



WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

2013 Wisconsin Act 115
[2013 Assembly Bill 297]

**Race-Based Nicknames, Logos,
Mascots, and Team Names**

2013 Wisconsin Act 115 relates to procedures for challenging race-based nicknames, logos, mascots, and team names.

PRIOR LAW

Generally, under prior law, any school district resident could object to the use of a race-based nickname, logo, mascot, or team name by a school board in that school district by filing a complaint with the State Superintendent of Public Instruction. The Department of Public Instruction (DPI) was required to review such complaints and take certain actions.

In general, DPI was required to schedule a contested case hearing within 45 days after a complaint was filed. However, DPI could determine that a hearing was not necessary based on evidence submitted by the school board that demonstrated that the nickname, logo, mascot, or team name at issue in the complaint depicted, portrayed, or used the name of a specific, federally recognized American Indian tribe, and that specific tribe had granted approval of such use to the school board and had not rescinded that approval.

At a hearing to review a complaint regarding a race-based nickname, logo, mascot, or team name, a school board generally had 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 DPI by rule. Following a hearing, DPI was generally required to issue a decision and order. If it found that the use of the race-based nickname, logo, mascot, or team name promoted discrimination, pupil harassment, or stereotyping, prior law required DPI to order the school board to terminate its use of the race-based nickname, logo, mascot, or team name within 12 months after the issuance of the order. However, DPI was authorized to grant extensions for compliance in certain circumstances.

This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents at the Legislature's Web site at: <http://www.legis.wisconsin.gov>.

2013 WISCONSIN ACT 115

2013 Wisconsin Act 115 retains a procedure whereby a school district resident may object to the use of a race-based nickname, logo, mascot, or team name by a school board. The Act modifies the prior law framework for objecting to race-based nicknames, logos, mascots, and team names as described below.

Requirement to Collect Signatures

Prior law did not require a person submitting an objection to a race-based nickname, logo, mascot, or team name to collect signatures prior to submitting a complaint to DPI.

The Act requires such a complaint to include a number of electors' signatures that is equal to at least 10% of the school district's membership, defined to mean the sum of enrolled pupils in the school district. In addition, the Act requires that a signature is valid only if it was obtained within the 120-day period before the complaint is filed.

No Hearing Necessary if an Agreement Exists With an American Indian Tribe with Historical Ties to the State

Prior law authorized DPI to determine that no hearing on a complaint against a school board was necessary if the school board submits certain evidence within 10 days following the date when the school board is notified of the complaint. Specifically, the school board was required to demonstrate that the nickname, logo, mascot, or team name at issue in the complaint depicted, portrayed, or used the name of a specific, federally recognized American Indian tribe, and that specific tribe had granted approval of the use to the school board and has not rescinded that approval. Alternatively, following the receipt of that evidence, DPI was authorized to postpone a hearing for the purpose of obtaining additional information.

Under *the Act*, DPI may determine that a hearing is not necessary based on evidence that a school board has entered into an agreement with any federally recognized American Indian tribe with historical ties to Wisconsin. The agreement must grant approval to the school board to refer to, depict, portray, or use the name of either the tribe or of American Indians, in general. The Act does not authorize DPI to postpone a hearing for the purpose of obtaining additional information following the receipt of such evidence.

Hearings to be Conducted by the Division of Hearings and Appeals

Under *prior law*, hearings to review complaints regarding race-based nicknames, logos, mascots, and team names were generally conducted by DPI.

The Act requires DPI to refer such complaints to the Division of Hearings and Appeals within the Department of Administration (DOA). Under the Act, the Division of Hearings and Appeals must conduct hearings on complaints and issue decisions and orders following hearings. The Division of Hearings and Appeals is also the entity responsible for determining whether an extension is needed for compliance with an order.

In addition, the Act authorizes the Division of Hearings and Appeals to set fees to be charged for any services rendered to DPI under the Act. The Act requires such fees to cover the total cost of the services provided by the Division of Hearings and Appeals, less any costs covered by the state

appropriation for the division's general program operations. The Act requires DPI to pay all costs of the services of a Division of Hearings and Appeals hearing examiner, including support services, according to the fees set by the division.

Timeline of "Reasonable Promptness" for Scheduling a Hearing

Prior law generally required DPI to schedule a hearing within 45 days after a complaint objecting to a race-based nickname, logo, mascot, or team name was submitted.

The Act removes the 45-day timeline for scheduling a hearing to review such a complaint. Instead, under the Act, the Division of Hearings and Appeals must schedule a hearing with "reasonable promptness."

Burden to Prove Discrimination, Harassment, or Stereotyping Shifted to Complainant

Under *prior law*, a school board generally had the burden to prove in a hearing, by clear and convincing evidence, that the race-based nickname, logo, mascot, or team name did not promote discrimination, pupil harassment, or stereotyping.

Under *the Act*, the person who filed a complaint generally has the burden to prove that the race-based nickname, logo, mascot, or team name promotes discrimination, pupil harassment, or stereotyping.

Limitation on DPI Rule-Making

Prior law required DPI to define discrimination, pupil harassment, and stereotyping for purposes of complaint procedures regarding race-based nicknames, logos, mascots, and team names.

The Act retains that requirement but prohibits DPI from promulgating a rule that creates a presumption that a nickname, logo, mascot, or team name is race-based or promotes discrimination, pupil harassment, or stereotyping.

Venue for Judicial Review

Prior law provided that decisions of DPI regarding race-based nicknames, logos, mascots, and team names were subject to judicial review.

The Act likewise provides for the opportunity for judicial review of a decision of the Division for Hearings and Appeals. However, the Act specifies that the venue for judicial review following a hearing is the circuit court in any county in which territory of the affected school district is located.

Prohibition on Membership in Certain Interscholastic Athletic Associations

Prior law did not prohibit school districts from becoming members of certain athletic associations.

The Act prohibits a school district from being a member of an interscholastic athletic association that prohibits the use of a nickname, logo, mascot, or team name on the basis that the nickname, logo, mascot, or team name is race-based, unless the use violates an order issued following a hearing authorized under the Act.

Existing Orders Unenforceable

Finally, *the Act* prohibits the enforcement of orders that were issued pursuant to a hearing regarding a complaint objecting to a race-based nickname, logo, mascot, or team name under prior law.

Effective date: The Act will take effect on December 21, 2013.

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