



**SENATE SUBSTITUTE AMENDMENT 3,
TO 2009 SENATE BILL 25**

April 7, 2010 – Offered by COMMITTEE ON EDUCATION.

1 **AN ACT** *to amend* 118.51 (13); and *to create* 118.134 of the statutes; **relating**
2 **to:** the use of race-based nicknames, logos, mascots, and team names by school
3 boards, providing an exemption from emergency rule procedures, requiring the
4 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:

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

6 **118.134 Race-based nicknames, logos, mascots, and team names. (1)**
7 Notwithstanding s. 118.13 and except as provided in sub. (3m), a school district
8 resident may object to the use of a race-based nickname, logo, mascot, or team name
9 by the school board of that school district by filing a complaint with the state
10 superintendent. If the complainant objects to the use of a nickname or team name
11 by the school board, the state superintendent shall immediately review the

1 complaint and determine whether the use of the nickname or team name by the
2 school board, alone or in connection with a logo or mascot, is ambiguous as to whether
3 it is race-based. The state superintendent shall do all of the following:

4 (a) Notify the school board of the receipt of the complaint and of the state
5 superintendent's determination regarding whether the use of the nickname or team
6 name is ambiguous as to whether it is race-based and direct the school board to
7 submit, if applicable, any of the information under sub. (1m) (a).

8 (b) Except as provided in sub. (1m), schedule a contested case hearing within
9 45 days after the complaint is filed.

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

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

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

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

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

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

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

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

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

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

1 **(3)** (a) The state superintendent shall issue a decision and order within 45 days
2 after the hearing. If the state superintendent finds that the use of the race-based
3 nickname, logo, mascot, or team name does not promote discrimination, pupil
4 harassment, or stereotyping, the state superintendent shall dismiss the complaint.
5 Except as provided in par. (b), if the state superintendent finds that the use of the
6 race-based nickname, logo, mascot, or team name promotes discrimination, pupil
7 harassment, or stereotyping, the state superintendent shall order the school board
8 to terminate its use of the race-based nickname, logo, mascot, or team name within
9 12 months after issuance of the order.

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

16 2. a. If, at the hearing under sub. (2) or after a decision and order have been
17 issued under par. (a), the school board presents evidence to the state superintendent
18 that extenuating circumstances render full compliance with the decision and order
19 within 12 months after the issuance of that decision and order impossible or
20 impracticable, the state superintendent may issue an order to extend the time within
21 which the school board must terminate its use of the race-based nickname, logo,
22 mascot, or team name. Except as provided in subd. 2. b., the extension may not
23 exceed 24 months and shall apply only to those portions of the decision and order to
24 which extenuating circumstances apply.

1 b. The state superintendent may extend the time granted to a school board
2 under subd. 2. a. if the school board presents evidence to the state superintendent
3 that compliance with a portion of the decision and order issued under par. (a) may
4 be accomplished through a regularly scheduled maintenance program and that the
5 cost of compliance with that portion of the decision and order exceeds \$5,000. The
6 extension granted under this subd. 2. b. may not exceed 96 months and applies only
7 to that portion of the decision and order with which compliance will be accomplished
8 through the regularly scheduled maintenance program and that costs more than
9 \$5,000.

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

12 **(3m)** A pupil attending a public school in a nonresident school district under
13 s. 118.51 may not file a complaint under sub. (1) in which the pupil objects to the use
14 of a race-based nickname, logo, mascot, or team name by the school board of the
15 nonresident school district.

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

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

22 **SECTION 2.** 118.51 (13) of the statutes is amended to read:

23 118.51 **(13)** RIGHTS AND PRIVILEGES OF NONRESIDENT PUPILS. ~~A~~ Except as
24 provided in s. 118.134 (3m), a pupil attending a public school in a nonresident school
25 district under this section has all of the rights and privileges of pupils residing in that

1 school district and is subject to the same rules and regulations as pupils residing in
2 that school district.

3 **SECTION 3. Nonstatutory provisions.**

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

8 (2) Using the procedure under section 227.24 of the statutes, the department
9 of public instruction may promulgate rules required under section 118.134 (4) of the
10 statutes, as created by this act, for the period before the effective date of the rules
11 submitted under subsection (1), but not to exceed the period authorized under section
12 227.24 (1) (c) and (2) of the statutes. Notwithstanding section 227.24 (1) (a), (2) (b),
13 and (3) of the statutes, the department is not required to provide evidence that
14 promulgating a rule under this subsection as an emergency rule is necessary for the
15 preservation of the public peace, health, safety, or welfare and is not required to
16 provide a finding of emergency for a rule promulgated under this subsection.

17 (END)