



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2013 Assembly Bill 297

**Assembly Substitute
Amendment 1**

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Contact: Anna Henning, Staff Attorney (266-0292)

2013 Assembly Bill 297 relates to procedures for challenging race-based nicknames, logos, mascots, and team names.

CURRENT LAW

Generally, under current law, any school district resident may object to the use of a race-based nickname, logo, mascot, or team name by a school board in that school district by filing a complaint with the State Superintendent of Public Instruction. The Department of Public Instruction (DPI) must review such complaints and take certain actions.

In general, DPI must schedule a contested case hearing within 45 days after a complaint is filed. However, DPI may determine that a hearing is not necessary based on evidence submitted by the school board that demonstrates that the nickname, logo, mascot, or team name at issue in the complaint depicts, portrays, or uses the name of a specific, federally recognized American Indian tribe, and that specific tribe has granted approval of such use to the school board and has not rescinded that approval.

At a hearing to review a complaint regarding a race-based nickname, logo, mascot, or team name, a school board generally 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, as defined by DPI by rule. Following a hearing, DPI generally must issue a decision and order. If it finds that the use of the race-based nickname, logo, mascot, or team name promotes discrimination, pupil harassment, or stereotyping, the DPI must order the school board to terminate its use of the race-based nickname, logo, mascot, or team name within 12 months after the issuance of the order. However, DPI is authorized to grant extensions for compliance in certain circumstances.

2013 ASSEMBLY BILL 297

2013 Assembly Bill 297 wholly repeals current law regarding the submission and review of complaints objecting to race-based nicknames, logos, mascots, and team names.¹ The bill also makes orders that were issued by DPI under the current procedures unenforceable.

ASSEMBLY SUBSTITUTE AMENDMENT 1

Assembly Substitute Amendment 1 retains the general framework under current law for objecting to race-based nicknames, logos, mascots, and team names. However, the substitute amendment modifies current law as described below.

Requirement to Collect Signatures

Current law does not require a person submitting an objection to a race-based nickname, logo, mascot, or team name to collect signatures prior to submitting a complaint to DPI.

Assembly Substitute Amendment 1 requires such a complaint to include signatures of school district electors. Specifically, under the substitute amendment, the complaint must include a number of electors' signatures that is equal to at least 10% of the school district's membership.² In addition, the substitute amendment requires that a signature is valid only if it was obtained within the 120-day period before the complaint is filed.

No Hearing Necessary if an Agreement Exists With an American Indian Tribe with Historical Ties to the State

Current law authorizes DPI to determine that no hearing on a complaint against a school board is necessary if the school board submits certain evidence within 10 days following the date when the school board is notified of the complaint. Specifically, the school board must demonstrate that the nickname, logo, mascot, or team name at issue in the complaint depicts, portrays, or uses the name of a specific, federally recognized American Indian tribe, and that specific tribe has granted approval of the use to the school board and has not rescinded that approval. Alternatively, following the receipt of that evidence, DPI may postpone a hearing for the purpose of obtaining additional information.

Under *Assembly Substitute Amendment 1*, DPI may determine that a hearing is not necessary based on evidence that a school board has entered into an agreement with any federally recognized American Indian tribe with historical ties to Wisconsin. The agreement must grant approval to the school board to refer to, depict, portray, or use the name of either the tribe or of American Indians, in general. The substitute amendment does not authorize DPI to postpone a hearing for the purpose of obtaining additional information following the receipt of such evidence.

¹ The bill does not affect a separate statute that provides for individual complaints of discrimination by a public school.

² "School district membership" is generally defined to mean the sum of enrolled pupils in the school district.

Hearings to be Conducted by the Division of Hearings and Appeals

Under *current law*, hearings to review complaints regarding race-based nicknames, logos, mascots, and team names are generally conducted by DPI.

Assembly Substitute Amendment 1 requires DPI to refer such complaints to the Division of Hearings and Appeals within the Department of Administration (DOA). Under the substitute amendment, the Division of Hearings and Appeals would conduct hearings on complaints and issue decisions and orders following hearings. The Division of Hearings and Appeals would also be the entity responsible for determining whether an extension is needed for compliance with an order.

In addition, the substitute amendment authorizes the Division of Hearings and Appeals to set fees to be charged for any services rendered to DPI under the substitute amendment. The substitute amendment requires such fees to cover the total cost of the services provided by the Division of Hearings and Appeals, less any costs covered by the state appropriation for the division's general program operations. The substitute amendment requires DPI to pay all costs of the services of a Division of Hearings and Appeals hearing examiner, including support services, according to the fees set by the division.

Timeline of "Reasonable Promptness" for Scheduling a Hearing

Under *current law*, DPI generally must schedule a hearing within 45 days after a complaint objecting to a race-based nickname, logo, mascot, or team name is submitted.

Assembly Substitute Amendment 1 removes the 45-day timeline for scheduling a hearing to review such a complaint. Instead, under the substitute amendment, the Division of Hearings and Appeals must schedule a hearing with "reasonable promptness."

Burden to Prove Discrimination, Harassment, or Stereotyping Shifted to Complainant

Under *current law*, a school board generally has the burden to prove in a hearing, by clear and convincing evidence, that the race-based nickname, logo, mascot, or team name does not promote discrimination, pupil harassment, or stereotyping.

Under *Assembly Substitute Amendment 1*, the person who filed a complaint generally has the burden to prove that the race-based nickname, logo, mascot, or team name, promotes discrimination, pupil harassment, or stereotyping.

Limitation on DPI Rulemaking

Current law requires DPI to define discrimination, pupil harassment, and stereotyping for purposes of complaint procedures regarding race-based nicknames, logos, mascots, and team names.

Assembly Substitute Amendment 1 retains that requirement but prohibits DPI from promulgating a rule that creates a presumption that a nickname, logo, mascot, or team name is race-based or promotes discrimination, pupil harassment, or stereotyping.

Venue for Judicial Review

Current law provides that decisions of DPI regarding race-based nicknames, logos, mascots, and team names are subject to judicial review.

Assembly Substitute Amendment 1 likewise provides for the opportunity for judicial review of a decision of the Division for Hearings and Appeals. However, the substitute amendment specifies that the venue for judicial review following a hearing is the circuit court in any county in which territory of the affected school district is located.

Prohibition on Membership in Certain Interscholastic Athletic Associations

Current law does not prohibit school districts from becoming members of certain athletic associations.

Assembly Substitute Amendment 1 prohibits a school district from being 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 violates an order issued following a hearing authorized under the substitute amendment.

Existing Orders Unenforceable

Like the bill, *Assembly Substitute Amendment 1* prohibits the enforcement of existing orders that were issued pursuant to a hearing regarding a complaint objecting to a race-based nickname, logo, mascot, or team name under current law.

BILL HISTORY

Assembly Substitute Amendment 1 to 2013 Assembly Bill 297 was offered by Representatives Nass, Craig, and Voss on September 27, 2013. On October 9, 2013, the Assembly Committee on Government Operations and Licensure voted to recommend adoption of the substitute amendment and passage of the bill, as amended, on votes of Ayes, 7; Noes, 4.

AH:jal