

U.S. Department of Education  
Office for Civil Rights  
San Francisco Office  
50 Beale Street, Suite 7200  
December 18, 2013

**RE: Loleta Union School District’s violations of Title VI of the Civil Rights Act of 1964, Title II of the Americans with Disabilities Act, and Section 504 of the Rehabilitation Act of 1973.**

Dear San Francisco Office:

**INTRODUCTION**

Complainants, the Tribal Council of the Wiyot Tribe of the Table Bluff Rancheria (“Wiyot Tribal Council”), bring this complaint due to the continuing racial discrimination by employees of the Loleta Union School District (“Loleta” or “District”), which operates the Loleta Elementary School (“Loleta Elementary”), including disparate treatment and harassment of Native American students. Loleta Elementary is the only non-charter school in Loleta,<sup>1</sup> and is overseen by Sally Hadden (“Ms. Hadden”) who is both the superintendent of the District and school principal. Many of the complaints specifically concern the treatment of Native American students by Ms. Hadden.

Complainants allege that Loleta employees have physically harassed Native American students, have used racial slurs in front of Native American students, and have engaged in disparate discipline of Native American students. For example, Ms. Hadden grabbed a Native American student by the ear and said, “See how red it’s getting?” Another District staff member referred to Native American students as “goats” and “sheep” in a School Board meeting. Loleta also routinely suspends or expels Native American students for minor behavioral infractions, like kicking a ball on the school roof, when White students are not similarly punished.

In addition, Complainants allege that Loleta fails to identify and evaluate students for special educational services and fails to make reasonable modifications to avoid discriminating against students with disabilities. For example, Loleta has failed to provide appropriate special education services to several sixth grade students who cannot read. Loleta staff also place students who have been removed from their classrooms due to behavioral issues in a small, windowless room, which students refer to as “the hole,” where they receive no instruction or oversight from teachers. This treatment of Native American students at Loleta has caused many Native American parents to transfer their children out of the District.

This complaint alleges continuing violations under Title VI of the Civil Rights Act of 1964, Title II of the Americans with Disabilities Act, and Section 504 of the Rehabilitation Act of 1973. By violating these federal provisions, Loleta staff have effectively denied the benefit of a public education to Native American students and students with disabilities through discriminatory

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<sup>1</sup> Loleta Union School District also has one charter school, Pacific View Charter. None of the facts raised in this complaint relate to Pacific View Charter.

treatment and/or harassment by school employees. We therefore respectfully ask the Office for Civil Rights to investigate Loleta and require that Loleta remedy the alleged violations.

## **I. COMPLAINANTS**

The Wiyot Tribe (“Tribe”) is a federally-recognized Indian tribe with all of the rights and privileges afforded thereto. The Tribe is organized pursuant to a constitution, and is governed by a seven member Tribal Council. Articles VI and VII of the Constitution vest the Tribal Council with the authority to take actions necessary for the welfare of the Tribe and its members. The Tribe has a membership of 645, many of whom live on or near the Tribe’s 88-acre Table Bluff reservation (“Table Bluff”) in Loleta, California. Many of the Tribe’s children attend Loleta Elementary, the closest school to Table Bluff.

Members of the Tribal Council of the Bear River Band of Rohnerville Rancheria (“Bear River”), another local tribe, have filed a Resolution in support of this Complaint. Many children at Bear River also attend Loleta Elementary.

## **II. HISTORICAL BACKGROUND**

For thousands of years, Native American communities, including the Wiyot people, have lived in what is now Northern California. Today, California is still home to the largest Native American population of any state in the United States. However, since the 1840s, when Euro-American settlers arrived in the area, Native American tribal communities have been ravaged by destructive practices and government policies, including massacres, disease, slavery, relocation, forced enrollment in distant boarding schools, and exclusion from local public schools. The practice of marginalizing Native American students through the provision of substandard education dates back almost 150 years. Starting in 1879, Native Americans were sent to boarding schools throughout California where the curriculum consisted mainly of vocational training programs for menial jobs. Some were never taught basic academics, such as math and English.<sup>2</sup> Reports of physical abuse and malnourishment were pervasive in the boarding schools.<sup>3</sup> Indeed, in the 1960s, a congressional report found that many teachers viewed their role as “civilizing” Native American students — with a major emphasis on discipline and punishment — rather than educating them.<sup>4</sup>

In addition, massacres wiped out large swaths of the Wiyot population. In February 1860, on Indian Island in the Humboldt Bay, White men from nearby Eureka brutally murdered sleeping Wiyot elders, women, children, and men after the annual world renewal ceremony.<sup>5</sup> White men also attacked and massacred two other Wiyot village sites that day.<sup>6</sup> These attacks decimated the

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<sup>2</sup> U.S. Dept. of Education, *Tribal Consultations And Listening Sessions Public Meeting*, August 15, 2013, Tolowa Event Center - Smith River, California.

<sup>3</sup> Lewis Meriam, *The Problem of Indian Administration* (1928).

<sup>4</sup> Senate Report 91-501, *Indian Education: A National Tragedy, A National Challenge*, Special Subcommittee on Indian Education, Senate Committee on Labor and Public Welfare (1969).

<sup>5</sup> Llewellyn L. Loud, *Ethnogeography and Archaeology of the Wiyot Territory*, Berkeley, California: University of California Press, pp. 330-331 (1918).

<sup>6</sup> Ray Raphael and Freeman House, *Two Peoples, One Place: Humboldt History, Vol. One*, Humboldt County Historical Society, p. 165 (2011).

culture, language, and spiritual practices of the Wiyot peoples in a single morning.<sup>7</sup> By 1861, there were an estimated 200 surviving Wiyot people.

Throughout the nineteenth and twentieth centuries, the surviving Wiyot people saw their community and culture disintegrate as they were pushed onto 21 acres of marginal land on the Table Bluff Rancheria, and, in the 1960s, administratively terminated by the Bureau of Indian Affairs. Amazingly, over the last three decades, the Wiyot have moved decisively away from the edge of cultural and political oblivion. In 1981, the Tribe's termination was reversed by the judgment in *Table Bluff Band of Indians v. Andrus*, Civil No. C-75-2525 WTS (N.D. Ca., 1981). The Tribe was restored, the original Rancheria was declared Indian Country, and was eventually expanded to include 88.5 additional acres, which is held in trust by the federal government on behalf of the Tribe. In addition to regrouping on the new Reservation, the Tribe has struggled to rejuvenate its culture, language, spirituality and governmental infrastructure. The Tribe built a new community center, which has become the base of cultural and governmental activities, housing tribal programs, a museum and library, and health and nutrition programs. The Tribe holds Wiyot language classes for children at the community center. Tribal members are again practicing basketry, for which the Wiyot were once famous.

Despite the Tribe's efforts at renewal and rebuilding, its children continue to face significant challenges. According to the 2012 report, *State of American Indian and Alaskan Native Education in California*, American Indian and Alaskan Native students have less access to educational resources in California than students from any other ethnic group.<sup>8</sup> Consequently, Native American students experience poorer educational and socioeconomic outcomes.<sup>9</sup> Humboldt County reflects these disturbing trends: in 2013, fewer than ten Native American students in the county completed the course requirements necessary to gain admittance to a California State University or University of California school during the 2010-2011 school year.<sup>10</sup>

Loleta Elementary currently serves at least 31 Native American students from the Table Bluff and Bear River reservations, making the Native American student population almost a third of the total school population. Patterns of physical harassment, discriminatory treatment, and inadequate educational services for Native American students perpetuate the historical marginalization of the local Native American community. Correcting this unlawful discrimination is essential to providing Native American students at Loleta with equal educational opportunity so they can further their educations and achieve professional success. Despite their tragic history and perpetual disenfranchisement, the Wiyot people are actively recovering their culture and ways of life. In looking to the future, education of the next generation is critical.

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<sup>7</sup> Robert F. Heizer, *Handbook of North American Indians*, Vol. 8, Washington, D.C.: Smithsonian Institution, p. 162 (1978).

<sup>8</sup> Joey Proudfit and Seth San Juan, *State of American Indian and Alaskan Native Education in California*, California Indian Culture and Sovereignty Center VI (2012).

<sup>9</sup>*Id.* As recently as 2011, California's overall dropout rate was 14.4 percent. Despite the Native American dropout rate decreasing in 2011 to 20.7 percent, it was still 6.3 percent higher than the state average. The poverty rate for Native Americans in California is 4 percent higher than the state average.

<sup>10</sup> Blythe George, *2012-13 Regional Data Report*, Native American Support Team: A Humboldt/Del Norte P-16 Council (2013).

### III. LEGAL VIOLATIONS AT LOLETA ELEMENTARY

#### A. Loleta Union District Violates Title VI by Discriminating Against Native American Students

Title VI of the Civil Rights Act of 1964 (“Title VI”) prohibits recipients of federal financial assistance (“recipients”) from discriminating based on race, color, or national origin.<sup>11</sup> Specifically, Title VI prohibits a recipient from discriminating against a protected group either through disparate treatment of that group or through practices or policies that have a disparate impact on that group.<sup>12</sup> To enforce Title VI, OCR may investigate and bring actions against a recipient that discriminates on the basis of race. Loleta is a recipient of federal funding.<sup>13</sup> In violation of Title VI, Loleta discriminates against Native American students by treating them differently based on their race.

Under Title VI, courts analyze disparate treatment discrimination similarly to intentional discrimination under the Equal Protection Clause of the Fourteenth Amendment.<sup>14</sup> Proving disparate treatment requires that a recipient was motivated, at least partially, by discriminatory intent.<sup>15</sup> Discriminatory intent can be proven through either direct or circumstantial evidence.<sup>16</sup> Circumstantial evidence of discriminatory intent includes such factors as:

- substantial disparate impact to a protected group;
- a history of discriminatory official actions against a protected group;
- procedural and substantive departures from the norms generally followed by the decision-maker;
- discriminatory statements in the administrative history of the decision; and<sup>17</sup>
- deliberate indifference to known discrimination.<sup>18</sup>

These principles also may be used to analyze claims that a defendant has engaged in a “pattern or practice” of unlawful discrimination.<sup>19</sup>

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<sup>11</sup> 42 U.S.C. § 2000d (2013).

<sup>12</sup> 34 C.F.R. § 100.3(b)(1)-(2) (2013). The regulations promulgated by the U.S. Department of Education to implement Title VI prohibit a recipient of federal funds from “utiliz[ing] criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin.”

<sup>13</sup> Loleta receives Title I, Title II, Impact Aid, and Rural Education federal funding. See Loleta Union School District PRA response dated May 10, 2013 (on file with the ACLU of Northern California).

<sup>14</sup> *Elston v. Talladega County Bd. of Educ.*, 997 F.2d 1394, 1405 (11th Cir. 1993) n. 11; *Georgia State Conference of Branches of NAACP v. Georgia*, 775 F.2d 1403, 1417 (11th Cir. 1985).

<sup>15</sup> *Elston, supra*, 997 F.2d at 1406.

<sup>16</sup> See, e.g., *Village of Arlington Heights v. Metropolitan Hous. Dev. Corp.*, 426 U.S. 252, 265-69 (1977) (holding that discriminatory intent may be found “even where the record contains no direct evidence of bad faith, ill will or any evil motive on the part of public officials.”); *Elston, supra*, at 1406 (noting that the record need not contain evidence of “bad faith, ill will or any evil motive on the part of the [recipient].”). See also *Epileptic Found. of Maui v. City and County of Maui*, 300 F. Supp. 2d 1003, 1013-14 (D. Haw. 2004) (noting that evidence that 1) a decision-making official was of a different race than the plaintiff; 2) other racial groups were treated better by the defendant; and 3) the defendant used a racial slur against the group) is sufficient to move forward on a Title VI claim.

<sup>17</sup> *Williams v. City of Dothan, Ala.*, 745 F.2d 1406, 1414 (11th Cir. 1984); *Arlington Heights, supra*.

<sup>18</sup> *Gant v. Wallingford Bd. of Educ.*, 195 F.3d 134, 137-38 (2d Cir. 1999) (defining deliberate indifference as circumstantial evidence permitting an inference of intentional race discrimination).

<sup>19</sup> See *Int’l Bd. of Teamsters v. United States*, 431 U.S. 324, 336, 362 (1977) (plaintiff must show that a pattern of discrimination based on race, color, or national origin was the recipient’s “standard operating procedure” rather than

1. Loleta's Disparate Treatment of Native American Students Shows Discriminatory Intent Towards Native American Students

a. *Excessive and Disparate Discipline of Native American Students Directly Reflect Discriminatory Intent*

In Loleta, Native American children are disciplined more often and more severely than non-Native American students.<sup>20</sup> Ms. Hadden regularly punishes Native American students excessively, often with suspensions or expulsions, for minor behavioral infractions or for acts that they did not commit.

In September 2013, Ms. Hadden expelled Christopher T.<sup>21</sup>, a Native American student, for kicking a ball on the school roof during an after-school program. Christopher T. has also received approximately 20 disciplinary referrals or suspensions, many for minor misbehaviors or acts that he did not commit, such as allegedly damaging school property when he hung on the rim of the basketball hoop, talking back to Loleta staff, shooting rubber bands, and throwing a pencil. Christopher T. has never seen White students receive similar discipline.

In September 2013, Ms. Hadden expelled William T., a Native American student, for allegedly punching a student, who is White, in the face. The complaining student later admitted to William T. and another student, Matthew T., that she invented the incident and apologized. William T. reported the new facts to his mother after school. When she called the school the next day to ask whether William T. could return to school, Loleta staff informed her that William T. was still expelled.

During the 2012-13 and 2013-14 school years prior to his expulsion, William T. was also suspended at least three times for minor misbehavior, such as talking in class. No other students were similarly disciplined, even though many students in the class were also talking. Additionally, during those years, William T. was sent out of the classroom at least ten times for talking or getting out of his seat to sharpen his pencils. Again, other students were not similarly disciplined.

In fall 2013, Ms. Hadden suspended Josh T., a seven-year-old Native American student, for disrupting the classroom, including by breaking crayons. Josh T.'s older brother, Christopher T., estimates that Josh T. has been suspended approximately eleven times, often after he gets angry because other students are picking on him.

In or around early October 2013, Matthew T., a Native American student, was suspended for three days for allegedly hitting a White student in the head with a book. Matthew T. reports that the book fell on the student's head after he jokingly pushed his friend into a bookshelf,

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"isolated" or "sporadic" incidents; once a discriminatory pattern has been proven, it may be presumed that every disadvantaged member of the protected class was a victim, unless the recipient can show that individual decisions were not based on its discriminatory policy.)

<sup>20</sup> See Loleta Union School District CPRA response to California Indian Legal Services, dated February 2013 (on file with California Indian Legal Services).

<sup>21</sup> Given the ease of identifying individual Native American students by their initials in a school as small as Loleta, all names of children and parents contained in this complaint are pseudonyms.

accidentally knocking the book onto the White student's head. Neither Matthew T., nor his friend who witnessed the incident, were given the opportunity to explain what had happened. During the 2012-13 school year, Matthew T. was severely punished, including getting sent home from school or suspended approximately seven times for two to three days each, for minor misbehaviors, including talking back to teachers and accidentally hitting his best friend with a ball. Other students are not suspended for talking back to teachers.

Additionally, on several occasions, Loleta staff have severely punished Native American students when they have been subject to aggression by other students. For example, Brandon T., a Native American student, was punched by another Native American student. In response, Brandon T. punched a wall out of anger. A White student alleged that Brandon T. had punched her. Without considering Brandon T.'s side of the story, Ms. Hadden suspended Brandon T. On another occasion during the 2012-13 school year, Brandon T. was beat up by two White students in the schoolyard. William T., Brandon T.'s cousin, ran over and tackled one of the other students to get him off of Brandon T. All of the students were sent to the office; however, while Brandon T. and William T. were suspended, the White students were sent back to class without punishment.

Ms. Hadden also unjustifiably called the Humboldt County Sheriff ("Sheriff") on Brandon T. on at least two occasions. In fall 2013, Brandon T. came to school upset about something that had happened at home, and sat on a bench outside his classroom rather than going into the class. Ms. Hadden called the Sheriff, who told Brandon T. to go to class and "start listening better." During the 2012-13 school year, Ms. Hadden called the Sheriff on Brandon T. after he climbed onto a storage unit during recess. Although Brandon T. complied with Ms. Hadden when she told him to get down, she still called the Sheriff and ultimately suspended Brandon for the incident.

In May 2013, Joseph M., a Native American student, was disciplined for tripping a girl who repeatedly poked him with a pencil, despite his asking her to stop. He was sent to the office for the rest of the day and his mother was never informed that her son had been disciplined. Also, in fall 2013, Joseph M. was blamed for writing on the "Welcome to Loleta" sign in the office even though the handwriting did not match his and another student was present at the time of the incident. Nonetheless, Joseph M. received a one-day suspension.

In addition to punishing Native American students severely for minor infractions or for acts they have not committed, Loleta staff punishes Native American students for behavior for which they do not punish White students. For example, Brianna L. has witnessed several fights in which a Native American student fought with a White student; Ms. Hadden consistently sent the Native American student home but returned the White student to the classroom. Similarly, William T. reported that he witnessed an altercation between a White student and a Native American student on the basketball court during which the White student pushed the Native American student first, and the Native American student responded by pushing him back. The Native American student was expelled, but the White student was not disciplined.

Additionally, during the 2010-2011 school year, a White student pushed a Native American student, David P., off a log on the playground. Upon information and belief, the White student was never disciplined for the incident.

Loleta also enforces rules against Native American students that White students are not required to follow. For example, a Native American student, Maya P., reported that Loleta staff members often require Native American students to consume the entire lunch provided by the school, including spoiled, chunky milk, while allowing White students to throw away their spoiled milk and leftover food.

Beyond individual student narratives demonstrating disparate treatment of Native American students, Native American students' cumulative files also reveal serious concerns about Loleta's discipline of Native American students, both with respect to the harshness of disciplinary actions against Native American students, and inconsistencies in documentation, as discussed below. Additionally, in response to a California Public Records Act ("CPRA") request by California Indian Legal Services ("CILS") in February 2013, Loleta provided copies of their "Discipline Action Referrals," which show numerous inconsistencies in student discipline over the last two years.

Despite multiple complaints, Loleta has failed to effectively address the racially disparate discipline.<sup>22</sup> Indeed, the Wiyot Tribal Council and Bear River Tribal Council, with the assistance of CILS, have complained to Ms. Hadden and the Loleta school board that Loleta punishes Native American students for minor misbehavior, while not punishing other students for that same behavior. Their complaints, thus far, have been ignored.

*b. Physical Harassment Directly Reflects Loleta's Discriminatory Intent Towards Native American Students*

Ms. Hadden engages in physical harassment and inappropriate "roughhousing" with Native American students. During the 2012-13 school year, Ms. Hadden grabbed Matthew T.'s arm and physically pulled him when his mother came to school to pick him up, leaving red marks on his shoulder and hurting him.

In January 2011, four adults reported to Shawna Morales ("Ms. Morales"), an Indian Action Council tutor, that they had witnessed Ms. Hadden hit a student over the head with a clipboard so hard that it made a loud "crack." Ms. Hadden also "bopped" a female student over the head, hit another student over the head with a notepad, and hit two students in the shoulder for dropping a ring that Ms. Hadden had brought to show the class. All four of these students are Native American.

Other teachers and staff have also physically harassed Native American students. For example, a Native American student reported to Ms. Morales that her teacher grabbed her face and other students' faces and pushed them around. In mid-March 2013, a teacher physically forced a student to sit down. A parent who witnessed this incident reported this behavior to Ms. Hadden, and Ms. Hadden replied, "I have to find out which kid it was because some kids need that." Shortly thereafter, the parent submitted a written report to Juan Carlos Enriquez ("Mr. Enriquez"), the Tribal Youth Services Coordinator for Bear River. The Bear River Tribe,

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<sup>22</sup> Although the School Board ordered an "independent investigation" into the complaint filed by CILS, the investigator did not thoroughly investigate the claims raised. See section III (A)(2)(f) *infra*.

through CILS, filed a formal complaint about physical harassment in Loleta.<sup>23</sup> Upon information and belief, Loleta has not acted to end this physical harassment.

Ms. Hadden also engages in other inappropriate roughhousing with Native American students. During the 2010-2011 school year, a Loleta employee reported to Ms. Morales that Ms. Hadden had kicked a Native American student, Joseph M., in the butt. Although Ms. Morales believes that Ms. Hadden thinks she is “joking around” with the student, the adult reported that Ms. Hadden kicked him so hard that it made a loud sound. In addition, Ms. Hadden has continued to make comments about wanting to kick at least one student.

Ms. Hadden also regularly touches Native American students’ hair, which is offensive in Native American culture.<sup>24</sup>

*c. Verbal Harassment by Loleta Employees Directly Reflects Loleta’s Discriminatory Intent Towards Native American Students*

Loleta staff members’ direct racial hostility is also reflected in racist statements made by school staff. On multiple occasions, Loleta staff have used racial slurs and have otherwise verbally harassed Native American students. For example, in February 2013, two students heard the school secretary say, “the kids are acting like a bunch of wild Indians.” In response to Ms. Morales’ complaint about this statement, Ms. Hadden stated that she did not find the remark offensive. Ms. Morales believes that Ms. Hadden never addressed the comment with the school secretary.

In 2011, a Native American student reported to Ms. Morales that Ms. Hadden pulled his ear and said, “See how red it’s getting?” Ms. Morales reported that the student looked as if he was going to cry, and that he stated that it made him feel like he felt when his mother was mad at him. Ms. Hadden also has a practice of making insensitive and disrespectful comments about tribal communities in the area. For example, Ms. Hadden referred to students from the Table Bluff reservation as the “Table Top” students – making a vulgar reference to a local strip club called the “Tip Top.” In addition, a Loleta staff member openly referred to Native American students at a Loleta Board of Education meeting as animals, including calling them “a pack of wolves,” “goats,” and “sheep.” Ms. Morales has also heard Ms. Hadden refer to Native American students as “a pack of wolves.” Ms. Hadden also cursed at one Native American student, Christopher T., and referred to his brother as a “saltine” because he “looked White.”

Lastly, Loleta employees have made negative comments about the length of male Native American student’s hair. For many Native Americans, long hair is a symbol of spiritual health, pride, and strength and cutting hair results in a loss of self.<sup>25</sup>

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<sup>23</sup> Letter from Delia Parr, Directing Attorney, California Indian Legal Services, to Sally Hadden, Superintendent of Loleta Elementary School (Jan. 21, 2011).

<sup>24</sup> See, e.g., Levi Rickert, *When Length of Hair Does Not Cut It*, NATIVE CONDITION, (Dec. 17, 2013), <http://www.nativenewsnetwork.com/when-length-of-hair-does-not-cut-it.html>.

<sup>25</sup> *Id.*



## 2. Circumstantial Evidence Also Shows Loleta's Discriminatory Intent Towards Native American Students

### *a. Loleta Departs from Required Policies and Procedures in Disciplining Native American Students.*

In addition to disparately and harshly punishing Native American students for unfounded or unjustifiable reasons, Loleta staff routinely fail to follow statutorily and constitutionally mandated procedures for suspending or expelling students. Loleta staff members' departure from established policies and procedures further reflects their discriminatory intent against Native American students.

Loleta has an established discipline policy that outlines four categories of disruptive behaviors and the subsequent consequences for those behaviors.<sup>26</sup> According to the policy, for all four categories of disruptive behavior, students should receive a written referral to the parent and a parent-teacher conference. Loleta staff routinely fail to properly document incidents of disruptive behavior and hold required conferences for Native American students. In addition, Loleta staff do not consistently identify which category of behavior has occurred and apply the appropriate consequences when disciplining Native American students.

For example, when Christopher T. and William T. were expelled in September 2013, as described above, Ms. Hadden did not follow statutorily mandated procedures for expulsion of students. When Ms. Hadden expelled William T., Ms. Hadden informed William T.'s mother, Jessica T. ("Ms. T."), over the phone about the expulsion and only later sent written confirmation. Ms. T. left a voice message to contest William T.'s expulsion, however, Ms. Hadden never returned her message, or gave Ms. T. any other opportunity to inquire about or contest the expulsion. Similarly, when Christopher T. was expelled, Ms. Hadden informed Ms. T., Christopher T.'s caretaker,<sup>27</sup> over the phone that he was expelled but never provided any written documentation of the expulsion. Additionally, after both of these expulsions, Loleta staff never informed Ms. T. of her rights to challenge the expulsions, nor did Loleta staff provide her with notice of other legally-required expulsion procedures. Consequently, Ms. T. assumed that Christopher T. and William T. were not allowed to attend Loleta and enrolled both of them in schools outside of Loleta.

Ms. Hadden also regularly sends Native American students home for behavioral infractions without recording the incidents, or she records them as absences or sick days rather than suspensions or expulsions, despite the established discipline policy. For example, as stated above, during the 2012-13 school year, Matthew T. and William T. were sent home from school repeatedly for minor misbehaviors, such as talking back to teachers. Upon information and belief, Ms. Hadden only sporadically provided written referrals or accurately recorded the incidents in question and the punishments provided. Matthew T. reported that he does not know

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<sup>26</sup> See Loleta Union School District Discipline Policy (on file with the ACLU of Northern California).

<sup>27</sup> Ms. T. is an Indian custodian for Christopher T., her nephew. As his Indian custodian, Ms. T. is responsible for all day-to-day decision-making for him, including educational decisions. Ms. T. notified Loleta staff that she was Christopher T.'s Indian custodian when she enrolled him.

what type of behavior will lead to different disciplinary consequences. Similarly, in April 2011, Joseph M. was sent home from school, yet it was not recorded as a suspension.

Additionally, Ms. Hadden calls upon the Sheriff, as described above, or two Native American youth service providers, Shawna Morales and Juan Carlos Enriquez, to intervene in the discipline of Native American students, thus departing from Loleta's established discipline policy. These departures from policy harm Native American children by exposing them to unnecessary and potentially traumatizing law enforcement experiences, and by detracting from Ms. Morales' and Mr. Enriquez's intended purpose of tutoring and otherwise supporting Native American students. Ms. Hadden's reliance on informal discipline by non-Loleta staff also prevents proper documentation of the discipline that Native American students receive.

Loleta Elementary administrators also have a long history of inconsistently reporting discipline data to the California Department of Education ("CDE"). In 2009-10, while Sal Steinberg was superintendent of Loleta, Loleta Elementary reported an enrollment of 114 students and 0 suspensions to CDE. However, according to the Office of Civil Rights, there were 25 out-of-school suspensions that year, 60 percent of which were of Native American youth, while only 40 percent were of White youth. According to DataQuest, Loleta Elementary had 12 suspensions in 2011-12.<sup>28</sup> This does not match the 25 unique suspensions recorded in the 2011-12 California Longitudinal Pupil Achievement Data System ("CALPADS").<sup>29</sup> Inconsistencies and deficiencies in maintaining and reporting disciplinary data for Native American students are departures from established policies and procedures that reflect Loleta's animus towards Native American students.

All of these departures prevent Native American parents and students from receiving appropriate and fair discipline for the behaviors committed, accessing accurate information about student discipline, and asserting procedural protections around discipline. Lastly, as explained more below, without documentation, Loleta staff cannot appropriately identify Native American students who receive disciplinary referrals for behaviors that may be manifestations of unidentified disabilities.

*b. Loleta Staff Depart from Required Policies and Procedures for Native American Students with Disabilities.*

Loleta also departs from procedures required under federal law when conducting Individualized Education Program ("IEP") meetings for Native American students. For example, Ms. Hadden has excluded Native American parents from IEP team meetings by failing to notify them of meetings, and holding meetings in their absences. In 2011, Ms. Hadden changed a Native American child's designated hours of special education resource time without notifying his parent of the IEP team meeting. Ms. Hadden also regularly holds IEP meetings without all of the necessary parties. For example, Ms. Hadden has continued IEP team meetings after parents of Native American students have left the meetings. On at least one occasion, Ms. Hadden lied to a

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<sup>28</sup> The California Department of Education: DataQuest, <http://data1.cde.ca.gov/Dataquest/> (last visited December 2, 2013).

<sup>29</sup> See Loleta Union School District CPRA response to California Indian Legal Services (on file with California Indian Legal Services).

parent about whether Ms. Morales still worked in the school in order to exclude her from an IEP meeting about a student with whom Ms. Morales worked. Ms. Hadden has also attempted to convince Native American parents and students to attend alternative or charter schools by stating that she will not provide needed resources and services for their students.

*c. Loleta Departs from Required Policies and Procedures in Complying with Mandated Child Abuse Reporting Procedures.*

Loleta Elementary administrators have failed to report abuse and neglect of Native American students when they are required to do so under state “mandated reporting” laws or have reported these incidents in an untimely manner. According to Sarah Lindgren-Akana, an Indian Child Welfare Agency (“ICWA”) social worker, there have been several instances where Ms. Hadden has failed to report suspected neglect or abuse of Native American children to Humboldt County Child Welfare Services. For example, Ms. Hadden told Ms. Lindgren-Akana that she knew of two Native American students who are alone at home without food. When Ms. Lindgren-Akana told Ms. Hadden that she is legally required to report situations like this to Humboldt County Child Welfare Services, Ms. Hadden told her that she would “keep an extra eye on them” rather than report the situation to the proper authorities.

*d. Loleta’s Failure to Apply for Indian Education Funding to Benefit Native American Students Reflects Its Animus Against the Native American Community*

Ms. Hadden’s refusal to apply for Indian Education funds, despite the significant benefits such funds would bring to the large number of Native American students at Loleta, shows her animus towards these students.

As the superintendent and principal, Ms. Hadden has the authority to apply for Indian Education (Title VII), Impact Aid, and Johnson-O’Malley Act funding to supplement general district funds to help support the unique needs of Native American students. Indian Education and Johnson-O’Malley Act funding are especially helpful because they emphasize participation from parents of Native American students through a Parent Committee and require the committee’s authorization for fund expenditures in accordance with an educational plan outlined by the committee. Impact Aid, on the other hand, is a more flexible fund that does not require an educational plan or a parent committee. Ms. Hadden only applies for Impact Aid funds, reflecting her refusal to work with a committee of Native American parents to improve education for Native American students. As Loleta’s Native American population is currently almost one-third of students, Ms. Hadden’s refusal to apply for Indian Education funds is evidence of Ms. Hadden’s intolerance and animus towards the Native American community. Moreover, even though Ms. Hadden receives Impact Aid funds—funds which flow to the District because District students live on the Table Bluff and Bear River Reservations—Native American students have not received any special services from them.

The actions of racial and physical harassment, excessive discipline, and denial of services to students with disabilities, prevent Native American students from achieving the goals of Federal Indian Education programs. As a result, the Johnson O’Malley Act and Title VII funding may

provide useful mechanisms for Native American Tribal members to assist in balancing the scales of disparate treatment complained about by Native American students and parents.

*e. Loleta's Discipline Policy Significantly Disparately Impacts Native American Students*

According to data provided by Loleta to OCR, in 2009-2010, 60% of Loleta suspensions were Native American students although Native American students constituted less than 30% of student body. During the same year, 40% of the suspensions were White students and White students constituted approximately 40% of the student body.

*f. Loleta is Deliberately Indifferent to Complaints of Discriminatory Treatment of Native American Students*

Ms. Hadden and the Loleta School Board ("Board") have acted with deliberate indifference to racial discrimination by failing to effectively respond to specific complaints of physical and verbal racial harassment presented by the Wiyot Tribal Council and Bear River Tribal Council on behalf of Tribal members. On multiple occasions, Ms. Hadden and the School Board have received written and verbal complaints about the racially disparate treatment and discipline of Native American students by Loleta staff, including some of the specific examples enumerated above.

Both the Wiyot Tribal Council and the Bear River Tribal Council submitted formal complaint letters to the Board on behalf of their communities. Both complaint letters asked the Board to take action to remedy the situation at Loleta Elementary. Instead of effectively investigating complaints, Ms. Hadden hired Dennis Hanson to investigate the allegations. During his three-day investigation, Mr. Hanson only interviewed one individual, who is not on campus during the school day, so could not have witnessed the problems enumerated in the complaints.<sup>30</sup> Upon information and belief, neither the Board nor Ms. Hadden has adequately investigated any of the many complaints from Native American parents or the Tribes. Native American students at Loleta still experience discriminatory treatment, and verbal and physical harassment.

**B. Loleta Violates Rights of Students with Disabilities**

Under Title II of the Americans with Disabilities Act ("ADA"), public entities are prohibited from excluding a "qualified individual with a disability" from "participation in or... the benefits of the services, programs, or activities of a public entity."<sup>31</sup> Public educational institutions are considered public entities under the ADA.<sup>32</sup> Students with physical or mental impairments that substantially limit one or more major life activities are considered to have disabilities and are "qualified individuals" by virtue of meeting age and residency requirements for public school.<sup>33</sup>

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<sup>30</sup>See letter from Dennis Hanson, Fundamental Solutions to John Oswald, President Loleta Board of Trustees, Board Members, Staff, Tribal Members (Mar. 6, 2013).

<sup>31</sup> 42 U.S.C. § 12132.

<sup>32</sup> 42 U.S.C. § 12131(1)(B).

<sup>33</sup> Students who have a record of such impairment, or regarded as having such impairment, are also protected by the ADA. 42 U.S.C. §§ 12102(1)(A), 12131(2).

Section 504 of the Rehabilitation Act of 1973 (“Section 504”) prohibits recipients of federal funding from discriminating on the basis of disability.<sup>34</sup> Additionally, the statute’s implementing regulations affirmatively require that school districts locate students with disabilities, notify such students and their parents of the schools’ duties under Section 504 and ensure that such students receive free and appropriate public education.<sup>35</sup>

Public school districts, like Loleta, must comply with both Section 504 and the ADA because they are public entities that receive Federal financial assistance. The ADA incorporates Section 504’s nondiscrimination provisions.<sup>36</sup> Because the ADA provides no less protection than Section 504, a violation of Section 504 also constitutes a violation of the ADA. Loleta violates both the ADA and Section 504 by failing to make reasonable modifications to avoid discrimination against students with disabilities, by failing to evaluate students with disabilities, and by denying students with disabilities access to appropriate public education.

#### 1. Loleta Violates Section 504 by Failing to Evaluate Students with Disabilities

Section 504 requires that recipient school districts conduct timely evaluations of students suspected to be students with disabilities.<sup>37</sup> Loleta violates Section 504 by failing to evaluate students when it knows, or should know, that they may be students with disabilities. Loleta does not make or retain records of verbal evaluation requests from parents or other educational advocates, and Loleta often does not conduct requested evaluations. Loleta staff, including Ms. Hadden, actively resist identifying students as students with disabilities and providing them appropriate educational services, even when parents explicitly ask that their child be evaluated for special education. For example, although parents and Loleta teachers identified Joseph M. as having learning difficulties in first grade, he never received appropriate evaluations or services from Loleta; by his sixth grade year, he still had not developed functional skills in reading or writing. This is not a unique situation: at least two other students in the fourth and sixth grades have been identified as being unable to read after repeated requests by their families for evaluations and services.

Loleta has also ignored signs that children should be evaluated to determine whether they are students with disabilities who need accommodations and modifications. For example, during the 2013-2014 school year, Josh T., a seven-year-old Native American student, has repeatedly been sent out of his classroom or suspended for various behavioral problems. In one instance, in fall 2013, Josh T. became physically upset in class because he did not understand his mathematics assignment. Rather than convene a meeting to discuss whether Josh T.’s behavioral issues might be manifestations of a disability, Ms. Hadden sent him home and suspended him. Also as described above, during fall 2013, another student, Brandon T., had an emotional response to a troubling family matter and refused to enter his classroom. Instead of recognizing this response as a potential sign that evaluations might be necessary, Ms. Hadden called the Sherriff to address

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<sup>34</sup> 29 U.S.C. § 794.

<sup>35</sup> 34 C.F.R. § 104.32-37.

<sup>36</sup> 28 C.F.R. § 35.103(a).

<sup>37</sup> 34 C.F.R. § 104.35.

Brandon T.'s behavior.<sup>38</sup> Similarly, Anthony W. had multiple emotional outbursts during the 2012-13 and 2013-14 school years, during which he yelled, screamed, and threw objects at other students. Rather than evaluating him for potential disabilities, Loleta sent him home from school approximately two to three times per week.

Loleta's failure to evaluate and identify students as students with disabilities has continued throughout Ms. Hadden's tenure. For example, in early 2011, Chloe N., a six-year-old Native American student with a history of abuse, hid under her desk when she became overwhelmed in the classroom. Ms. Hadden threatened to physically remove the child from under her desk. Loleta did not recommend any evaluations to assess whether the child's difficulties in the classroom setting were manifestations of her past trauma, or determine what modifications the school could make to meet her needs.

Loleta further violates Section 504's evaluation requirements by suspending students with diagnosed and undiagnosed disabilities without evaluating these students' needs. Section 504 requires that a school evaluate a student with a disability before any significant change in educational placement.<sup>39</sup> Under Section 504, a significant change in placement occurs when a school excludes a student from his educational placement for more than ten consecutive days or for a "pattern of exclusions" that equals more than ten cumulative days.<sup>40</sup> Thus, a school must first evaluate a student with a disability before suspending that student for more than ten consecutive days or for more than ten cumulative days constituting a pattern of exclusions.

Loleta has made significant changes in students' education placements by repeatedly suspending students with disabilities without any evaluation. For example, Joseph M., a Native American student with Attention-Deficit Hyperactivity Disorder ("ADHD"), was suspended more than 20 times during the 2011-2012 school year. Loleta staff made no attempt to evaluate Joseph M. before removing him from his educational placement over 20 times. Additionally, Joseph M. was suspended and prevented from riding the bus after an incident with another student. Loleta failed to evaluate potential modifications to allow Joseph M. to continue to ride the bus to school. Instead of determining whether this behavior was a manifestation of Joseph M.'s disability or whether modifications would allow him to use the bus successfully, Loleta precluded him from this mode of transportation and suspended him.

Brianna L. is a Native American student with a reading disability who has been disciplined excessively by Loleta Elementary staff because of her disability. Brianna L. cannot read well and does not want to be humiliated by reading aloud in class. On one occasion, her teacher attempted to force her to read aloud in class, which she did not feel comfortable doing, causing

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<sup>38</sup> The Sheriff instructed Ms. Hadden to call Mr. Enriquez, Ms. Morales, or the Tribe to assist with Brandon T.'s behavior before calling him, noting that the Sheriff is not the appropriate first responder.

<sup>39</sup> 34 C.F.R. § 104.35(a).

<sup>40</sup> *Parents of Student W. v. Puyallup Sch. Dist.*, No. 3, 31 F.3d 1489, 1495 (9th Cir. 1994) (citing *Letter Re: Akron City School Dist.*, 19 IDELR 542 (November 18, 1992)); *see also* *OCR Memorandum*, 307 IDELR 07 (February 24, 1989) (noting that in determining whether a series of suspensions that are each ten days or fewer in duration creates a pattern of exclusions, the pattern of exclusions in the previous school year is a relevant consideration); *see also* *Springfield (MA) Public Schools*, 54 IDELR 102 (July 6, 2009) (noting the relevance of whether the behaviors that gave rise to the disciplinary infraction are similar, the length of each suspension, the proximity in time of the suspensions to one another and the total amount of time the student is excluded from school).

her to shut down and refuse to talk. As a result, the teacher and Ms. Hadden disciplined Brianna L. for alleged defiance. According to her mother Melissa L., Brianna L. has been sent home from school every other week since the beginning of the 2013-14 school year due to issues related to her reading disability. Ms. L. told Ms. Hadden and the teacher that Brianna L. typically refuses to talk when she gets upset or mad, which often occurs when she is experiencing problems with reading. Nonetheless, Loleta employees have developed only minimal modifications to assist her with managing frustration with her reading disability so she can participate meaningfully in class. Rather than developing effective accommodations and supports, Loleta has repeatedly excluded her from educational instruction by sending her home.

Ms. Hadden also fails to properly record changes in educational placements of students with disabilities to avoid following statutorily mandated procedures that protect students with disabilities.<sup>41</sup> Ms. Hadden sends students with disabilities home for misbehavior and tells them they have been suspended, while recording these incidents as “absences” rather than “suspensions.” Loleta staff have also placed students in an unsupervised room without instruction or in the office for long periods without instruction, without recording these removals as suspensions. In one case, Ms. Hadden suspended a student with a disability over ten times, and stopped recording suspensions after the tenth day. Staff members subsequently shredded documents pertaining to the student’s disciplinary record. Similarly, as noted above, Joseph M. was suspended over 20 times, while his records inaccurately documented only six suspensions.

Additionally, Loleta misrecords student suspensions as “absences,” and then threatens truancy enforcement against students who have been suspended for behaviors related to their disabilities. For example, in fall 2013, Ms. Hadden told Melissa L. that she would send a truancy officer to their house to investigate Brianna L.’s absences. However, Melissa L. reports that these absences are actually suspensions Brianna L. received for her “defiant” behavior associated with her reading disability.

Another Native American student with disabilities, Anthony W., is regularly sent home for outbursts, which are related to his disability, but Loleta Elementary staff does not document these forced removals from school as suspensions. The school secretary signs Anthony W. out without his guardian’s knowledge or consent. Anthony W.’s social worker’s report confirms that Anthony W. is regularly sent home inappropriately and that school administrators fail to properly record these incidents as suspensions. Because of Ms. Hadden’s intentional misreporting of disciplinary actions, Loleta cannot possibly comply with Section 504’s requirement that evaluations be conducted before disciplinary placement changes. Additionally, Anthony W. who has behavioral issues related to his disability, was not evaluated for a disability until the 2013-14 year, and now has only an informal behavioral plan that is followed inconsistently.

Loleta has also expelled students with disabilities without evaluating them. In some cases, Ms. Hadden implies that students are no longer welcome at school or that they are expelled, effectively changing their placements without proper evaluations. Ms. Hadden also tried to expel Joseph M. during the 2011-12 school year without an evaluation prior to conducting a change in placement mandated by Section 504. Although Ms. Morales intervened and stopped the expulsion, Ms. Hadden never notified Joseph M.’s parents of his potential expulsion.

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<sup>41</sup> 34 C.F.R. § 300.530; 34 C.F.R. § 300.536.

## 2. Loleta Violates the ADA and Section 504 by Denying Students with Disabilities the Benefits of Public Education

Under the ADA and Section 504, Loleta must provide students with disabilities the benefits of an appropriate public education.<sup>42</sup> Loleta students with disabilities, however, do not receive appropriate educational services to ensure that they obtain equal educational opportunity. Loleta fails to review students' services to determine whether students with disabilities are receiving appropriate services to obtain equal educational opportunities as compared to their non-disabled peers. Loleta fails to provide students with a range of services as needed: Loleta does not have a special day classroom for students whose disabilities necessitate such instruction. Although a special day classroom existed previously, Ms. Hadden got rid of it when she became principal and superintendent. Loleta also provides only minimal one-to-one support for students whose disabilities necessitate such services. Anthony W. requires speech pathologist services due to his disability. However, until December 2013, the school did not have access to speech pathology services; nor did school staff offer to transport Anthony W. to see a speech pathologist. Similarly, Thomas H. has a disability that required speech pathology services twice a week, however, Loleta's lack of consistent access to a speech pathologist meant that he rarely, if ever, received those services.

In addition, instead of attempting to provide appropriate services to accommodate students with disabilities, Loleta encourages youth to transfer to other schools, sometimes by encouraging the student to do so without discussing the recommendation with the parent. For example, at his annual IEP meeting in April 2013, Ms. Hadden suggested to Joseph M.'s mother, Anna M. ("Ms. M.") that he transfer to a school in another town, because they "can't help him" at Loleta. Despite the fact that Ms. M. requests additional special education services for Joseph M. every year, Ms. Hadden has refused because she claims that there is no funding to provide additional services.

Loleta also has failed to implement modifications and accommodations identified as necessary to accommodate students' disabilities.<sup>43</sup> In the 2013-14 school year, one Loleta teacher has routinely refused to provide even minor accommodations to the approximately five students with disabilities in his class. For example, he does not allow students with attentional deficits to take breaks from the classroom, or shorten their assignments as necessitated by their disabilities. Without necessary accommodations, at least two of those students are failing their classes. The teacher also requires Ms. Morales to tutor students with disabilities in the back of his classroom, which identifies them as students with disabilities to other students. James H. had a learning disability which required modifications to test length and setting, as well as the use of a highlighter to highlight key terms and phrases during instruction. Loleta failed to implement either of those modifications for James H.

Rather than providing appropriate accommodations and modifications to students with disabilities, Ms. Hadden has recommended increased psychiatric medication for Loleta students.

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<sup>42</sup> 28 C.F.R. § 35.130(a), (b)(1)(i); 34 C.F.R. § 104.4(b)(1)(i).

<sup>43</sup> Loleta fails to implement these modifications even when, as for many of the children in this complaint, the modifications are included in the child's IEP.



For example, on multiple occasions, Ms. Hadden has suggested to Joseph M. and Ms. M. that Joseph M. should increase his medication, although Joseph M.'s doctor has stated that it is not necessary. Ms. Hadden has also discussed with others that Joseph M. should increase his ADHD medication dosage to help him to focus in class. Although Ms. M. has complained to Ms. Hadden that Joseph M. becomes upset when Ms. Hadden talks about his medication in front of other people, Ms. Hadden has continued to do so.

Loleta also removes children with disabilities from their classrooms due to behavioral issues, and places them in a small, windowless room, in the school office which some students refer to as "the hole." While in this room, students are not directly supervised by teachers, receive no instruction, and often do not have access to books or instructional materials. As discussed above, these removals occur without consideration of a student's disability status. Consequently, students who exhibit behaviors that are manifestations of their disabilities are removed from classrooms and denied the benefits of public education.

Loleta's failure to maintain confidentiality of students with disabilities also affects their ability to access the benefits of public education. Loleta staff members, including Ms. Hadden, have failed to maintain confidentiality on behalf of students with disabilities. In one case with Joseph M., Ms. Hadden asked his mother loudly in a public area whether she had brought the student's "drugs" to school. Joseph M.'s mother had previously requested that his disability and medication information remain confidential, and Joseph M. reported feeling upset after hearing Ms. Hadden talking about him and his medication in front of other people. Such breaches of confidentiality in the school distress students with disabilities and harm their ability to access the benefits of public education.

### 3. Loleta Fails to Make Reasonable Modifications to Avoid Discriminating Against Students with Disabilities

Under the ADA, school districts are required to "make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity."<sup>44</sup> However, Loleta applies its policies, practices, and procedures without regard for students' disabilities, failing to consider whether modification of those policies would prevent discrimination against students with disabilities.

As mentioned above, Loleta's disciplinary practices fail to consider whether a student's disability may be related to misbehavior. Instead, Loleta enforces blanket punishments that may prove ineffective or potentially harmful for a student with a disability. Furthermore, low level Loleta staff are granted authority to punish students who misbehave. Mr. Enriquez has repeatedly witnessed the school janitor deny students the opportunity to attend recess due to their perceived misbehavior at lunch, regardless of whether they have been diagnosed with a disability. One student in particular, Dylan A., is diagnosed with a disability and is in the

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<sup>44</sup> 28 C.F.R § 35.130(b)(7); *c.f.* 34 C.F.R. §104.4 (Section 504 similarly prohibits discrimination against students on the basis of their disabilities).

process of getting an IEP now, but has repeatedly been denied the opportunity to participate at recess by the janitor, as a form of punishment.

Loleta also fails to consider whether modifications of its graduation policy are necessary for students with disabilities. Currently, Loleta policy prohibits students with failing grades from participating in the school's graduation ceremony. In spring 2013, because of this graduation policy, Loleta precluded one student (out of the nine total graduates) who had a disability from participating in the graduation ceremony, even though she was still advancing to the ninth grade. Loleta's policy fails to consider whether modifying the policy would prevent discrimination against disabled students who are more likely to receive failing grades.

#### **IV. REMEDIES**

Loleta Union School District violates Title VI, the ADA, and Section 504 by treating Native American students differently than other students, failing to identify and evaluate students with disabilities, failing to make reasonable modifications to avoid discrimination against students with disabilities, and denying students with disabilities access to appropriate public education. Complainants respectfully request that OCR require Loleta to develop and implement plans to accomplish the remedies described below:

##### **A. COLLABORATION OF STAKE HOLDERS**

Loleta will work to create a welcoming and collaborative environment for all stakeholders to facilitate participation in the development and implementation of meaningful solutions to educational challenges faced by Native American students. To accomplish this goal:

1. Loleta Elementary administrators and the Loleta School Board shall meet with Wiyot and Bear River Tribal Councils on a quarterly basis to communicate and facilitate collaboration between the Tribes and the school. Loleta will provide quarterly updates, including data about discipline, academic performance, and services to students with disabilities.
2. Loleta Elementary administrators and the Loleta School Board shall collaborate with Wiyot and Bear River Tribal Councils to establish multi-cultural programming at Loleta Elementary that serves the needs of Native American students and teaches non-Native American students about the local history. Such programming will be used to engage both students and staff in learning about the various cultural and ethnic groups represented at Loleta Elementary.
3. Loleta Elementary will provide classroom instruction that teaches the Wiyot language for school credit.
4. Loleta Elementary shall coordinate with the resources of the Wiyot Tribe and Bear River Rancheria, including the Indian Action Council and any other educational resources deemed appropriate by the Tribes, to help address the unique educational needs of Native American students.

##### **B. COMPLAINT PROCESS**

Loleta will create a comprehensive and meaningful process to handle complaints by students, families, and community members about harassment, discrimination, disparate discipline, provision of services to students with disabilities, and misconduct by Loleta staff. To accomplish this goal:

1. Loleta will solicit and employ the feedback of Native American students, families, and community members, in the process of revising the complaint process, Student Handbook, and Student Code of Conduct. The Student Handbook shall explain the complaint procedures in language understandable to elementary school students.
2. Loleta will utilize the Uniform Complaint Procedure, published in the Student Handbooks and all parents' rights handbooks, and posted at Loleta Elementary and on the school website. The publication of the complaint process will also include:
  - i. a summary of state and federal laws related to discrimination, discipline, special education services, and staff misconduct; and
  - ii. a clear statement that retaliation based on complaints is prohibited under District policy, state and federal law, and an assurance that the District will promptly investigate and address any allegations of retaliation.
3. Loleta will ensure that every teacher, school administrator, and School Board member has reviewed, and is knowledgeable about, the complaint policies and procedures described in this section. Such persons shall facilitate the complaint process and assist students, families, and community members seeking to file complaints under this process.

### **C. PROFESSIONAL DEVELOPMENT**

Loleta will foster a community of teachers and administrators that are knowledgeable about child development and are culturally competent and sensitive. To accomplish this goal:

1. Loleta shall provide educators at all levels within the District with training about the unique historical and cultural experiences of Native American students, and effective methods for engaging Native American students in the educational process.<sup>45</sup>
2. Loleta shall provide professional development for teachers, staff and administrators in: childhood brain development; trauma-informed responses and interventions; implicit bias; mental health issues and symptoms in children; developmental and learning disabilities; and special education procedural requirements.

### **D. SCHOOL CLIMATE**

Loleta will implement evidence-based practices, such as Restorative Justice and School-Wide Positive Behavior Supports (“SWPBIS”), with fidelity and with an emphasis on reducing racial and ethnic disparities in discipline and educational achievement. To accomplish this goal:

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<sup>45</sup>Joey Proudfit and Seth San Juan, *State of American Indian and Alaskan Native Education in California*, California Indian Culture and Sovereignty Center, 45 (2012) (stating that culturally relevant education and understanding can make for a better overall educational experience for Native American students.).

1. Loleta shall hire a consultant, approved by the Complainants, with expertise in implementing evidence-based educational practices and, specifically, with expertise in reducing racial and ethnic disparities in discipline, to assist in planning and implementation of Restorative Justice and SWPBIS programming.
2. Loleta shall create a comprehensive discipline policy that clearly sets out the expected behavior and appropriate responses to student misconduct. The policy should:
  - a. be developed with input and guidance from Native American students, families, and community members; and
  - b. include clear guidelines for what discipline should be handled by teachers, and what discipline should be addressed by the Principal; and
  - c. make all District, school, and classroom attendance and discipline policies and procedures accessible to students and parents through publication in the Student Handbook, any parents' rights handbooks, and posting at Loleta Elementary and on the school website. District policies must be provided in language understandable to elementary school students.

#### **E. SERVICES FOR STUDENTS WITH DISABILITIES**

Loleta will create a school environment in which students with disabilities are properly identified, evaluated, and provided with services appropriate to their needs to ensure that students with disabilities have opportunities equal to their peers. To accomplish this goal:

1. Loleta will provide professional development to teachers and administrators regarding the identification of students in need of evaluations to determine whether they are students with disabilities, development of service plans for students with disabilities, and implementation of individual accommodations.
2. Loleta will expand its special education programming to provide students with disabilities with a continuum of services, such as supportive aides, individualized positive behavior supports and interventions, and other accommodations or modifications necessary for students with disabilities to access educational programming.
3. Loleta will identify and address disability-related misbehavior with behavioral plans or other accommodations that meet the disability-related needs of the individual student. This includes ensuring that the District complies with existing state and federal law procedures for disciplining students with disabilities.
4. Loleta will implement early intervention programs for students who receive multiple disciplinary referrals and/or who are at risk of being retained in grade, transferring, or dropping out of school. Examples of this may include: student counseling and tutoring, family consultations, and behavioral plans specific to the student to correct misbehavior and address their social and emotional learning needs.

#### **F. DATA COLLECTION AND RECORD KEEPING**

Loleta will collect and maintain accurate data regarding school enrollment, discipline, and special education, which is disaggregated by race, disability, gender, grade, type of offense, discipline imposed, and referring teacher and school. To accomplish this goal:

1. Loleta shall create and maintain clear written guidelines on data-keeping protocols, including those on the retention, destruction and confidentiality of student cumulative files.
2. Loleta shall accurately maintain its computerized data collection system.
3. Loleta shall provide professional development to staff on how to use the data collection system.
4. Loleta shall make data available to the Tribes biannually. The District will replace student names with unique identification numbers to facilitate data analysis, including whether discipline statistics reflect repeated disciplinary actions against a few students or discrete disciplinary actions against many students.
5. Loleta shall inform families in the parents' rights handbook about their rights to complain about violations of confidentiality of student information, access and obtain copies of their child's records, and contest information in their child's cumulative files.

## **G. FUNDING**

Loleta will maximize its funding aimed at benefiting Native American students. To accomplish this goal:

1. Loleta shall apply for all federal funding that is specifically intended to benefit Native American students, including but not limited to Title VII (Indian Education Act) of the No Child Left Behind Act ("NCLB"),<sup>46</sup> Title VIII (Impact Aid) of NCLB,<sup>47</sup> and Title X (Bureau of Indian Affairs – Johnson O'Malley) of NCLB.<sup>48</sup>
2. Loleta shall establish programs and projects using Title VII funding to meet the needs of Indian students, including language and cultural needs.<sup>49</sup> These programs and projects shall be designed in response to a locally conducted needs assessment and with the full cooperation and involvement of an elected Indian parent committee.<sup>50</sup>
3. Loleta shall create (or update any existing) Indian Policies and Procedures to ensure that children who reside on Indian lands participate in the Districts' programs and activities that are supported by Title VII (Impact Aid) funds on an equal basis with all other children.<sup>51</sup>
4. Loleta shall consult with and involve parents of children living on Indian lands and Indian tribes in planning and developing the programs and activities. Loleta shall disseminate Impact Aid funding application and evaluations to the parents and Indian tribes.
5. Loleta shall establish supplemental education programs for the unique educational needs of Indian children using Title X (Johnson O'Malley) funds.<sup>52</sup> An Indian

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<sup>46</sup> 20 U.S.C. § 7401 – 7546.

<sup>47</sup> 20 U.S.C. § 7701 – 7713a.

<sup>48</sup> 25 U.S.C. § 452 – 457.

<sup>49</sup> 20 U.S.C. § 7402(a).

<sup>50</sup> 20 U.S.C. § 7424(c).

<sup>51</sup> 20 U.S.C. § 7704(a).

<sup>52</sup> 25 C.F.R. § 273.32.

parent committee shall have the right to participate fully in the planning, development, approval and evaluation of all programs and projects using Title Johnson O'Malley funds.<sup>53</sup>

## **H. MONITORING**

Loleta will develop and implement a plan that contains strategies, objectives, and timelines to accomplish the remedies described above, and to ensure that Loleta complies with applicable federal and state law. The plan will be regularly monitored by a consultant, for at least five years, who will provide regular reports to Complainants and to OCR. To accomplish this goal:

1. Loleta shall hire an independent expert consultant or consultants with approval from Complainants. The consultant(s) will assist in the design and implementation of a plan, which includes goals, objectives, timelines, and measurable outcomes, for the remedies listed above.
2. The consultant(s) engaged for this purpose shall also participate in the design and implementation of a revised discipline policy, complaint process, and Restorative Justice and SWPBIS based programs, as described above, that will be explicitly designed to reduce racial and ethnic disparities in discipline and other treatment. The consultant(s) will also participate in the restructuring of discipline and special education services to prevent discrimination against students with disabilities.
3. Loleta will provide the consultants with bi-annual updates on its progress in implementing these remedies described above. Each update will take the form of a memorandum setting forth:
  - a. efforts undertaken by the District during the previous six months;
  - b. the results of those efforts; and
  - c. Loleta's plans for the following six months.
4. No more than 30 days after the consultant receives each update, the consultant, a representative from the District, and a representative for the Complainants will have a conference in which a District representative will be prepared to answer questions about the information in the update and the District's implementation of this plan. During the conference, the parties will discuss whether the efforts undertaken by the District have produced the intended goals, and if either or both parties conclude that the District is not meeting such goals, the parties shall meet and confer in a good faith effort to reach an agreement on whether and, if so, how to amend or supplement the District's efforts in an effort to achieve the mutually desired results.

## **VII. CONCLUSION**

Loleta Elementary's current system of racially discriminatory discipline, harassment, and denial of special education student services has resulted in the ongoing, improper, and harmful exclusion of Native American students from access to a fair and equal public school education. As alleged in this complaint, the actions of Loleta Elementary staff and administrators disproportionately affect Native American students and obstruct their access to a safe learning environment in which all students can thrive. For the foregoing reasons, there is an urgent need

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<sup>53</sup> 25 U.S.C. § 456.

for OCR to review Complainants' allegations of racial discrimination and harassment, disparate disciplinary policies, and the denial of special education services to Native American students at Loleta Elementary. Likewise, Complainants request that OCR assist in correcting the District's violations of Title VI of the Civil Rights Act of 1964, Title II of the American with Disabilities Act, Section 504 of the Rehabilitation Act of 1973 by ensuring the District implement the remedies requested above.

Respectfully submitted,

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