

MAJORITY REPORT | TALAWANDA BRANDING COMMITTEE

To the Talawanda School Board Members:

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1. Recommendations:

1. Modify the “Braves” name to “Brave” on all new purchases of school resources
2. Cease all purchasing of “Braves” branded school resources (i.e., language and imagery)
3. Cease production on all licensing agreements that include the “Braves” name or Native American imagery
4. Pursue grants to cover unanticipated expenses of adapting our brand
 - a. Members of the Branding Committee have agreed to assist in this regard
5. Implement ongoing education on Native American history, culture, and contemporary life

Draft language for motions to the Board:

1. Motion to modify the official athletics name to “Talawanda Brave.”
2. Motion to cease all purchasing of “Braves” branded school resources including the “Braves” name and all Native American imagery.
3. Motion to cease production on all licensing agreements that include the “Braves” name or Native American imagery.

2. Reasons:

A. Well-being of students

The American Psychological Association has issued a summary Resolution recommending “the immediate retirement of American Indian mascots, symbols, images, and personalities by schools.”¹ As of the summer of 2017, this Resolution cites one-hundred-one (101) peer-reviewed publications to support conclusions that Native American mascots can 1) undermine the educational experience of *all* students, 2) establish a hostile and unwelcoming learning environment for Native American students, 3) promote stereotypes, and 4) divide communities

B. Tribal educators have reached similar conclusions on the basis of this and other research:

¹ American Psychological Association. (2005). *Summary of the APA Resolution Recommending Retirement of American Indian Mascots*. Washington: American Psychological Association. <https://www.apa.org/about/policy/mascots.pdf> Updated citations: http://www.asanet.org/sites/default/files/updated_bibliography_on_native_american_nicknames_logos.pdf

- The **National Indian Education Association** has called for the retirement of Native American mascots²
- **The National Congress of American Indians** (NCAI), a collective body that represents 573 Federally recognized Tribes (including The Miami Tribe of Oklahoma, the tribe most-indigenous to the land we currently live on)³ has called for the elimination of Native American mascots and urged the Secretary of Education to take action against schools that use Native American mascots
 - In 2013 the NCAI documented one-hundred-eleven (111) organizations that have formally called for the retirement of Native American mascots. Included among them are:
 - American Sociological Association
 - Association on American Indian Affairs
 - Center for the Study of Sports in Society
 - Michigan State Board of Education
 - Minnesota State Board of Education
 - National Conference of Christians and Jews
 - Native American Indian Center of Central Ohio
 - New Hampshire State Board of Education
 - New York State Education Department
 - Ohio Center of Native American Affairs
 - Presbyterian Church
 - United Church of Christ
 - United Methodist Church
 - United States Commission on Civil Rights⁴

C. Brand-oriented researchers have reached similar conclusions:

- “These findings demonstrate measurable negative effects of ethnic brand imagery on implicit stereotypes and support the view that the use of such images can carry detrimental societal consequences (84)⁵
- “Results from both studies show that participants primed with an American Indian sports mascot increased their stereotyping of a different ethnic minority group” (534)⁶

² National Indian Education Association. (2009). *Resolution #09-05: Elimination of Race-Based Indian Logos, Mascots, and Names*. Washington: National Indian Education Association.

³ <http://www.ncai.org/tribal-directory?letter=M>

⁴National Congress of American Indians. (2014). *Resolution ATL-14-011: Urging the U.S. Secretary of Education to Take Substantive Action Regarding Schools with "Native" Sports Stereotypes*. Washington: National Congress of American Indians.

⁵ Angle, J. W., Dagogo-Jack, S. W., Forehand, M. R., & Perkins, A. W. (2017). Activating Stereotypes with Brand Imagery: The Role of Viewer Political Identity. *Journal of Consumer Psychology* , 27 (1), 84 - 90.

⁶ Kim-Prieto, C., Goldstein, L. A., Okazaki, S., & Kirschner, B. (2010). Effect of Exposure to an American Indian Mascot on the Tendency to Stereotype a Different Minority Group. *Journal of Applied Psychology* , 40 (3), 534 - 553.

D. Ethicists have reached similar conclusions:

- “Native Americans are not only still with us...they are still with us as inheritors of a very different sort of past. Those two facts make their appropriateness for team symbols *doubly* incomparable... we should bristle at the suggestion that their existence is on a par with the amusements that provide our escapes from life” (213)⁷
- Native American mascots “are wrong because they propagate false or misleading beliefs about others and contribute to disrespectful misrelationships” (287)⁸
- Unlike in the private sector, public school constituents cannot easily refuse to attend a district that supports an inaccurate stereotype
 - For example, a community member can very easily refuse to attend Atlanta Braves games if they object to the images. However, a student cannot easily refuse to attend school if he or she objects to the images used by the school. Schooling is mandatory and changing schools requires either changing districts or enrolling in private schooling, both of which are often prohibitively expensive and out of the student’s control
- Students who are members of a minority group often do not wish to have special attention drawn to them on the basis of a personal characteristic over which they have no control, such as ethnicity. Yet that is what the District is doing by using a Native American mascot. No other group of our community is spotlighted by our District in this or any other comparable way
- That there are relatively few Native people in the District does not reduce the importance of this issue. We ought to safeguard the interests of the few even though they are - indeed, precisely because they are, a minority

E. The Native American Guardian’s Association

In a letter dated September 6, 2018 and addressed to former District Superintendent Kelly Spivey and the Board of Education the Native American Guardian’s Association (NAGA) implored the District to retain its current names and images. The majority of the Branding Committee has serious concerns about this letter.

- The only source in the letter is an opinion poll (one poll is cited, three others are discussed without citation)
 - This poll has been criticized by Native American leaders⁹

⁷ Lindsay, P. (2008). Representing Redskins: The Ethics of Native American Team Names. *Journal of the Philosophy of Sport*, 35, 208 - 224.

⁸ Morris, S. P. (2015). The Trouble with Mascots. *Journal of the Philosophy of Sport*, 42 (2), 287 - 297.

⁹ National Public Radio. (2016, May 21). *Native American Leader Responds to Washington Post 'Redskins' Poll*. Retrieved November 7, 2018, from www.npr.org/2016/05/21/479001688/native-american-leader-responds-to-washington-post-redskins-poll

Keeler, J. (2016, May 25). *www.thenation.com*. Retrieved November 7, 2018, from On the Shameful and Skewed 'Redskins' Poll: The Washington Post did a grave disservice by utterly ignoring studies that clearly demonstrated the harm mascotting causes. <https://www.thenation.com/article/on-the-shameful-and-skewed-redskins-poll/>

- There are also opinion polls which show that more than two-thirds of Native Americans find the “Redskins” name racist and offensive¹⁰
- There is no peer-reviewed research cited
 - The letter concludes “we could fill hundreds of pages of citations... but truth and common sense should not require justification”¹¹
- The letter alleges a conspiracy among psychology researchers
 - “If you take the time to research the method and APA conclusions, you will be hard-pressed to find any “Peer Reviews” of these so-called studies on the damages caused by an Indian name or image simply because “Peer Reviewers” do not review clearly biased studies meant to arrive at predetermined conclusions”¹²
 - In response, we would like to re-state that there are 101 peer-reviewed publications in the APA Resolution alone, and
 - “Peer Reviewers” often review “biased studies meant to arrive at predetermined conclusions” but *very rarely* (and at risk of great embarrassment) do they publish them (they are almost always rejected; that is what peer-review is for)
 - “Public schools... are now focusing on creating division and hatred”¹³
 - There is no context, evidence, or examples provided to support this claim (other than calls to remove Native American mascots)

F. Potential legal and (therefore financial) liability:

The Committee is concerned that the continued use of a Native American mascot exposes the District to unnecessary legal liability.

- The Harvard Law Review Association recommended discontinuing the use of Native American mascots.¹⁴ The following passages are especially relevant:

This Note... proposes using the federal public accommodations law, Title II of the Civil Rights Act of 1964, to challenge... sports teams’ use of Indian nicknames and mascots. Title II guarantees all persons the right to the “full and equal enjoyment” of places of public accommodation without regard to race, color, religion, or national origin... although a sports team name is a form of... speech that receives limited protection under the First Amendment, this Note argues that prohibition under Title II would not infringe on the free speech rights of the sports teams involved

¹⁰ Fenelon, J. V. (2017). *Redskins? Sports, Mascots, Indian Nations and White Racism*. Routledge.

¹¹ Page 3 of the NAGA letter.

¹² Page 1 of the NAGA letter.

¹³ Page 2 of the NAGA letter.

¹⁴ The Harvard Law Review Association. (1999). A Public Accommodations Challenge to the Use of Indian Team Names and Mascots in Professional Sports. *Harvard Law Review*, 4, 904 - 921.

The fundamental purpose of remedial civil rights legislation is to alter the majority group's actions and notions of social propriety to conform to a legislatively prescribed code of conduct. With sufficient factual findings of a deterrent effect, Title II should succeed in prohibiting discriminatory Indian team names and mascots

In addition, many state public accommodation statutes include more expansive or explicit definitions of prohibited discriminatory practices, and many also include damages provisions. State public accommodations laws could therefore also be used to challenge team names and mascots, especially because provisions for damages provide a greater incentive to litigate under these statutes than under Title II (920 – 921)

- Legal cases on the matter have involved trademark law, Title VI, public accommodations law (Title II of the Civil Rights Act of 1964), free speech law (the First Amendment), and intentional infliction of emotional distress (IIED) challenges and these cases extend to public high schools in the United States
 - The Minority Report of this Committee has emphasized the June 19, 2017 ruling of the Supreme Court of the United States in *Matal v Tam*. This case involved trademark law and the 1st Amendment. The ruling is in favor an Asian American rock band's trademark on the name *The Slants*. The Court ruled (8-0) that the 1st Amendment permits the band to trademark-its potentially "disparaging" name. The Case is about a private, for-profit rock band not a public, non-profit school (e.g., Talawanda)¹⁵
- Eleven states have successfully passed legislation prohibiting Native American mascots (Moushegian, 2006)¹⁶
- We have several District residents who may have legal standing on this matter. There are at least eleven (11) Native American students in the District, according to our own data, some of whom have explicitly asked the District to desist this practice; the Board has known about this since 2012 at the latest¹⁷
- The existence of this *ad hoc* Committee and the recommendations of the majority opinion would seem to further expose the District to unnecessary legal liability. Should the District end up in litigation this Committee's majority opinion, which is a matter of public record, would likely count in favor of a prospective plaintiff or plaintiffs

¹⁵ https://www.supremecourt.gov/opinions/16pdf/15-1293_1o13.pdf

¹⁶ Moushegian, B. R. (2006). Native American Mascots' Last Stand - Legal Difficulties in Eliminating Public University Use of Native American Mascots. *Jeffrey S. Moorad Sports Law Journal* , 13 (2), 465 - 492.

¹⁷ Journal News. (2018, June 29). *Native American Group Wants Butler County School's Mascot Changed*. Retrieved October 31, 2018, from www.journal-news.com: <https://www.journal-news.com/news/native-american-group-wants-butler-county-school-mascot-changed/IF739qRLXnDWuR4fz2sr1L/>

- The existence of this *ad hoc* Committee is in part a response to a letter received by Superintendent Spivey and the Board (dated June 8, 2018) from a Staff Attorney (Matthew Campbell) of the Native American Rights Fund (NARF)
- The NARF letter is well-documented and consistent with our Report
- Failure to protect the District from this unnecessary legal liability may be an abdication of the Board's legal, and financial fiduciary responsibility
- Even a successful defense of the District through a potential legislative process would likely be a financial calamity given the costs of going to court. A potential loss would be even worse, by an order of magnitudes. Furthermore, given that there are several individuals in the District who may have legal standing it may be the case that the District is multiply exposed to this unnecessary legal liability and/or potentially exposed to class action, which could exponentially increase the District's legal and therefore financial vulnerability
- No member of this *ad hoc* Committee holds a Juris Doctorate but we have cited publications from relevant law journals that are the basis of our concern. We strongly urge the Board to consult with the District's legal council on this matter and to adopt a conservative approach to managing potential legal and therefore financial liability

G. Benchmarking other schools

- As of September 5, 2014 there are 1,958 American high schools with Native American mascots. More than 100 of them are "Braves."¹⁸
 - Many American colleges and universities are retiring Native American mascots¹⁹
 - Many American high schools are retiring Native American mascots²⁰
 - Benchmarking these cases must be done carefully. Because states have banned Native American mascots many schools are doing this under legal mandate and imposed timelines²¹
 - Our District is *currently* under no such pressure. The recommendations of the Committee can be phased out and in (respectively) as our rolling budgets allow
- Examples of other districts that are hastily working to meet these legal mandates (e.g., Reedsport, OR) would seem to be a cautionary tale; legal and financial prudence favors modifying our brand on our own volition and (financial) timeline rather than under (potential) legal mandate

¹⁸ Munguia, H. (2014, *The 2,128 Native American Mascots People Aren't Talking About*. Retrieved October 31, 2018, from FiveThirtyEight:

<https://fivethirtyeight.com/features/the-2128-native-american-mascots-people-arent-talking-about/>

¹⁹ Schwarb, A. W. (2016). *www.ncaa.org*. Retrieved November 7, 2018, from Where Pride Meets Prejudice: <http://www.ncaa.org/static/champion/where-pride-meets-prejudice/index.php>

²⁰ National Congress of American Indians. (2014).

²¹ Moushegian, B. R. (2006).

3. Costs

Financial cost should be calculated on a *differential* basis. That is, the question is not “how much would this cost?” but, rather, “how much *more* would this cost?” Our proposal is only to cease spending on “Braves” branded school resources

- We are NOT proposing the purchase of new field turf
- We are NOT proposing the purchase of new gym floors
- We are NOT proposing the purchase of new athletic uniforms
- We are NOT proposing ANY new spending
 - Suggestions to the contrary are bad-faith mischaracterizations of the collective efforts of this Committee
- We ARE proposing that when these items are replaced or updated that purchases at that time modify to “Brave” branding and exclude Native American imagery
- School levies are complex political negotiations; any suggestion that modifying the District’s brand would negatively affect the ability to pass a levy should be supported with evidence rather than speculation. It seems unlikely that voters would sabotage their own school District over the discontinued use of controversial images and the removal of the letter “S.” A slippery-slope argument is not persuasive on this matter. The burden of proof is to give *good reason* to expect a threat to future levies
- As is noted in the other report from this Committee, “Talawanda High School’s Mascot and branding has changed over time (4 times)” and in none of those four cases has a financial catastrophe or failed levy followed as a result²²

4. Benefits

- Adapting to “Talawanda Brave” retains many of the values and traditions of our District’s members. Community members have repeatedly expressed the view that the District’s brand represents virtues like bravery, courage, honor, and fierceness. All of these virtues and connotations can be retained without the continued use of Native American imagery
- A compromise (i.e., adapting to “Brave”) is a win-win, as those in the community who hold certain Talawanda traditions in high esteem can keep those traditions (for example, punctuating the National Anthem with the word BRAVE!) while simultaneously retiring the use of the language and imagery that is the source of controversy
 - As an added bonus, the Anthem tradition would actually be truer to The Star-Spangled Banner, which ends with the word “brave,” not “braves”
- Rebranding reduces the likelihood (perhaps eliminates the likelihood) of this recurrent and difficult issue that has been divisive in our community
- Rebranding can be done in a financially responsible way (for the fifth time) while simultaneously eliminating several sources of potential and unnecessary legal and therefore financial liability for the District

²² This quote comes from page-3 of the Minority Report that was shared with the Committee on October 29th, 2018.