



WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

Memo No. 5

TO: MEMBERS OF THE SPECIAL COMMITTEE ON STATE-TRIBAL RELATIONS

FROM: Joyce L. Kiel, Senior Staff Attorney

RE: Use of American Indian Mascots, Logos, Names, or Nicknames by Public Schools

DATE: January 18, 2007 (Corrected)

This Memo was prepared for the Special Committee on State-Tribal Relations to provide background information relating to:

- Current law relating to the use of American Indian mascots, logos, names, and nicknames by public schools.
- Legislative proposals in the past 16 years (that is, since January 1, 1991) relating to this issue.
- Prior activities of the Special Committee on State-Tribal Relations and its predecessor committee in that time period relating to this issue.
- Statements made by the current and two preceding State Superintendents of Public Instruction (State Superintendents) relating to this issue.

CURRENT LAW

Current statutes do not specifically address the use of American Indian mascots, logos, names, or nicknames by schools. However, s. 118.13, Stats., prohibits discrimination against pupils in public schools based on various factors, including prohibiting discrimination based on race and ancestry. On September 17, 1992, then-Attorney General James E. Doyle, Jr. issued an opinion (OAG 25-92) in which he noted that the administrative rules promulgated by the Department of Public Instruction (DPI) implementing this statute [ch. PI 9, Wis. Adm. Code] explicitly define discrimination as including stereotyping and pupil harassment and, therefore, prohibit stereotyping and pupil harassment, as defined in the rules. He concluded that if a claim of discrimination were made, in some circumstances based on the particular facts, it would be possible to conclude that a particular American Indian mascot, logo, name, or nickname constituted discrimination. Then-State Superintendent Herbert J. Grover sent copies

of the Attorney General's opinion to all school districts on October 15, 1992, urging that they review any logos their schools might use to consider whether they constituted discrimination.

Under s. 118.13, Stats., complaints may be made to a school board claiming discrimination. Appeals of a school board's decision may be made to the State Superintendent. It appears that the State Superintendent has issued decisions on two discrimination complaints relating to American Indian mascots, logos, names, or nicknames. In one case, the State Superintendent found that the "Indian" nickname and logo were not discriminatory. The finding in the second case was that the middle school logo was discriminatory but that the high school logo, mascot, and nickname were not.

INTRODUCED LEGISLATION

The following legislative proposals relating to logos, mascots, names, or nicknames were introduced in the last 16 years:

- **1993 Assembly Joint Resolution 27** was introduced by Representative Boyle and others; cosponsored by Senator Moore. It called upon school boards to review stereotypical depictions of American Indians in school and athletic team logos, mascots, and nicknames. Assembly Substitute Amendment 1 was adopted by the Assembly, and the amended resolution was then adopted by the Assembly on a vote of Ayes, 57; Noes, 36. In the Senate, the resolution was referred to the Senate Committee on Education, which recommended concurrence on a vote of Ayes, 5; Noes, 2. However, the Senate did not vote on the resolution, and it failed to be adopted.
- **1995 Assembly Bill 488** was introduced by Representative Nass and others; cosponsored by Senator Zien and others. It provided that s. 118.13, Stats. (the pupil nondiscrimination statute discussed above), does **not** prohibit the use of any logo, mascot, or nickname of any public school. That bill was referred to the Assembly Committee on Education, which held two public hearings. No further action was taken, and it failed to pass.
- **1997 Assembly Bill 384 and 1997 Senate Bill 341** were companion bills which would have prohibited a school board from using certain specified names as a school nickname, logo, or mascot and would have prohibited any school board from using any other American Indian name, nickname, logo, or mascot if the State Superintendent considered it to be a violation of the pupil nondiscrimination statute. Assembly Bill 384 was introduced by Representative Boyle and others. (There were no Senate cosponsors.) Assembly Amendment 1 was offered. No further action was taken, and the bill failed to pass. Senate Bill 341 was introduced by Senators Moore and Burke. It was referred to the Senate Committee on Education, which held a public hearing but took no further action. That bill also failed to pass.
- **1999 Assembly Bill 433 and 1999 Senate Bill 217** were companion bills which would have provided that if a school district resident objected to a school board's use of an ethnic name, nickname, logo, or mascot by filing a complaint with the State Superintendent, the State Superintendent was required to schedule a hearing to decide the issue. The bills provided that the school board would have the burden of proving that the use of the ethnic name, nickname, logo, or mascot did not promote pupil discrimination, harassment, or stereotyping. If the State Superintendent found in favor of the complainant, the bills required an order for

the school board to terminate use of the name, nickname, logo, or mascot and provided penalties for failure to do so. Assembly Bill 433 was introduced by Representative Boyle and others; cosponsored by Senators George and Risser. Assembly Bill 433 was referred to the Assembly Committee on Education Reform, which took no action on the bill. Senate Bill 217 was introduced by Senators George and Risser. It was referred to the Senate Committee on Education, which held a public hearing but took no further action on the bill. Both bills failed to pass.

- **2001 Assembly Bill 92 and 2001 Senate Bill 25** were companion bills which were the same as 1999 Assembly Bill 433 and 1999 Senate Bill 217. Assembly Bill 92 was introduced by Representative Boyle and others; cosponsored by Senator George and others. It was referred to the Assembly Committee on Education Reform, which took no further action. Senate Bill 25 was introduced by Senator George and others; cosponsored by Representative Boyle and others. It was referred to the Senate Committee on Education, which took no further action. Both bills failed to pass.
- **2003 Assembly Bill 357** was the same as the bills introduced in the previous two legislative sessions, as described above. It was introduced by Representative Boyle and others; cosponsored by Senator Risser and others. It was referred to the Assembly Committee on Education Reform, which took no action on the bill. It failed to pass.
- **2005 Assembly Bill 395 and 2005 Senate Bill 172** were companion bills which were the same as the bills introduced in the past three legislative sessions, as described above. Assembly Bill 395 was introduced by Representative Boyle and others; cosponsored by Senator Coggs and others. It was referred to the Assembly Committee on State Affairs, which took no action on the bill. A motion was made on the Assembly floor to suspend the rules to withdraw the bill from committee and have the Assembly take it up. That motion failed on a vote of Ayes, 38; Noes, 57. That bill failed to pass. Senate Bill 172 was introduced by Senator Coggs and others; cosponsored by Representative Boyle and others. It was referred to the Senate Committee on Education, which took no action on the bill. Thus, it failed to pass.
- **2005 Assembly Bill 564** included the provisions in 2005 Assembly Bill 395 and 2005 Senate Bill 172 and also prohibited the Department of Natural Resources from using the word “squaw” in the name of any lake or stream. Assembly Bill 564 was introduced by Representative Schneider and others; cosponsored by Senator Coggs. It was referred to the Assembly Committee on State Affairs, which took no action on the bill. A motion was made on the Assembly floor to suspend the rules and withdraw the bill from committee and have the Assembly take it up. That motion failed on a vote of Ayes, 36; Noes, 57. No further action was taken, and that bill failed to pass.

STUDY COMMITTEE ACTIVITIES

This section lists activities of the Special Committee on State-Tribal Relations and its predecessor, the American Indian Study Committee, relating to the issue of American Indian mascots, logos, names, and nicknames in the past 16 years.

- **November 12, 1992** - The American Indian Study Committee heard presentations by invited speakers and also held a public hearing on the issue of American Indian mascots and logos.
- **January 27, 1993** - The American Indian Study Committee voted (Ayes, 8; Noes, 0; Absent, 3) to recommend that the Legislative Council introduce a resolution calling on school boards to review stereotypical depictions of American Indians in school and athletic team logos, mascots, and nicknames. Representative Boyle, then-chairperson of the American Indian Study Committee, introduced this proposal (with minor editorial changes) as 1993 Assembly Joint Resolution 27, as discussed above.
- **March 17, 1999** - The American Indian Study Committee heard presentations from invited speakers about the use by schools of American Indian mascots and logos.
- **April 19, 1999** - The American Indian Study Committee heard presentations by invited speakers regarding the use by schools of American Indian mascots, logos, names, and nicknames. The committee directed Chairperson Terry Musser to send a letter to the chairpersons of the standing committees to which any bills on the issue were referred requesting that each committee chairperson schedule a public hearing on the bills. After 1999 Assembly Bill 433 and 1999 Senate Bill 217 were introduced, Representative Musser sent such a letter on August 24, 1999 to Representative Stephen Nass, Chair, Assembly Committee on Education Reform, and to Senator Richard Grobschmidt, Chair, Senate Committee on Education. As noted above, the Senate Committee held the requested hearing but the Assembly Committee did not.

STATE SUPERINTENDENT LETTERS

As noted above, State Superintendent Grover sent a letter, dated October 15, 1992, informing school districts of the Attorney General's opinion and urging their review of logos to make sure they were not discriminatory. His successor, State Superintendent John Benson, wrote to school districts on April 1, 1994 urging elimination of American Indian mascots, logos, names and nicknames. His successor, State Superintendent Elizabeth Burmaster, wrote to school district administrators on December 27, 2005 encouraging school districts that continue to use American Indian logos or mascots to engage their communities in finding positive alternatives.

JLK:jal