

# State of Wisconsin



2013 Assembly Bill 297

Date of enactment: **December 19, 2013**  
Date of publication\*: **December 20, 2013**

## 2013 WISCONSIN ACT 115

AN ACT *to repeal* 118.134 (1m) (a) 1., 118.134 (1m) (b) 2. and 118.134 (2) (b); *to renumber and amend* 118.134 (2) (a) and 118.134 (4); *to consolidate, renumber and amend* 118.134 (1m) (b) (intro.) and 1.; *to amend* 20.505 (4) (kp), 118.134 (1) (intro.), 118.134 (1) (a), 118.134 (1) (b), 118.134 (1m) (a) (intro.), 118.134 (1m) (a) 2., 118.134 (1m) (a) 3., 118.134 (3) (a), 118.134 (3) (b) 2., 118.134 (3) (c), 118.134 (3) (d) and 118.134 (5); and *to create* 118.134 (3r), 118.134 (4) (b), 227.43 (1) (bd), 227.43 (3) (br) and 227.43 (4) (br) of the statutes; **relating to:** race-based nicknames, logos, mascots, and team names and making an appropriation.

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

**SECTION 1.** 20.505 (4) (kp) of the statutes is amended to read:

20.505 (4) (kp) *Hearings and appeals fees.* The amounts in the schedule for hearings and appeals services to the department of health services under s. 227.43 (1) (bu), the department of children and families under s. 227.43 (1) (by), the department of public instruction under s. 227.43 (1) (bd), and to all agencies under s. 227.43 (1m). All moneys received from the fees charged under s. 227.43 (3) (br), (c), (d), and (e) shall be credited to this appropriation account.

**SECTION 2.** 118.134 (1) (intro.) of the statutes is amended to read:

118.134 (1) (intro.) Notwithstanding s. 118.13 and except as provided in sub. (3m), a school district resident may object to the use of a race-based nickname, logo, mascot, or team name by the school board of that school district by filing a complaint containing a number of signatures of school district electors equal to at least 10 percent of the school district's membership, as defined in s.

121.004 (5), with the state superintendent. ~~If the complainant objects to the use of a nickname or team name by the school board, the state superintendent shall 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. A signature on a complaint is valid only if the signature is obtained within the 120-day period before the complaint is filed with the state superintendent.~~ The state superintendent shall do all of the following:

**SECTION 3.** 118.134 (1) (a) of the statutes is amended to read:

118.134 (1) (a) 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, if applicable, any of the information under sub. (1m) (a).

**SECTION 4.** 118.134 (1) (b) of the statutes is amended to read:

118.134 (1) (b) Except as provided in sub. (1m), schedule refer the complaint to the division of hearings and appeals for a contested case hearing within 45 days

\* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

after the complaint is filed. The division of hearing and appeals shall schedule a hearing on the referred complaint with reasonable promptness.

**SECTION 5.** 118.134 (1m) (a) (intro.) of the statutes is amended to read:

118.134 (1m) (a) (intro.) The state superintendent may determine that no contested case hearing is 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:

**SECTION 6.** 118.134 (1m) (a) 1. of the statutes is repealed.

**SECTION 7.** 118.134 (1m) (a) 2. of the statutes is amended to read:

118.134 (1m) (a) 2. ~~The A~~ federally recognized American Indian tribe ~~under subd. 1. that has historical ties to this state~~ has granted entered into an agreement with the school board under which the tribe grants approval to the school board to refer to or, depict, or portray the tribe or American Indians, in general, in a specific nickname, logo, or mascot or to use the name of the tribe or American Indians, in general, as a team name in the specific manner used by the school board ~~and has not rescinded that approval.~~

**SECTION 8.** 118.134 (1m) (a) 3. of the statutes is amended to read:

118.134 (1m) (a) 3. The use of the nickname, logo, mascot, or team name that has been approved by ~~the a~~ tribe ~~as provided in under~~ subd. 2. is the use to which the school district resident objects in the complaint filed under sub. (1).

**SECTION 9.** 118.134 (1m) (b) (intro.) and 1. of the statutes are consolidated, renumbered 118.134 (1m) (b) and amended to read:

118.134 (1m) (b) If the state superintendent ~~does any of the following determines that a contested case hearing is not necessary,~~ the state superintendent shall notify the school district resident who filed the complaint under sub. (1) and the school board of his or her decision in writing: ~~1. Determines that a contested case hearing is not necessary.~~ A decision under this subdivision is subject to judicial review under ch. 227.

**SECTION 10.** 118.134 (1m) (b) 2. of the statutes is repealed.

**SECTION 11.** 118.134 (2) (a) of the statutes is renumbered 118.134 (2) and amended to read:

118.134 (2) ~~Except as provided in par. (b), at~~ At the hearing, the school board district resident who filed the complaint under sub. (1) 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~~ promotes discrimination, pupil harassment, or

stereotyping, as defined by the state superintendent by rule.

**SECTION 12.** 118.134 (2) (b) of the statutes is repealed.

**SECTION 13.** 118.134 (3) (a) of the statutes is amended to read:

118.134 (3) (a) ~~The state superintendent~~ division of hearings and appeals shall issue a decision and order within 45 days after the hearing. If the ~~state superintendent~~ division of hearings and appeals 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~~ division of hearings and appeals shall dismiss the complaint. Except as provided in pars. (b) and (d), if the ~~state superintendent~~ division of hearings and appeals finds that the use of the race-based nickname, logo, mascot, or team name promotes discrimination, pupil harassment, or stereotyping, the ~~state superintendent~~ division of hearings and appeals shall 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.

**SECTION 14.** 118.134 (3) (b) 2. of the statutes is amended to read:

118.134 (3) (b) 2. a. If, at the hearing under sub. (2) or after a decision and order have been issued under par. (a), the school board presents evidence to the ~~state superintendent~~ division of hearings and appeals 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~~ division of hearings and appeals 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. Except as provided in subd. 2. b., the extension may not exceed 24 months and shall apply only to those portions of the decision and order to which extenuating circumstances apply.

b. The ~~state superintendent~~ division of hearings and appeals may extend the time granted to a school board under subd. 2. a. if the school board presents evidence to the ~~state superintendent~~ division of hearings and appeals that compliance with a portion of the decision and order issued under par. (a) 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 subd. 2. b. 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.

**SECTION 15.** 118.134 (3) (c) of the statutes is amended to read:

118.134 (3) (c) Decisions of the ~~state superintendent~~ under this subsection are subject to judicial review under

ch. 227. The venue for a proceeding to review a decision under this section is the circuit court in any county in which territory of the school district is located.

**SECTION 16.** 118.134 (3) (d) of the statutes is amended to read:

118.134 (3) (d) No school district ~~is~~ is required by to comply with a decision and order issued under this subsection ~~on or before July 1, 2011~~ the effective date of this paragraph .... [LRB inserts date], to terminate the use of a race-based nickname, logo, mascot, or team name ~~shall be required to comply with the terms of that decision and order until January 15, 2013.~~

**SECTION 17.** 118.134 (3r) of the statutes is created to read:

118.134 (3r) A school district may not be 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 of the nickname, logo, mascot, or team name violates a decision and order issued under sub. (3) on or after the effective date of this subsection .... [LRB inserts date].

**SECTION 18.** 118.134 (4) of the statutes is renumbered 118.134 (4) (a) and amended to read:

118.134 (4) (a) ~~The~~ Except as provided in par. (b), the state superintendent shall promulgate rules necessary to implement and administer this section.

**SECTION 19.** 118.134 (4) (b) of the statutes is created to read:

118.134 (4) (b) The state superintendent may not promulgate a rule that creates a presumption that a nickname, logo, mascot, or team name is race-based or promotes discrimination, pupil harassment, or stereotyping.

**SECTION 20.** 118.134 (5) of the statutes is amended to read:

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

logo, mascot, or team name in violation of sub. (3) constitutes a separate violation. The state superintendent may not assess or collect a forfeiture under this subsection for a use that violates a decision and order issued under sub. (3) before the effective date of this subsection .... [LRB inserts date].

**SECTION 21.** 227.43 (1) (bd) of the statutes is created to read:

227.43 (1) (bd) Assign a hearing examiner to preside over any hearing of a contested case which is referred by the state superintendent under s. 118.134 (1).

**SECTION 22.** 227.43 (3) (br) of the statutes is created to read:

227.43 (3) (br) The administrator of the division of hearings and appeals may set the fees to be charged for any services rendered to the department of public instruction by a hearing examiner under this section. The fee shall cover the total cost of the services less any costs covered by the appropriation under s. 20.505 (4) (f).

**SECTION 23.** 227.43 (4) (br) of the statutes is created to read:

227.43 (4) (br) The department of public instruction shall pay all costs of the services of a hearing examiner, including support services, assigned under sub. (1) (bd), according to the fees set under sub. (3) (br).

**SECTION 24. Nonstatutory provisions.**

(1) A complaint objecting to the use of a race-based nickname, logo, mascot, or team name filed with the state superintendent of public instruction before the effective date of this subsection for which a decision and order has not been issued under section 118.134 (3) of the statutes is void.

**SECTION 25. Initial applicability.**

(1) The treatment of section 118.134 (1) (intro.), (a), and (b), (1m) (a) (intro.), 1., 2., and 3., and (2) (a) and (b) of the statutes first applies to a complaint objecting to the use of a race-based nickname, logo, mascot, or team name filed with the state superintendent of public instruction on the effective date of this subsection.