

**STATE OF WISCONSIN
DEPARTMENT OF PUBLIC INSTRUCTION**

Carol S. Gunderson; Harvey S. Gunderson;)
Betty Wolcott OSF; Richard G Grangaard;)
Sharon M. Jermstad; Dianne K. Richardson;)
Steven Velie; Natalie Velie;)
Mona Vold Jacobson; Mark J. Wehner;)
Bethany J. Jacobson-Flieger; David A. Flieger;))
Patrick W. Sorge; Debra A. Sorge;)
Marie D. Anderson; individually and on)
behalf of all others similarly situated,)
Petitioner(s),)
Vs.)
Osseo-Fairchild School District;)
Osseo-Fairchild School Board;)
Respondent(s).)
_____)

**CLOSING ARGUMENT
OF
PETITIONERS**

Case No. 10-LC-01 (Osseo-Fairchild)

I

INTRODUCTION

The Petitioner(s) are residents of the Osseo-Fairchild School District who have filed a complaint pursuant to Wis. Statute §118.134, alleging that the use of the District’s chieftains nickname, logo, mascot and team name promotes, as Wisconsin Act 250 states:

(2) (a) Except as provided in par. (b), at the hearing, 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, as defined by the state superintendent by rule. (emphasis added)

Further, DPI promulgated emergency rules for the purpose of addressing complaints filed prior to permanent rules being promulgated, which state the following:

CHAPTER PI 45- USE OF RACE-BASED NICKNAMES, LOGOS, MASCOTS, AND TEAM NAMES BY SCHOOL BOARDS

PI 45.01 Purpose. (1) Section 118.134 (1), Stats., allows a school district resident to 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 with the state superintendent.

- (2) Under s. 118.134 (4), Stats., the state superintendent is required to promulgate rules necessary to implement and administer this provision.
- (3) Under s. 118.134 (2) (a), (b) 1. and 2., Stats. rules must define whether the use of the race-based nickname, logo, mascot, or team name promotes discrimination, pupil harassment, or stereotyping.
- (4) This chapter identifies specific nicknames or team names that used alone or with a combination of logos or mascots are unambiguously race-based and presumed to promote discrimination, pupil harassment or stereotyping unless the school district produces **clear and convincing evidence** refuting this presumption. The rules also establish procedural timelines as to when and what information must be submitted to the state superintendent by a school board and when a contested case hearing may or may not be scheduled. (emphasis added)

The petitioner(s) believe that the Respondent(s) have failed to meet their burden of refuting this presumption by “clear and convincing evidence”, especially in light of evidence supporting the presumption contained in the complaint of the petitioner(s), including but not limited to their supporting documentation, affidavits, testimony and other evidence.

II

SUMMARY OF TESTIMONY

The seven witnesses for the Respondents (Barry Kostka, Harold Mulhern, Kelly Mulhern, Dorothy Nelson, Nyree Kedrowski, Joseph Kedrowski, Nick Kedrowski) indicated that they were not personally aware of and had not observed and did not believe that there had been any instances of discrimination, pupil harassment or stereotyping promoted by the chieftains nickname and associated references.

However, the existence of people who didn't observe discrimination, pupil harassment or stereotyping doesn't prove that discrimination, pupil harassment or stereotyping never occurred, but only provides evidence that individuals exist who didn't observe it (or were unable to observe it, or "chose" not to observe it).

In contrast, all five Hearing witnesses called by complainants (i.e., Patricia Marroquin Norby, Charles Kwick, Carol Gunderson, Barbara Munson, Matt Stewart) testified that they had in fact observed acts of discrimination, pupil harassment and/or stereotyping promoted by the chieftains nickname and associated references.

In addition, the testimony of the School District's witnesses was directly refuted by affidavits provided to the Department by complainants from two witnesses and four other individuals stating that they observed acts of discrimination, pupil harassment and/or stereotyping promoted by the chieftains nickname and associated references (i.e., Exhibits Nos. 63, 64, 65, 68, 69 and 70 from Todd C. Fischer, Mona Vold Jacobson, Charles Kwick, Karen L. Ressel, Gary J. Montana, and Patricia Marroquin Norby respectively).

The School Board has the burden of proof to show by clear and convincing evidence that the chieftains nickname and associated references does not promote discrimination, pupil harassment or stereotyping. However, seven nickname-supporters claiming that they hadn't observed such acts hardly provides "clear and convincing evidence" that such acts never occurred, especially when such testimony is directly refuted by the testimony of witnesses (and affiants) that (1) such acts of discrimination, pupil harassment and/or stereotyping had in fact occurred and that (2) they had actually witnessed acts of discrimination, pupil harassment and/or stereotyping promoted by the chieftains nickname and associated references.

Another claim of certain witnesses of Respondents (Harold Mulhern, Kelly Mulhern, Dorothy Nelson) was that their opinion was that research has no relevancy to the matter before the Department unless such research was conducted by residents of the Osseo-Fairchild School District and/or was conducted in the Osseo-Fairchild School District. This assertion is so ludicrous that it doesn't deserve a serious response and appears to indicate a serious lack of understanding of research, the scientific method, empirical analysis by such witnesses. One need go no further than observe that the opinion of these witnesses of Respondents is contradicted by experts as reflected in professional organizations with resolutions that do **not** limit the scope of these resolutions to the communities wherein such research was conducted. (Exhibits Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12). Of particular note are (1) the resolution of the American Psychological Association (Exhibit No. 5), (2) the Justification Statement for the American Psychological Association resolution (Exhibit No. 6) and (3) the resolution of the American Sociological Association (Exhibit No. 33) which make no such restrictions and where these resolutions are research based and list 34, 42 and 48 references respectively.

Additionally, this claim of certain witnesses of Respondents is further refuted by the affidavits from experts in the matter before the Department by the fact that such experts make no such restrictions regarding the applicability of research findings. (Exhibits Nos, 14, 26, 27, 34, 35, 36, 37, 38, 39)

A third claim made by certain witnesses of Respondents (Barry Kostka, Nyree Kedrowski) was that the existence of a Logo Use Policy provides support for the School District's claim that the chieftains nickname and associated references does not promote discrimination, pupil harassment or stereotyping. This assertion has been refuted by Dr. Christian Kraatz who addressed how Osseo-Fairchild's Logo Use Policy actually indicates **acknowledgement** by the Osseo-Fairchild School Board that their race-based athletic policy **does** promote discrimination, pupil harassment and stereotyping. If the School Board members weren't aware that their race-based athletic policy **did** promote such thing, the provisions in the Logo Use Policy wouldn't exist because there wouldn't be a need. However, the existence of the provisions implicitly indicates the presence of awareness and acknowledgement that the race-based nickname and logo **do** promote discrimination, pupil harassment and stereotyping. Dr. Kraatz wrote in part that:

Some public school boards have actually acknowledged and anticipated the racial intimidation that will result from their Indian team logos, and yet they continue to defend their logos anyway. A prime example of this concession that such images create racial hostilities can be found in the Logo Use Policy of the Osseo-Fairchild School District in Wisconsin. As stated in their Logo Use Policy (formally adopted on April 12, 2004), the Osseo-Fairchild team name and logo fit precisely the stereotypic portrayal of sacred vestments that we have been examining here:

The name of the School District, its teams, and student groups shall be "Chieftains". The official Osseo-Fairchild School District "Chieftain Logo" shall be a Ho-Chunk Indianhead with a headdress.

Moreover, Osseo-Fairchild's Logo Use Policy mandates the formation of what they call "A Chieftain Ambassador committee." The role of this committee is specifically to request that neighboring schools not use the "Chieftain" name and logo as the basis of disrespectful behavior. As stated in the district's policy:

These ambassadors, in pairs or larger groups, will visit each school in our conference to educate them on this logo use policy and ask their help in preventing and controlling all actions that may be viewed as being

disrespectful to Native Americans or go beyond the bounds of good sportsmanship and healthy competition.

This policy is revealing in that it makes very clear the school board's understanding of how this team name and logo will function within the community. No one would ask for "help in preventing and controlling all actions that may be viewed as being disrespectful to Native Americans" unless they believed that such disrespectful actions were at least possible. And no school district would bother forming such a committee, with the specific task of addressing such things, unless they believed that these disrespectful actions were highly probable. It is inconceivable that such an "ambassador committee" would be formed in a school district where no one really believed that the logo would instigate racial hostilities. Let Osseo-Fairchild's Logo Use Policy itself, therefore, stand as testimony to the great potential for harm that these images present to our students and our communities.

Racism harms everyone involved. This harm becomes deep-seated indeed when it is officially endorsed by public institutions, and it is unavoidably perpetuated when those public institutions are charged with educating our future generations. This is precisely the situation at hand when public schools adopt and defend logos, nick-names, and mascots of American Indian theme. Images such as these impede the acquisition of knowledge that is accurate and truthful, they hinder students' abilities to learn well, and they make good relationships with peers difficult or perhaps even impossible. Everyone will benefit in abiding by the words of the United States Civil Rights Commission:

Schools that continue the use of Indian imagery and references...have simply failed to listen to the Native groups, religious leaders, and civil rights organizations that oppose these symbols...[T]he use of the imagery and traditions, no matter how popular, should end when they are offensive.
(Exhibit No 37, p. 9)

Accordingly, what some witnesses of the School District expressed as a positive in defense of the race-based nickname has been considered by others such as Dr. Kraatz to be "the smoking gun" that demonstrates that the School Board retained the race-based nickname policy in spite of being aware (as proven by the existence of a Chieftain Ambassador committee within the Logo Use Policy) that the chieftains nickname and associated references promotes discrimination, pupil harassment and/or stereotyping.

The fact that the School Board was consciously aware of the inherent stereotyping is further confirmed by the testimony of witness and complainant Carol Gunderson that the School Board on April 12, 2004 when adopting the Logo Use Policy actually on a 4-3 vote implicitly

endorsed racial stereotyping with the race-based nickname policy when they refused a proposed amendment to the Logo Use Policy that would have disallowed stereotypes. Carol Gunderson testified that she witnessed this action by the School Board as part of the process of adoption of the Logo Use Policy, and that this action clearly indicated to her that this School Board action “boiled down to a decision by the School Board to condone and permit stereotyping”.

A fourth claim made by certain witnesses of Respondents (Harold Mulhern, Kelly Mulhern, Dorothy Nelson, Nyree Kedrowski, Joseph Kedrowski, Nick Kedrowski) was that “approval” of an Indian head logo by an American Indian family justifies the School Board’s continued use of the chieftains nickname and associated references. This assertion has been refuted by many witnesses as well as by experts via affidavit and by the research that has determined that those American Indians who **support** race-based athletic nicknames actually on average suffer the **greatest** psychological harm, even greater than that incurred by American Indians who oppose race-based athletic nicknames. As Dr. Stephanie Fryberg stated:

My research provides empirical evidence that exposure to social representations like the Osseo-Fairchild “Chieftains” mascot (1) lowers the self-esteem of American Indian students, (2) reduces American Indian students’ belief that their community has the power and resources to resolve problems (community efficacy), and (3) reduces the number of achievement-related future goals that American Indian students see for themselves (achievement-related possible selves). My research also demonstrates that while exposure to these social representations lowers self-esteem for American Indian students, it raises the self-esteem of European American students.

My research also addresses two other relevant claims about the use of American Indian mascots. The first claim is that no one American Indian mascot is better, or less harmful, than another. To test this diversity of American Indian mascots, we tested whether being exposed to (1) a caricature of an American Indian (2) a “real person” dressed up as an American Indian or (3) an American Indian mascot representing an American Indian school differentially influenced the amount of psychological harm incurred by American Indian students. All three of the American Indian mascot representations were more harmful than not being exposed to an American Indian mascot (the control condition) and there were no significant differences from one mascot to another—they were all equally influential. This research, therefore, discredits any claims the O-F School Board may make that their nickname/logo is harmless on the basis that they (1) do not use a caricature, (2) use a real person, or (3) use a “respectful” mascot—there is nothing respectful about a mascot that causes psychological harm.

The second claim is that if American Indians support or agree with the use of American Indian mascots, then the mascots must be good. In the second study, students were asked whether they agree or disagree with the use of American Indian mascots. We then tested whether attitudes about the use of American Indian mascots protected or inoculated participants from the effects of being exposed to the mascot. The results demonstrated that attitudes or preferences for American Indian mascots were problematic. In fact, when not exposed to a mascot there were no differences in community efficacy (the belief that one's community has the power and resources to improve itself) between those who agreed or disagreed with the use of American Indian mascots. But, when exposed to an American Indian mascot, it was those who agreed with the use of American Indian mascots who reported depressed community efficacy scores compared to those who disagreed. Thus, claims on the part of O-F School Board that American Indians like being used as mascots should not be used to justify the use of American Indian mascots in schools. The issue for the School Board should not be about attitudes or preferences, but about whether their mascot causes psychological harm to American Indian students.

In my professional judgment, based on the research presented herein which demonstrates race-based psychological harm, the O-F School Board's use of the race-based "Chieftains" nickname/logo creates (1) a harmful learning environment for American Indian students and (2) a harmful public accommodation environment for American Indian youth and adults. This harmful education and public accommodation environment negatively affects not only American Indian students and adults in the O-F School District but also affects American Indian students and adults from other school districts which interact with Osseo-Fairchild.

The studies presented here fit in the category of stereotyping studies and, consistent with previous research, they reveal that stereotypes have negative consequences for self and identity. However, linking these findings only to stereotyping does not illuminate the challenge to identity construction that race-based 'Indian' mascots pose. We have used the broader term social representations because stereotypes, as examined in the social psychology literature, are uniformly regarded as negative. For example, no one argues that representations of women as poor in math or as overly concerned with household products, or representations of blacks as low academic achievers are positive or in any way benefit or *honor* the target group. In fact, most observers agree that contexts purged of these negative stereotypes would be desirable.

The American Indian mascot representations, however, are a somewhat different case. Being a person and constructing relevant social identities is not solely an individual or personal project. People use the available social representations—either by way of incorporating or resisting them—to think about themselves and to think about others. In fact, people cannot think about themselves or others

without social representations. Many pro-logo/mascot advocates (natives and non-natives alike) claim that the image of American Indians as warrior-like, as tough and noble, are not negative or disrespectful, but rather complimentary and honorific. This research suggests, however, that American Indian mascots have negative consequences not because they are inherently negative, but because in the contexts where they appear, there are relatively few alternate characterizations of American Indians. As such, these logos/mascots become powerful communicators, to natives and non-natives alike, of how American Indians should look and behave. That is, they remind American Indians of the limited way in which others see them, and this in turn may limit the number of ways in which American Indians can see themselves. In a school district, like O-F, the logo/mascot provides institutionalized daily reminders to American Indian students (as well as American Indian employees and adult native visitors to the public accommodations of school facilities) of the small number of socially acknowledged ways to be an American Indian in the schools.

Finally, the use of American Indians as logos/mascots is more than an issue of whether someone is offended, who is offended, how many people are offended, and why people are offended. Previous debate has, in fact, relied on anecdotal evidence rather than “measurable evidence” or “proof.” This research provides empirical evidence that psychological harm is occurring through lower self-esteem, reduced community efficacy, and a reduced number of “future selves” or goals envisioned by the students. This harm is real and substantive, with the significance rising far beyond the conventional argument related to “offensiveness”, especially when it occurs within an educational environment, an environment that has consequences for future life chances (college and employment). I am not aware of research that provides empirical evidence of American Indian mascots leading to positive psychological benefits for American Indian students. Without this evidence, the O-F School Board cannot justify retaining the “Chieftain” mascot and cannot dispute these findings of racial discrimination. (Exhibit No. 14, pp. 9-11)

Dr. Fryberg also wrote:

Similarly, the O-F School Board argument that the existence of individual American Indian supporters justifies continuing the use of the “Chieftains” nickname/logo is equally problematic. My research suggests, in fact, that asking whether American Indians support ‘Indian’ nicknames or logos is the wrong question and the wrong focus. The right question and the right focus involves determining the effect such social representations have on people, or in this case on students. **This research provides empirical evidence that the continued use of the race-based “Chieftains” nickname/logo cannot be justified by the existence of American Indians who say they support the nickname/logo and that the rationale for keeping the “Chieftain” nickname/logo should be focused on psychological consequences, not on attitudes or preferences.** (Exhibit No. 14, p. 15)

Complainants' witness Patricia Marroquin Norby, who is an Osseo-Fairchild resident of Purepéche (Tarascan)/Eastern Apache descent and a scholar with expertise in the use of imagery of American Indians who has worked at the National Museum of the American Indian at the Smithsonian Museum, testified that the use of an image of a real person as an athletic logo does not diminish the stereotypical nature of such representations. She said:

So, for example, much of the testimony you've heard, some of the witnesses couldn't even tell the difference between the image of Frank Thunder and the previous image before, before him that was used. They are very similar. (Trans. p. 109, line 16)

Patricia Marroquin Norby further testified that:

But what's interesting about the Osseo-Fairchild situation is that the Indian population is actually quite diverse. In the City of Osseo, which has a population of about, I think, 1,600, there are actually six different Indian Nations represented or cultures represented. However, the Chieftain's nickname and logo image reduces this diverse population down to one stereotype of an American Indian.

So this goes way beyond one family and goes way beyond one culture. This affects all six or more of Indian families that are in the district. Also, these warrior and Chieftain images are historically associated with physical violence and domination and are used by athletic teams, even though American Indians are actually an extremely diverse population made up of doctors, lawyers, educators, artists. That these positive roles are often ignored and we get, like, for example, with the Frank Thunder image, rather than honoring Frank Thunder and calling the school a Frank Thunder school, we get the Chieftains wearing a headdress and, you know, wearing this regalia that non Indians associate with physical protest. (Trans. p. 111, line 17)

Osseo-Fairchild has had a number of members of an American Indian family play the part of unofficial mascot at athletic events as stated by witness Nyree Kedrowski. (Trans. p. 183, line 1) Nyree Kedrowski, when reading the letter of Dashell Thunder, asserted that there has not been a live mascot at Osseo-Fairchild but later witnesses of the complainants suggested that such a claim was invalid because any American Indian who appears at an athletic event where the nickname is chieftains is appearing as an unofficial mascot but a mascot nonetheless. Nyree Kedrowski said, reading from Dashell Thunder's letter:

First, contrary to what has been reported in the news by misinformed individuals, OF does not have a mascot and has not had a mascot for many years. Since 1980s, various members of the Thunder family, including Gordon, Levi Thunder, Lance Long and, of course, (inaudible) and myself, um, sorry -- lost -- because this is Dashell Thunder's letter I'm reading here, and myself have voluntary -- Ho-Chunk various sporting events, including the state basketball, volleyball, and football tournaments representing the pride and honor we have as Chieftains. (Trans. p. 183, line 1)

Complainant's witness Barbara Munson (Oneida), Chair of the Wisconsin Indian Education Association Mascot & Logo Task Force, refuted that claim by referring to the appearance of Lance Long in regalia (as described by Dashell Thunder above) as an "unofficial mascot" that she witnessed at a School Board meeting about the race-based nickname and logo.:

Richie Plass was one of the people that was there, and it was interesting to see Richie there as a [former] mascot and also to see an unofficial mascot present dressed in a -- a -- in his regalia, but he was an unofficial mascot because that regalia was not in a cultural setting, but under a scoreboard on a gym floor. And he was talking about, you know, how proud he had been.

So this person -- I'm not questioning in any way his -- his right or -- to wear that regalia. He certainly has it. And -- and I know that this is an honorable person many ways. What I'm saying is that he in that setting [was] a mascot, and so it was interesting to see the differences and the ways that different people from different cultures could view that, even that role, that role of being a mascot.

And you can have unofficial mascots in school districts that have stereotypes of -- of this nature. It's very easy to have an unofficial mascot. (Trans. p. 163, line 14)

Barbara Munson further testified that:

Well, you know, this is -- as long as that image is connected with the Chieftain's nickname and a -- an athletic tradition in a school, it's basically a form of mascot. (Trans. p. 176, line 9)

Witness and complainant Carol Gunderson (Oneida) also described this behavior as an unofficial mascot of Lance Long in regalia at a School Board meeting about the race-based nickname: (Trans. p. 148, line 23)

Q Do you recall being at a public -- at a school board meeting where an American Indian supporter of the nickname put on a headdress and where the

White supporters of the school board were highly appreciative of the fact that this individual wore the headdress?

A Yes.

Q How did they -- did they respond differently to the American Indian who dressed -- how would you describe that? Would that be a stereotypical matter, putting the headdress on in that context?

A Yeah, it's -- it's -- yeah, it's following being a stereotype showing the stereotype of an -- of -- Indian like the logo like it is.

Q It's like being a mascot?

A Being a mascot in that situation. In a school board meeting you don't usually wear --

Q In your culture, that would not be deemed acceptable?

A No, it would not be, because it's not the right place to -- to be wearing a (inaudible).

Q Do you recall a former student of yours from Oshkosh who had come to that meeting, a person who is [Stockbridge-Munsee], and when she came and saw this said -- clutched her throat and said, my goodness, I had no idea what you people were going through here at Osseo-Fairchild?

A Yes, yes, she did.

Q And that was also because she was very offended by what she observed (inaudible). So is it true not all people view everything as positively --

A Right.

Q -- as has been portrayed by some here today?

A Right.

Q You have a great deal of concern about the religious dimensions of, for example, a headdress used that has -- represents eagle feathers being used on a wall. Eagle feather is something that's very sacred in your tradition?

A Right.

Q And so to see it represented up on a -- for an athletic nickname, what does that mean to you?

A It -- to me, it's demeaning, it's dehumanizing. And this is a religious, you know -- that is used for ceremonies, not to be put up on a wall or -- or be cheered about, what not. It -- it isn't respectful.

Q A lot of people here early -- earlier today said that they respected the logo. That was a common expression, we respect the logo. I think I've heard you say sometimes that you said they respect the logo on the wall, but --

A They don't respect real Indians. (Trans. p. 148, line 23)

Barbara Munson testified that one of her relatives, who is a member of the Ho-Chunk Nation, was in effect forced out of the Osseo-Fairchild community by the hostile environment, including regarding her opposition to the School Board's race-based athletic policy:

After the forum, one of the women who is a Ho-Chunk woman who had moved to the area not too long ago, was -- was accosted by a -- a coach and -- and -- and some things were said to her that were really -- made her very uncomfortable and were quite threatening. I remember that incident. That person is a member of my extended family. She's Ho-Chunk. I'm Oneida. My son-in-law is Ho-Chunk. My daughter's Oneida. I -- this is my extended family, too. And when I listened to her talk about her experience from the time she moved into Osseo-Fairchild, I am aware that she -- even though she was from the same tribe, she experienced negative impact from -- from community members and was made to feel not welcomed. (Trans. p. 166, line 21)

And -- and, in fact, some people have been forced out of the -- I mentioned my -- my relative. She definitely was forced out. She definitely said, I can't -- I'm not living here, it's terrible, it's not good for me, it's a bad thing. Some of the worst things that have happened to me have happened in this community, and I'm out. So -- so some people have been forced out and perhaps others may have been forced out that we don't know about, too. (Trans. p. 168, line 6)

Complainants' witness Matt Stewart (Fond du Lac Band of Lake Superior Ojbiwe) corroborated Barbara Munson's testimony by describing the treatment of this Ho-Chunk woman by a coach at an educational forum about the chieftains nickname and logo, that led the woman to send a complaint letter to the Department:

In addition to that, and these are obviously things that were done to me, but I also remember the -- when -- when Sam was basically attacked, and Barb and I were giving an interview at the time. And I remember the former superintendent, his

wife, being harassed and threatened numerous times. I remember them being scared. I remember the kids, the Montana kids, as well as other students, Native students were crying and didn't feel safe, who didn't feel part of the school and who certainly felt a feeling of marginalization, created not just by the bullying going on, but by the mascot itself. That this wasn't their school, that they don't belong to it. (Trans. p. 188, line 6)

As witness Matt Stewart said, he was first at Osseo-Fairchild in 1998, when he was invited to come and get involved at Osseo-Fairchild by students because the students were concerned that the race-based policy of the School Board was discriminatory:

And I guess my -- my first interaction with -- specifically with this issue in Osseo began in 1998, when I was asked to come to Osseo by a group of students at the high school who were questioning whether or not this was an issue of racism. And so I came up there and made a number of presentations to student governance body. (Trans. p. 183, line 1)

Matt Stewart put this issue into the proper perspective when he said that “approval” by American Indians is not relevant, when he said:

I think most importantly that those defenses that are put up to -- to defend and legitimize those mascots are not conducive to educational practice. And that's really the bottom line here, is that this is not a Native American issue. This is an educational issue. (Trans. p. 192, line 11)

So it is critical that the Department look at this matter from the basis of what is educationally sound, not from a basis of whether there is any American Indian support for the School Board's race-based athletic policy. Stewart followed up by saying:

And so I guess I would say in conclusion to all this, that if we're not going to look at the research which proves this, which bears this out, what we're saying, that we still have to look at the evidence that people have brought here. And while some people may feel connected to this image, while some people may feel even honored by it, that that's not really the issue. The issue is a pedagogical one, and at the same time while some people may enjoy the nickname and logo, other people are being hurt by that nickname and logo. And, you know, we learn in philosophy that if there's even one person that feels that way, that we can't say that it does not hurt because it does. (Trans. p. 193 line 18)

An important mention was made of the differential impact on American Indian students and adults that depends on one's position regarding support for or opposition to the race-based athletic policy. As Barbara Munson testified about a student forum regarding the nickname and logo:

I think the most -- I think what I -- I -- the thing I have to say about this is probably the most important is that I did [see] clearly differential treatment of American Indian -- different American Indian students. And when I presented educational information at the student forum, there were definitely students from - - there were students who were in favor of retaining the Indian logo and they spoke up and -- and -- and came forward and gave their reasons why. And they were encouraged by the -- by most of the student body. (Trans. p. 159, line 2)

After the forum, there were two Native students who were -- who came up and wanted to shake my hand and thank me for presenting the other -- the other side, which they saw as their side. And they began to tell me of some of the things that they had experienced in the school. And I still remember -- I still remember holding them. I still remember tears on my shoulder. (Trans. p. 159, line 22)

Several witnesses testified about the tears they witnessed that American Indian children attending the Osseo-Fairchild School District shed because the School Board and certain community members refused to stop using their race for the athletic policy. In addition to the above testimony of Barbara Munson, Carol Gunderson testified of the indifference of Osseo-Fairchild School Board members toward American Indian students:

Q Do you recall being at a school board meeting where American Indian children have come up to you and have been in tears because of the tensions and sadness and frustrations that they had with the school board because of their actions to reinstate the --

A Yes.

Q -- race-based nickname and logo?

A On the day that they reinstated the logo, there were two (inaudible) start crying (inaudible) crying when the school board reinstated the -- the nickname and the logo. And -- and one of the board members had said -- had said that the logo (inaudible) bother or hurt Indian children. (Inaudible) right in front of them crying her eyes out because of it. (Trans. p. 147, line 14)

The differential impact on American Indian students and adults that depends on whether one supports or opposes the race-based athletic policy was affirmed by Patricia Marroquin Norby:

So -- so then at Osseo-Fairchild in my personal experience, any Indians who speak out against the logo are actually harassed and questioned and consistently just treated very disrespectfully. (Trans. p. 111, line 17)

Patricia Marroquin Norby further discussed the differential impact in her affidavit:

The Indian community in Osseo, Wisconsin is a small but diverse group of adults and children consisting of tribally/culturally specific families from various matriarchal and patriarchal American Indian nations including: Oneida, Ho-Chunk, Lakota, Purépeche, Eastern Apache, and Alaskan Native. The O-F logo image, which depicts ceremonial eagle feathers and regalia ignores and trivializes specific cultural values and religious beliefs of these Indian families for the athletic entertainment of non-Indian community members. (Exhibit No. 70)

As is true nationwide, American Indians who agree to *support* (or at least *not oppose*) the race-based nicknames are “accepted” while those students who speak out *against* use of race-based nickname/logo are consistently harassed, bullied, teased and/or repeatedly interrogated about their religious/cultural beliefs and racial “authenticity” because they do not “dress-up like American Indians” or an Indian stereotype (i.e., the O-F “chieftain” nickname/logo). (Exhibit No. 70)

In summary, all major claims made by witnesses for the Respondents provided as evidence in support of the School Board’s burden of proof have been refuted by testimony of complainants’ witnesses and by exhibits submitted to the Department by complainants. Moreover, most testimony of Respondents’ witnesses represents unsubstantiated opinion whereas the testimony of complainants’ witnesses were backed up by facts and evidence.

III

RESPONDENT’S SUPPORTING EVIDENCE

According to School Board President Kostka (Trans. p. 19, line 19). the Exhibits submitted by the School Board in response to the initial contact from the Department constituted

the totality of written evidence from the School Board. In the view of complainants, these provide no substantive evidence that the race-based policy of the School Board does not promote discrimination, pupil harassment, or stereotyping.

In addition, witness Harold Mulhern submitted several advertisements during his testimony which actually make the case for the complainants rather than for the School Board.

IV

PETITIONER'S SUPPORTING EVIDENCE

Complainants submitted 84 exhibits that, complainants believe, individually and collectively provide **clear and convincing** evidence that the Department's presumption is correct that use of the chieftains nickname, logo, mascot, or team name **does** promote discrimination, pupil harassment, or stereotyping.

However, the burden of proof is not on the complainants. Instead, the burden of proof rests entirely on the School Board to provide **clear and convincing** evidence to refute the presumption that the use of the chieftains nickname, logo, mascot, or team name promotes discrimination, pupil harassment, or stereotyping. In the view of complainants, there has been minimal credible evidence submitted either in written form or by testimony at the Hearing that applies to the high burden of proof required under a "clear and convincing evidence" hurdle.

We will not herein reiterate the content of the brief that complainants previously submitted that presents the resolutions, bibliographies, lists of supporting organizations, research, empirical evidence, affidavits from experts, affidavits from local people detailing incidents of discrimination, harassment and stereotyping they observed, etc. However, we incorporate the content of that brief by reference as an indication of the evidence complainants have submitted in the 84 exhibits.

V

CONCLUSION

Based upon the foregoing the Petitioner(s) hereby submit that the Respondent(s) usage of the chieftains nickname and associated references promotes discrimination, pupil harassment and stereotyping. The Petitioner(s) hereby respectfully request that the Department of Public Instruction for the State of Wisconsin hold and decide in favor of the Petitioner(s) and against the Respondent(s).

Since (1) there exists an extensive body of knowledge and credible evidence that the School Board's race-based athletic practice **do** promote discrimination, pupil harassment and stereotyping, and (2) there exists little or no credible evidence (and the School Board submitted little or no credible evidence to the Department) that contradicts such evidence that the School Board's race-based athletic practice **do** promote discrimination, pupil harassment and stereotyping, Petitioner(s) believe this indicates that the School Board did **not** satisfy its burden of proving by **clear and convincing** evidence that the use of the chieftains nickname, logo, mascot, or team name does not promote discrimination, pupil harassment, or stereotyping.

Based upon the foregoing, the Petitioner(s) respectfully request that the Department order the School Board to terminate its use of the chieftains nickname, logo, mascot, or team name and associated references pursuant to the statutory requirements of Wis. Stat. §118.134, as said nickname and associated references do, based on creditable evidence, promote discrimination, pupil harassment and stereotyping.

REPECTFULLY SUBMITTED, this ____ day of July, 2010.

Harvey S. Gunderson, Pro Se
Petitioner