

2013 DRAFTING REQUEST

Bill

Received: 9/27/2013 Received By: fknepp
 Wanted: As time permits Same as LRB:
 For: Mary Lazich (608) 266-5400 By/Representing: Tom
 May Contact: Drafter: fknepp
 Subject: Education - miscellaneous Addl. Drafters:
 Extra Copies: PG
 TKK

Submit via email: YES
 Requester's email: Sen.Lazich@legis.wisconsin.gov
 Carbon copy (CC) to:

Pre Topic:

No specific pre topic given

Topic:

Procedure for objecting to a race-based nickname, logo, mascot, or team name; hearings administered by division of hearings and appeals

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>
/?	fknepp 9/27/2013	kfollett 9/27/2013	jfrantze 9/27/2013	_____			
/1				_____	mbarman 9/30/2013	sbasford 9/30/2013	State S&L

FE Sent For:

*at intro
10/2/13*

<END>

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/?	fknepp 9/27/2013	kfollett 9/27/2013	jfrantze 9/27/2013	_____	_____		
/1				_____	mbarman 9/30/2013		State S&L

re-submitted via-email (see attached)

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/?	fknepp 9/27/2013	kfollett 9/27/2013	jfrantze 9/27/2013	_____			
/1				_____	lparisi 9/27/2013		State S&L

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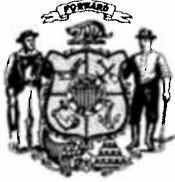
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/?	fknepp	1/1/5f 9/27		_____			
FE Sent For:							

<END>

Tom (Lazick's office)
requests ~~02985~~/P3 as
a SB

Telephone call
9-27



No changes
State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-2985/P3
 FFK:sac:

-3280/1
 stays KMR

In 9-27-13

draft

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

PB

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

Analysis by the Legislative Reference Bureau

Under current law, 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). If a complaint is received, the state superintendent must hold 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. However, the state

superintendent does not have to hold a hearing if a school board demonstrates that the use of a nickname, logo, mascot, or team name relates to a specific federally recognized American Indian tribe and the specific tribe has approved the school board's use of the nickname, logo, mascot, or team name.

Currently, 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 nickname, logo, mascot, or team name within 12 months after issuance of the order. However, the state superintendent may extend the amount of time a school board has to comply with an order to terminate the use of a nickname, logo, mascot, or team name under certain circumstances. A school board that uses a race-based nickname, logo, mascot, or team name in violation of an order is subject to a forfeiture of not less than \$100 nor more than \$1,000 for each day that it violates the order.

This bill makes various changes to the complaint process for objecting to a school board's use of a race-based nickname, logo, mascot, or team name. First, under the bill, a complaint to object to the use of a race-based nickname, logo, mascot, or team name must include the signatures of at least the number of school district residents that is equal to ten percent of the school district's membership and the signatures must be obtained within the 120-day period before the complaint is filed. Second, the bill requires the division of hearings and appeals, rather than the state superintendent, to hold a hearing on a complaint objecting to the use of a race-based nickname, logo, mascot, or team name. Third, the bill reverses the burden of proof at a hearing challenging the use of a race-based nickname, logo, mascot, or team name so that the burden is on the school district resident to demonstrate that the nickname, logo, mascot, or team name promotes discrimination, pupil harassment, or stereotyping. Fourth, the bill allows the state superintendent to forego a hearing if a school board demonstrates that a federally recognized American Indian tribe that has historical ties to this state has, under an agreement with the school board, approved the school board's use. Fifth, the bill prohibits the state superintendent from promulgating a rule that creates a presumption of what constitutes a race-based nickname, logo, mascot, or team name that promotes discrimination, pupil harassment, or stereotyping. Sixth, the bill prohibits the enforcement of a decision or order to terminate the use of a race-based nickname, logo, mascot, or team name that is based on a complaint filed before the effective date of the bill, including the collection or assessment of any forfeiture based on such decision or order. Finally, the bill prohibits a school district from being a member of an interscholastic athletic association that bars a member from using a race-based nickname, logo, mascot, or team name, unless the use violates a decision or order to terminate the use and the decision or order is issued after the effective date of the bill.

1 118.134 (1) (a) Notify the school board of the receipt of the complaint and of the
2 ~~state superintendent's determination regarding whether the use of the nickname or~~
3 ~~team name is ambiguous as to whether it is race-based and~~ direct the school board
4 to submit, if applicable, any of the information under sub. (1m) (a).

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

6 118.134 (1) (b) Except as provided in sub. (1m), schedule refer the complaint
7 to the division of hearings and appeals for a contested case hearing within 45 days
8 ~~after the complaint is filed.~~ The division of hearing and appeals shall schedule a
9 hearing on the referred complaint with reasonable promptness.

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

11 118.134 (1m) (a) (intro.) The state superintendent may determine that no
12 contested case hearing is necessary ~~or that a hearing date may be postponed for the~~
13 ~~purpose of obtaining additional information from the school board if, no later than~~
14 10 days after being notified of the receipt of the complaint, the school board submits
15 evidence to the state superintendent that demonstrates all of the following:

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

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

18 118.134 (1m) (a) 2. The A federally recognized American Indian tribe under
19 ~~subd. 1. that has historical ties to this state~~ has granted entered into an agreement
20 with the school board under which the tribe grants approval to the school board to
21 refer to ~~or~~, depict, or portray the tribe or American Indians, in general, in a specific
22 nickname, logo, or mascot or to use the name of the tribe or American Indians, in
23 general, as a team name in the specific manner used by the school board and has not
24 ~~rescinded that approval.~~

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

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

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

6 118.134 (1m) (b) (intro.) If the state superintendent ~~does any of the following~~
7 determines that a contested case hearing is not necessary, the state superintendent
8 shall notify the school district resident who filed the complaint under sub. (1) and the
9 school board of his or her decision in writing: ~~1. Determines that a contested case~~
10 ~~hearing is not necessary.~~ A decision under this subdivision is subject to judicial
11 review under ch. 227.

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

13 **SECTION 11.** 118.134 (2) (a) of the statutes [✓] is renumbered 118.134 (2) and
14 amended to read:

15 118.134 (2) ~~Except as provided in par. (b), at~~ At the hearing, the school board
16 district resident who filed the complaint under sub. (1) has the burden of proving by
17 clear and convincing evidence that the use of the race-based nickname, logo, mascot,
18 or team name ~~does not promote~~ promotes discrimination, pupil harassment, or
19 stereotyping, as defined by the state superintendent by rule.

20 **SECTION 12.** 118.134 (2) (b) of the statutes is repealed. [✓]

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

22 118.134 (3) (a) ~~The state superintendent~~ division of hearings and appeals shall
23 issue a decision and order within 45 days after the hearing. If the ~~state~~
24 ~~superintendent~~ division of hearings and appeals finds that the use of the race-based
25 nickname, logo, mascot, or team name does not promote discrimination, pupil

1 harassment, or stereotyping, the ~~state superintendent~~ division of hearings and
2 appeals shall dismiss the complaint. Except as provided in pars. (b) and (d), if the
3 ~~state superintendent~~ division of hearings and appeals finds that the use of the
4 race-based nickname, logo, mascot, or team name promotes discrimination, pupil
5 harassment, or stereotyping, the ~~state superintendent~~ division of hearings and
6 appeals shall order the school board to terminate its use of the race-based nickname,
7 logo, mascot, or team name within 12 months after issuance of the order.

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

9 118.134 (3) (b) 2. a. If, at the hearing under sub. (2) or after a decision and order
10 have been issued under par. (a), the school board presents evidence to the state
11 ~~superintendent~~ division of hearings and appeals that extenuating circumstances
12 render full compliance with the decision and order within 12 months after the
13 issuance of that decision and order impossible or impracticable, the state
14 ~~superintendent~~ division of hearings and appeals may issue an order to extend the
15 time within which the school board must terminate its use of the race-based
16 nickname, logo, mascot, or team name. Except as provided in subd. 2. b., the
17 extension may not exceed 24 months and shall apply only to those portions of the
18 decision and order to which extenuating circumstances apply.

19 b. The ~~state superintendent~~ division of hearings and appeals may extend the
20 time granted to a school board under subd. 2. a. if the school board presents evidence
21 to the ~~state superintendent~~ division of hearings and appeals that compliance with
22 a portion of the decision and order issued under par. (a) may be accomplished through
23 a regularly scheduled maintenance program and that the cost of compliance with
24 that portion of the decision and order exceeds \$5,000. The extension granted under
25 this subd. 2. b. may not exceed 96 months and applies only to that portion of the

1 decision and order with which compliance will be accomplished through the
2 regularly scheduled maintenance program and that costs more than \$5,000.

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

4 118.134 (3) (c) Decisions of ~~the state superintendent~~ under this subsection are
5 subject to judicial review under ch. 227. The venue for a proceeding to review a
6 decision under this section is the circuit court in any county in which territory of the
7 school district is located.

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

9 118.134 (3) (d) No school district is required by to comply with a decision and
10 order issued under this subsection ~~on or before July 1, 2011~~ the effective date of this
11 paragraph [LRB inserts date], to terminate the use of a race-based nickname,
12 logo, mascot, or team name shall be required to comply with the terms of that decision
13 and order until January 15, 2013.

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

15 118.134 (3r) A school district may not be a member of an interscholastic
16 athletic association that prohibits the use of a nickname, logo, mascot, or team name
17 on the basis that the nickname, logo, mascot, or team name is race-based unless the
18 use of the nickname, logo, mascot, or team name violates a decision and order issued
19 under sub. (3) on or after the effective date of this subsection [LRB inserts date].

20 **SECTION 18.** 118.134 (4) of the statutes is [✓] renumbered 118.134 (4) (a) and
21 amended to read:

22 118.134 (4) (a) The Except as provided in par. (b), the state superintendent
23 shall promulgate rules necessary to implement and administer this section.

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

1 118.134 (4) (b) The state superintendent may not promulgate a rule that
2 creates a presumption that a nickname, logo, mascot, or team name is race-based
3 or promotes discrimination, pupil harassment, or stereotyping.

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

5 118.134 (5) Any school board that uses a race-based nickname, logo, mascot,
6 or team name in violation of sub. (3) shall forfeit not less than \$100 nor more than
7 \$1,000. Each day of use of the race-based nickname, logo, mascot, or team name in
8 violation of sub. (3) constitutes a separate violation. The state superintendent may
9 not assess or collect a forfeiture under this subsection for a use that violates a
10 decision and order issued under sub. (3) before the effective date of this subsection
11 [LRB inserts date].

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

13 227.43 (1) (bd) Assign a hearing examiner to preside over any hearing of a
14 contested case which is referred by the state superintendent under s. 118.134 (1).

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

16 227.43 (3) (br) The administrator of the division of hearings and appeals may
17 set the fees to be charged for any services rendered to the department of public
18 instruction by a hearing examiner under this section. The fee shall cover the total
19 cost of the services less any costs covered by the appropriation under s. 20.505 (4) (f).

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

21 227.43 (4) (br) The department of public instruction shall pay all costs of the
22 services of a hearing examiner, including support services, assigned under sub. (1)
23 (bd), according to the fees set under sub. (3) (br).

24 **SECTION 24. Nonstatutory provisions.**

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

September 26, 2013

Date

LRBs0125/1dn

FFK:cjs:jan

stays

-3280/1
dn

Tom
To ~~Mike~~:

Because this draft transfers the state superintendent of public instruction's statutory duty to hold a hearing on a complaint about a race-based nickname, logo, mascot, or team name to a DOA-attached division it may be subject to a challenge based on article X, section 1, of the Wisconsin Constitution, which requires that the supervision of public instruction be vested in the state superintendent. See *Thompson v. Craney*, 199 Wis. 2d 674 (1996). It is not clear whether a court would find that holding a hearing and determining whether a race-based nickname, logo, mascot, or team name promotes discrimination, pupil harassment, or stereotyping is "the supervision of public instruction" for purposes of article X, section 1, of the Wisconsin Constitution.

Fern Knepp
Legislative Attorney
Phone: (608) 261-6927
E-mail: fern.knepp@legis.wisconsin.gov

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3280/1dn
FFK:cjs:jf

September 27, 2013

To Tom:

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Fern Knepp
Legislative Attorney
Phone: (608) 261-6927
E-mail: fern.knepp@legis.wisconsin.gov

Barman, Mike

From: Sen.Lazich
Sent: Monday, September 30, 2013 9:27 AM
To: LRB.Legal
Subject: Electronic Version of LRB 3280/1

A paper copy of LRB 3280/1 was received on Friday September 27. We would like the electronic version to request jacketing.

Thank you.