

2009 DRAFTING REQUEST

Assembly Substitute Amendment (ASA-AB35)

Received: 05/20/2009

Received By: tkuczens

Wanted: As time permits

Identical to LRB:

For: James Soletski (608) 266-0485

By/Representing: Dan Young

This file may be shown to any legislator: NO

Drafter: tkuczens

May Contact:

Addl. Drafters:

Subject: Education - school boards
Education - miscellaneous

Extra Copies: PG

Submit via email: YES

Requester's email: Rep.Soletski@legis.wisconsin.gov

Carbon copy (CC:) to: tracy.kuczenski@legis.wisconsin.gov

Pre Topic:

No specific pre topic given

Topic:

Use of race-based team names and logos by school boards

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?							
/P1	tkuczens 05/26/2009	jdyer 05/27/2009	phenry 05/27/2009	_____	cduerst 05/27/2009		
	tkuczens 06/17/2009	jdyer 06/17/2009		_____			
/1			mduchek 06/17/2009	_____	mbarman 06/17/2009	mbarman 06/17/2009	

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/P1	tkuczens 05/26/2009	jdyer 05/27/2009	phenry 05/27/2009		cduerst 05/27/2009		

FE Sent For:

<END>

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/?	tkuczens	PI S 27jld		M PH 5/27			

FE Sent For:

<END>

Kuczenski, Tracy

From: Young, Dan
Sent: Monday, May 18, 2009 10:16 AM
To: Kuczenski, Tracy
Subject: RE: Request for amendment to AB 35

Later this week should be fine.

Thanks.

Dan

Daniel A. Young
Office of Representative Jim Soletski
(608) 266-0485
1-888-534-0088

From: Kuczenski, Tracy
Sent: Monday, May 18, 2009 10:12 AM
To: Young, Dan
Subject: RE: Request for amendment to AB 35

Thanks, Dan. I think, given that AA1 to AB 35 is so extensive, that it would make more sense to do a substitute amendment to fold in the two amendments.

What is your timeline on this? I am pretty busy with budget amendments -- It will be difficult for me to get to this until later in the week. Is that okay?

Tracy

Tracy K. Kuczenski
Legislative Attorney
Wisconsin Legislative Reference Bureau
(608) 266-9867
Tracy.Kuczenski@legis.wisconsin.gov

From: Young, Dan
Sent: Monday, May 18, 2009 9:52 AM
To: Kuczenski, Tracy
Subject: Request for amendment to AB 35

Tracy:

Representative Soletski would like an amendment to Assembly Bill 35 to do two things:

1. Amend it so that "names" is changed to "team names"
2. Require that the DPI submit its administrative rules implementing the bill to the Legislative Council with 6 months of the enactment.

I'm thinking that the requested amendment might best be in the form of a substitute amendment (any thoughts?) in which case it should also incorporate AA1 to AB 35.

The bill is currently in the Rules Committee.

Thank you.

Dan



LPS-check
auto refs please

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION
ASSEMBLY SUBSTITUTE AMENDMENT,
TO 2009 ASSEMBLY BILL 35**

5/26/09

Gen

Insert Analysis

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

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

Inserts
- 1-5 A
+ 1-5 B

5 SECTION 1. Nonstatutory provisions.
6 (1) The department of public instruction shall submit in proposed form the
7 rules required under section 118.134 (4) of the statutes, as created by this act, to the
8 legislative council staff under section 227.15 (1) of the statutes no later than the first
9 day of the 6th month beginning after the effective date of this subsection.
10 (2) Using the procedure under section 227.24 of the statutes, the department
11 of public instruction may promulgate rules required under section 118.134 (4) of the

1 statutes, as created by this act, for the period before the effective date of the rules
2 submitted under subsection (1), but not to exceed the period authorized under section
3 227.24 (1) (c) and (2) of the statutes. Notwithstanding section 227.24 (1) (a), (2) (b),
4 and (3) of the statutes, the department is not required to provide evidence that
5 promulgating a rule under this subsection as an emergency rule is necessary for the
6 preservation of the public peace, health, safety, or welfare and is not required to
7 provide a finding of emergency for a rule promulgated under this subsection.

8 (END)

insert

2009 ASSEMBLY BILL 35

February 12, 2009 - Introduced by Representatives SOLETSKI, POPE-ROBERTS, MURSAU, YOUNG, BENEDICT, BERCEAU, BLACK, COLON, CULLEN, FIELDS, GRIGSBY, HILGENBERG, KESSLER, MASON, MILROY, MOLEPSKE JR., NELSON, PARISI, PASCH, POCAN, RADCLIFFE, SCHNEIDER, SHERIDAN, SHERMAN, SHILLING, SINICKI, SMITH, STEINBRINK, TURNER, VAN AKKEREN and A. WILLIAMS, cosponsored by Senators COGGS, HANSEN, CARPENTER, TAYLOR, RISSER and HOLPERIN. Referred to Committee on Education.

1 AN ACT *to create* 118.134 of the statutes; **relating to:** the use of race-based
2 ^{team} names, ^{team} nicknames, ^{team} logos, and ^{team} mascots by school boards, requiring the exercise
3 of rule-making authority, and providing a penalty.

Begin
Insert Analysis

Analysis by the Legislative Reference Bureau

Current law prohibits discrimination against pupils on a number of grounds, ^{or team name} including race and ancestry. This ^{substitute amendment} bill provides that a school district resident may ^{or team name} object to a school board's use of a race-based name, nickname, logo, or mascot by filing a complaint with the state superintendent of public instruction. The state superintendent must schedule a hearing on the complaint, at which the school board has the burden of proving by clear and convincing evidence that the use of the race-based name nickname, logo, or mascot ^{or team name} does not promote discrimination, pupil harassment, or stereotyping. If the state superintendent finds in favor of the complainant, the state superintendent must order the school board to terminate its use of the race-based name, nickname, logo, or mascot ^{or team name} within 12 months after issuance of the order. A school board is subject to a forfeiture of not less than \$100 ^{or team name} nor more than \$1,000 for each day that it uses the race-based name, nickname, logo, or mascot in violation of the order. The decision of the state superintendent is subject to circuit court review. ^(State Superintendent)

^{or team name}

ASSEMBLY BILL 35

INSERT ANALYSIS CONT

For further information see the state and local fiscal estimate, which will be printed as an appendix to this bill. ~~Substitute amendment~~

INSERT
End Analysis

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

Begin Insert
1-5A

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

118.134 Race-based names, nicknames, logos, and mascots (1)

Notwithstanding s. 118.13, a school district resident may object to the use of a race-based name, nickname, logo, or mascot by the school board of that school district by filing a complaint with the state superintendent. The state superintendent shall notify the school board of the receipt of the complaint and schedule a contested case hearing within 45 days after the complaint is filed.

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

(3) 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 name, nickname, logo, or mascot does not promote discrimination, pupil harassment, or stereotyping, the state superintendent shall dismiss the complaint. If the state superintendent finds that the use of the race-based name, nickname, logo, or mascot promotes discrimination, pupil harassment, or stereotyping, the state superintendent shall order the school board to terminate its use of the race-based name, nickname, logo, or mascot within 12 months after issuance of the order.

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

Insert 2-20
CWS/MS/5B

INS
1-5B



INSERT
1-5 B
CONT

ASSEMBLY BILL 35

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

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

5 day of use of the race-based name, nickname, logo, or mascot in violation of sub. (3)
6 constitutes a separate violation.

or team name

End
Insert
1-5 B

7

(END)



State of Wisconsin
2009 - 2010 LEGISLATURE

LRBa0126/1
TKK:nwn:jf

**ASSEMBLY AMENDMENT 1,
TO 2009 ASSEMBLY BILL 35**

March 20, 2009 - Offered by Representative SOLETSKI.

- 1 At the locations indicated, amend the bill as follows:
- 2 **1.** Page 2, line 12: after "(3)" insert "(a)".
- 3 **2.** Page 2, line 15: delete "If" and substitute "Except as provided in par. (b), if".
- 4 **3.** Page 2, line 19: after that line insert:

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

11 2. If, at the hearing under sub. (2) or after a decision and order have been issued
 12 under par. (a), the school board presents evidence to the state superintendent that
 13 extenuating circumstances render full compliance with the decision and order

Begin
Insert
2-20
(to
Insert
1-5B)



INSERT 2-20
(to INS 1-5B)
CONT

LRBa0126/1
TKK:nwn:jf

1 within 12 months[✓] after the issuance of that decision and order impossible or
 2 impracticable, the state superintendent may issue an order to extend the time within
 3 which the school board must terminate its use of the[✓] race-based name nickname,
 4 logo, ~~or mascot~~[✓] [✓] ^{or team name}. The extension authorized under this subdivision[✓] shall not exceed 24
 5 months[✓] and shall apply only to those portions of the decision and order to which
 6 extenuating circumstances apply.[✓]

End
Insert
to
2-20
Insert 8
(1-5B)

7

(c) ^{re} ~~NO~~

(END)
^{re}



State of Wisconsin
2009 - 2010 LEGISLATURE

LRBs0068/PT

TKK:jld:ph

RWHZ

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

ASSEMBLY SUBSTITUTE AMENDMENT ,

TO 2009 ASSEMBLY BILL 35

6/17/09
No changes
soon (by 6/22) DUE

✓

Regen

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

Analysis by the Legislative Reference Bureau

Current law prohibits discrimination against pupils on a number of grounds, including race and ancestry. This substitute amendment provides that a school district resident may object to a school board's use of a race-based nickname, logo, mascot, or team name by filing a complaint with the state superintendent of public instruction (state superintendent). The state superintendent must schedule a hearing on the complaint, at which 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. If the state superintendent finds in favor of the complainant, the state superintendent must 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. A school board is subject to a forfeiture of not less than \$100 nor more than \$1,000

for each day that it uses the race-based nickname, logo, mascot, or team name in violation of the order. The decision of the state superintendent is subject to circuit court review.

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

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

2 **118.134 Race-based nicknames, logos, mascots, and team names. (1)**

3 Notwithstanding s. 118.13, a school district resident may object to the use of a
4 race-based nickname, logo, mascot, or team name by the school board of that school
5 district by filing a complaint with the state superintendent. The state
6 superintendent shall notify the school board of the receipt of the complaint and
7 schedule a contested case hearing within 45 days after the complaint is filed.

8 **(2)** At the hearing, the school board has the burden of proving by clear and
9 convincing evidence that the use of the race-based nickname, logo, mascot, or team
10 name does not promote discrimination, pupil harassment, or stereotyping, as
11 defined by the state superintendent by rule.

12 **(3)** (a) The state superintendent shall issue a decision and order within 45 days
13 after the hearing. If the state superintendent finds that the use of the race-based
14 nickname, logo, mascot, or team name does not promote discrimination, pupil
15 harassment, or stereotyping, the state superintendent shall dismiss the complaint.
16 Except as provided in par. (b), if the state superintendent finds that the use of the
17 race-based nickname, logo, mascot, or team name promotes discrimination, pupil
18 harassment, or stereotyping, the state superintendent shall order the school board
19 to terminate its use of the race-based nickname, logo, mascot, or team name within
20 12 months after issuance of the order.

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

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

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

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

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

24 **SECTION 2. Nonstatutory provisions.**

