



## WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

**2009 Wisconsin Act 250**  
[2009 Senate Bill 25]

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

*2009 Wisconsin Act 250* establishes a new procedure for challenging a school board's use of a race-based nickname, logo, mascot, or team name.

### **Complaint**

Under the Act, a school district resident may object to the use of a race-based nickname, logo, mascot, or team name by a school board of that school district by filing a complaint with the State Superintendent of Public Instruction. A pupil attending a public school in a nonresident district under the Open Enrollment Program may not file a complaint in which the pupil objects to the use of a race-based nickname, logo, mascot, or team name by the school board of the nonresident school district, however.

### **Determination by State Superintendent**

If the complainant objects to the use of a *nickname or team name*, the State Superintendent must immediately review the complaint and determine whether the use of the nickname or team name by the school board, alone or in conjunction with a logo or mascot, is ambiguous as to whether it is race-based. The State Superintendent must do all of the following:

- Notify the school board of the receipt of the complaint and of the State Superintendent's determination regarding whether the use of the nickname or team name is ambiguous as to whether it is race-based and direct the school board to submit any applicable information, as described below.
- Except as described below, schedule a contested case hearing within 45 days after the complaint is filed.

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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.state.wi.us/>.

The State Superintendent may determine that a contested case hearing is *not* 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:

- 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, depiction or portrayal of, or the name of a specific federally recognized American Indian tribe.
- The federally recognized American Indian tribe has granted approval to the school board to refer to, 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 the approval.
- The use of the nickname, logo, mascot, or team name that has been approved by the tribe is the use to which the school district resident objects in his or her complaint.

Under the Act, if the State Superintendent determines that a contested case hearing is not necessary or postpones the hearing date, he or she must notify the school district resident who filed the complaint and the school board of his or her decision in writing.

### **Burden of Proof**

At the hearing, the school board generally 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 stereotyping, as defined by the State Superintendent by rule.

However, if the State Superintendent has determined that the use of a nickname or a 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 must be presumed to be not race-based and, at the hearing, the school district resident 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.

If the State Superintendent has determined that the use of a nickname or a 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.

### **Decision and Order**

The State Superintendent must 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 must dismiss the complaint. 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 must 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.

**Extensions for Compliance**

If, at the hearing or after a decision and order to terminate the use of a race-based nickname, logo, mascot, or team name, 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. In general, the extension may not exceed 24 months and must apply only to those portions of the decision and order to which extenuating circumstances apply. The Act defines “extenuating circumstances” to include circumstances in which the costs of compliance with an order 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 cannot be completed within 12 months after the order is issued.

The State Superintendent may further extend the time granted to a school board to terminate its use of the race-based nickname, logo, mascot, or team name if the school board presents evidence to the State Superintendent that compliance with a portion of the decision and order issued may be accomplished through a regularly scheduled maintenance program and that the cost of compliance with that portion of the decision and order exceeds \$5,000. The extension granted under this provision may not exceed 96 months and applies only to that portion of the decision and order with which compliance will be accomplished through the regularly scheduled maintenance program and that costs more than \$5,000.

Decisions of the State Superintendent relating to race-based nicknames, logos, mascots, or team names are subject to judicial appeal under ch. 227, Stats.

**Penalty for Failure to Comply with Order**

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

**Rule-Making**

The Act requires the State Superintendent to promulgate rules necessary to implement the provisions created by the Act. The State Superintendent must submit its proposed rules to the Legislative Council no later than November 1, 2010. The Department of Public Instruction is authorized under the Act to promulgate emergency rules to implement the provisions of the Act. The emergency rules would remain in effect until the permanent rules take effect.

***Effective date:*** Act 250 takes effect on May 20, 2010.

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May 14, 2010

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