

## 2009 – 2010 LEGISLATURE

## 2009 ASSEMBLY BILL 35

AN ACT to create 118.134 of the statutes; relating to: the use of race-based nicknames, logos, mascots, and team names by school boards, providing an exemption from emergency rule procedures, requiring the exercise of rule-making authority, and providing a penalty.

**The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:**

**SECTION 1.** 118.134 of the statutes is created to read:

**118.134 Race-based nicknames, logos, mascots, and team names. (1)** Notwithstanding s. 118.13, a school district resident may object to the use of a race-based nickname, logo, mascot, or team name by the school board of that school district by filing a complaint with the state superintendent. If the complainant objects to the use of a nickname or team name by the school board, the state superintendent shall immediately review the complaint and determine whether the use of the nickname or team name by the school board, alone or in connection with a logo or mascot, is ambiguous as to whether it is race-based. The superintendent shall do all of the following: (a) Notify the school board of the receipt of the complaint of the state superintendent's determination, if any regarding whether the use of the nickname or team name is ambiguous as to whether it is race-based, direct the school board to submit, if applicable, any of the information under sub. (1m) (a) and, except provided in sub. (1m), (b) Schedule a contested case hearing within 45 days after the complaint is filed.

**(1m)** (a) The state superintendent may determine that no contested case hearing is necessary or that a hearing date may be postponed for the purpose of obtaining additional information from the school board if, no later than 10 days after being notified of the receipt of the complaint, the school board submits evidence to the state superintendent that demonstrates all of the following:

1. The nickname, logo, mascot, or team name that is used by the school board and that is the basis of the complaint is a reference to or depiction or portrayal of or the name of a specific, federally recognized, American Indian tribe.

2. The federally recognized American Indian tribe under subd. 1. has granted approval to the school board to refer to or depict or portray the tribe in a nickname, logo, or mascot or to use the name of the tribe as a team name in the specific manner used by the school board and has not rescinded that approval.

3. The use of the nickname, logo, mascot, or team name that has been approved by the tribe as provided in subd. 2. is the use to which the school district resident objects in the complaint filed under sub. (1).

(b) If the state superintendent does any of the following, the state superintendent shall notify the school district resident who filed the complaint under sub. (1) and the school board of his or her decision in writing:

1. Determines that a contested case hearing is not necessary. A decision under this subdivision is subject to judicial review under ch. 227.

2. Postpones a hearing date as provided in par. (a).

**(2)** (a) Except as provided in par. (b), at the hearing, the school board has the burden of proving by clear and convincing evidence that the use of the race-based nickname, logo, mascot, or team name does not promote discrimination, pupil harassment, or stereotyping, as defined by the state superintendent by rule.

(b) 1. Except as provided in subd. 2., if the state superintendent determined under sub. (1) that the use of a nickname or team name by a school board is ambiguous as to whether it is race-based, the use of the nickname or team name by the school board shall be presumed to be not race-based and at the hearing the school district resident who filed the complaint under sub. (1) has the burden of proving by clear and convincing evidence that the use of the nickname or team name by the school board promotes discrimination, pupil harassment, or stereotyping, as defined by the state superintendent by rule.

2. If the state superintendent determined under sub. (1) that the use of a nickname or team name by a school board is ambiguous as to whether it is race-based but that the use of the nickname or team name in connection with a logo or mascot is race-based, at the hearing the school board has the burden of proving by clear and convincing evidence that the use of the nickname or team name in connection with the logo or mascot does not promote discrimination, pupil harassment, or stereotyping, as defined by the state superintendent by rule.

(3) (a) The state superintendent shall issue a decision and order within 45 days after the hearing. If the state superintendent finds that the use of the race-based nickname, logo, mascot, or team name does not promote discrimination, pupil harassment, or stereotyping, the state superintendent shall dismiss the complaint. Except as provided in par. (b), if the state superintendent finds that the use of the race-based nickname, logo, mascot, or team name promotes discrimination, pupil harassment, or stereotyping, the state superintendent shall order the school board to terminate its use of the race-based nickname, logo, mascot, or team name within 12 months after issuance of the order.

(b) 1. In this paragraph, “extenuating circumstances” includes circumstances in which the costs of compliance with an order issued under par. (a) pose an undue financial burden on the school district and circumstances in which the work or the requirements for bidding a contract to complete the work required to bring the school district into compliance with the order issued under par. (a) cannot be completed within 12 months after the issuance of the order.

2. If, at the hearing under sub. (2) or after a decision and order have been issued under par. (a), the school board presents evidence to the state superintendent that extenuating circumstances render full compliance with the decision and order within 12 months after the issuance of that decision and order impossible or impracticable, the state superintendent may issue an order to extend the time within which the school board must terminate its use of the race-based nickname, logo, mascot, or team name. The extension authorized under this subdivision shall not exceed 24 months and shall apply only to those portions of the decision and order to which extenuating circumstances apply.

(c) Decisions of the state superintendent under this subsection are subject to judicial review under ch. 227.

(4) The state superintendent shall promulgate rules necessary to implement and administer this section.

(5) Any school board that uses a race-based nickname, logo, mascot, or team name in violation of sub. (3) shall forfeit not less than \$100 nor more than \$1,000. Each day of use of the race-based nickname, logo, mascot, or team name in violation of sub. (3) constitutes a separate violation.

## **SECTION 2.0 Nonstatutory provisions.**

(1) The department of public instruction shall submit in proposed form the rules required under section 118.134 (4) of the statutes, as created by this act, to the legislative council staff under section 227.15 (1) of the statutes no later than the first day of the 6th month beginning after the effective date of this subsection.

(2) Using the procedure under section 227.24 of the statutes, the department of public instruction may promulgate rules required under section 118.134 (4) of the statutes, as created by this act, for the period before the effective date of the rules submitted under subsection (1), but not to

exceed the period authorized under section 227.24 (1) (c) and (2) of the statutes. Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the department is not required to provide evidence that promulgating a rule under this subsection as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this subsection.