



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2009 Assembly Bill 35

**Assembly Substitute
Amendment 1 and Assembly
Amendments 1, 2, and 3 to the
Substitute Amendment**

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2009 Assembly Bill 35 provides that a school district resident may object to the use of a race-based name, nickname, logo, or mascot by the school board of that district by filing a complaint with the State Superintendent.

Under the bill, the State Superintendent must notify the school board that the complaint has been filed and schedule a contested case hearing within 45 days after the complaint is filed. 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.

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 name, nickname, logo, or mascot promotes discrimination, pupil harassment, or stereotyping, the State Superintendent must order the school board to terminate its use of the race-based name, nickname, logo, or mascot within 12 months after the issuance of the order.

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

Assembly Substitute Amendment 1 makes the following changes to the bill:

- The substitute amendment permits objection to a race-based team name instead of a race-based name used by a school district. Therefore, under the substitute amendment, a school district resident may object to the use of a race-based nickname, logo, mascot, or team name.

- The substitute amendment adds a provision under which the State Superintendent may issue an order to extend the time within which a school board must terminate the use of a race-based nickname, logo, mascot, or team name if, at the hearing or after a decision and order to terminate use of a race-based nickname, logo, mascot, or team name has been issued, the school board presents evidence to the State Superintendent that extenuating circumstances exist that make it impossible or impracticable to fully comply with the order within 12 months. The extension may not exceed 24 months and may apply only to those portions of the order to which extenuating circumstances apply. Under the amendment, “extenuating circumstances” 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 cannot be completed within 12 months.
- The substitute amendment requires the Department of Public Instruction (DPI) to submit proposed rules to implement and administer the provisions created in the bill to the Legislative Council staff no later than the first day of the 6th month beginning after the effective date of the bill. In the meantime, DPI may promulgate emergency rules without providing evidence that an emergency rule is necessary.

Assembly Amendment 1 to the substitute amendment provides that a pupil attending a public school in a nonresident school district through open enrollment 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.

Under *Assembly Amendment 2 to the substitute amendment*, the State Superintendent may determine that no contested case hearing is necessary under the bill 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 or 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 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.
- 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 the complaint.

The State Superintendent must notify the school district resident who filed the complaint and the school board in writing if he or she determines that a contested case hearing is not necessary or postpones the hearing date. A determination that a contested case hearing is not necessary is subject to judicial review under ch. 227, Stats.

Assembly Amendment 3 to the substitute amendment provides that, if a complaint objects to the use of a nickname or team name by a school board, 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 connection with a logo or mascot, is ambiguous as to whether it is race-based.

If the State Superintendent determines that the use of the 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 is presumed to be not race-based and at the hearing the school district resident who filed the complaint has the burden of proving by clear and convincing evidence that the use of the nickname or team name promotes discrimination, pupil harassment, or stereotyping, as defined by the State Superintendent by rule.

If the State Superintendent determines that the use of the 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.

Legislative History

Representative Soletski offered Assembly Substitute Amendment 1 on June 18, 2009. Representative Vruwink offered Assembly Amendments 1 and 2 to Assembly Substitute Amendment 1 on February 23, 2010. Representatives Staskunas, Hraychuk, Vruwink, Hilgenberg, Garthwaite, and Clark offered Assembly Amendment 3 to Assembly Substitute Amendment 1 on February 23, 2010.

On February 23, 2010, the Assembly adopted Assembly Amendment 1 to Assembly Substitute Amendment 1 on a vote of Ayes, 53; Noes, 42; adopted Assembly Amendment 2 to Assembly Substitute Amendment 1 on a vote of Ayes, 51; Noes, 44; adopted Assembly Amendment 3 to Assembly Substitute Amendment 1 on a voice vote; and adopted Assembly Substitute Amendment 1 on a voice vote.

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