary judgment, claiming that school officials and personnel did not engage in the alleged misconduct. The federal district court denied the school district's motion, and held that the school could be liable under Title VII and ELCRA for students who created a racially hostile environment for a teacher. *Id*. The school district settled the matter by paying the teacher $265,000 in financial damages, and agreed to train its employees on how to recognize and address issues of harassment.

The second case is *Williams v Port Huron Area Sch Dist Bd of Ed*, 2010 US Dist LEXIS 30472 (ED Mich 2010). Twelve students sued the school district, its superintendent, high school principal, and board, including board members in their individual capacity, alleging a racially hostile environment at the high school. The students claimed that there was a history of racial harassment going back to the 1990's, but during 2003 through 2006, they were the victims of the racial harassment that included graffiti, racial slurs, and threats of physical harm perpetuated by other students, sometimes by students from opposing schools during athletic contests.

During the 2006-2007 school year, 15 students of color transferred from one high school to another, and other students dropped out or otherwise left the district. Plaintiffs used the "exodus of black students" from the high school as "the clearest proof that racial harassment interfered with their education."

The court found that student-on-student racial harassment could open a school to liability, stating,

> This Court is not convinced that the Michigan Legislature intended to grant students less protection for racial harassment than sexual harassment. Likewise, the Court is not convinced that teachers have greater protections under the ELCRA than students. Because the ELCRA expressly prohibits discrimination based on race, this Court concludes that Michigan courts would recognize a hostile environment claim based on racial harassment and apply the same standards outlined above.

Id. at *37. The court noted it could apply the standards typically used to analyze sexual harassment claims for hostile environment, and replaced "sexual" with "racial." This analysis will require a plaintiff to prove that:

> (1) he was a member of a protected class;
>
> (2) he was subjected to unwelcome racial harassment;
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> (3) the harassment complained of was based on race;
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> (4) the charged racial harassment had the effect of unreasonably interfering with the plaintiff's education and creating an intimidating, hostile, or offensive educational environment that affected seriously the psychological well-being of the plaintiff; and,
>
> (5) there was some basis for institutional liability.

Id. at *35-36. The court held that the school district's motion for summary judgment should be denied, and that the case should go to a jury. While this case was subsequently reversed and remanded, the remand did not affect the Title VI or ELCRA portions of this case. Once remanded, the parties settled out of court.

3) Challenge from Michigan Department of Education State Board of Education

The State Board of Education (SBE) adopted a resolution on June 26, 2003, which it reaffirmed on August 2, 2010, to state that it "supports and strongly recommends the elimination of

> American Indian mascots, nicknames, logos, fight songs, insignias, antics, and team descriptors by all Michigan schools." MDE, *Memorandum: Reaffirmation of State Board of Education Resolution Regarding Use of American Indian Mascots, Nicknames, and Logos* (August 2, 2010).

Additionally, the Superintendent of Public Instruction stated that it would withhold state school aid funds from "school districts that use an American Indian mascot, logo, or other imagery."

The Attorney General opined that the Superintendent is not authorized under either the State School Aid Act or the Revised School Code to withhold state school aid funds in such a manner, despite the broad powers to which the Superintendent is entitled. OAG, 2017, No. 7296 (July 3, 2017).

Even though the State Superintendent cannot withhold funds from the School District if the Board decides not to change the mascot, the recommendation of the SBE to eliminate the mascot remains and could be used to demonstrate deliberate indifference.

Conclusion

The Board could wait for a lawsuit to occur. If the student(s) can show that the mascot created a racially hostile environment that resulted in sufficiently severe, pervasive, or persistent racially harassing conduct that limited the student(s) ability to participate or benefit from the school's programs or services, then the District and its officials will be liable for violations of federal and state civil rights law.

In the alternative, the Board could act proactively to avoid potential future liability and address the mascot situation prior to a lawsuit.

Should you have any questions or concerns as to this matter, please contact me.

Very truly yours,

THRUN LAW FIRM, P.C.

Daniel R. Martin

DRM/sjr

Enclosure(s)

c: