
STATE OF WISCONSIN

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of

THE BERLIN AREA SCHOOL DISTRICT NICKNAME AND LOGO

Complaint # 11-LC-01

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Appearances:

Richard F. Verstegen, Lathrop & Clark, LLP, PO Box 1507, Madison, WI, 53701, appearing on behalf of the Berlin Area School District.

Clif Morton, E8768 Cut Off Road, New London, WI, 54961, appearing on behalf of the complainant.

On June 20, 2011, the Department of Public Instruction (department) received a complaint from Thomas L. Sobieski, a resident of the Berlin Area School District (district), alleging the district uses a race-based nickname, logo, mascot, or team name which promotes discrimination, pupil harassment, or stereotyping in violation of s.118.134, Stats.

On July 14, 2011, the department, based on evidence submitted by the district, made the following determinations:

1. The district's use of the "Indians" nickname and logo depicting the head of a male person wearing a feather headdress is unambiguously race-based, and
2. The district does not have permission from a federally recognized American Indian tribe to use the "Indians" nickname or logo depicting the head of a male person wearing a feather headdress.

Pursuant to s.118.134, Stats., and PI 45.01(4) of the Wisconsin Administrative Code, the district's use of an unambiguously race-based nickname and logo is presumed to promote discrimination, pupil harassment, or stereotyping. The district bears the burden of producing clear and convincing evidence to refute the presumption.

A contested case hearing in the matter was held in Madison, Wisconsin, on August 3, 2011, before Paul A. Sherman, School Administration Consultant.

FINDINGS OF FACT

1. The complainant is a resident of the district.
2. The district uses the nickname "Indians." The district uses two logos associated with the nickname, one depicting the head of a male person wearing a feather headdress in the "Plains Indian" style, the other depicting an arrow and a feather.
3. The district has used the "Indians" nickname since 1939.
4. The district has used the name "Mascoutin" in reference to the high school newspaper or high school yearbook since 1917. "Mascoutin" is the name of an American Indian tribe that once resided in the Berlin Area.
5. Currently the district observes an annual ceremony in which a tomahawk is passed from the senior class to the junior class.
6. In 2001 and again in 2009 students attending an athletic event between Berlin and an opponent appeared in "Indian" headdresses and engaged in mock "Indian" dancing.
7. Empirical research indicates exposure to American Indian stereotypical images lowers the self-esteem of American Indian students, reduces American Indian students' belief their community has the power and resources to resolve problems, and reduces the number of achievement-related future goals American Indian students see for themselves.
8. Empirical research indicates exposure to stereotypical American Indian images has the same negative effect on American Indian children regardless of whether the image involved is a positive stereotype or a negative stereotype.
9. Empirical research indicates exposure to American Indian stereotypical images increases the tendency of children of any race to endorse stereotypes of other racial minority groups.

DISCUSSION

In order for the department to conclude the district should be permitted to continue using the "Indians" nickname and associated logos, the district must produce clear and convincing evidence its use of the nickname and logos does not promote discrimination, pupil harassment, or stereotyping. Wis. Stat. 118.134(2)(a). Clear and convincing evidence is evidence establishing it is, "highly probable or reasonably certain," that use of the nickname and logo does not promote discrimination, pupil harassment, or stereotyping. See *State v. Harris*, 2010 WI 79. The sum total of evidence presented by the district consists of the testimony of two district employees, two

school board members, and two community members; 20 historical accounts on American Indians who once lived or worked near Berlin; and a survey tool developed by the *Berlin Journal*. The evidence fails to establish it is highly probable or reasonably certain the district's use of the nickname and logos does not promote stereotyping or discrimination.

I. The district did not provide clear and convincing evidence the district's use of the "Indians" nickname and logos does not promote stereotyping.

The district provided scant evidence as to its use of the "Indians" nickname and logos. The record indicates the district uses the nickname to refer to its athletic teams, the nickname appears on banners in the gymnasium, the logos appear on certain athletic related items, and on occasion, the cover of the high school yearbook. Athletic uniforms display a stone-pointed arrow with an attached feather. Students at the district's high school engage in an annual ceremony passing a tomahawk from the senior class to the junior class. Witnesses for the district asserted that while the reason for the selection of the "Indians" nickname in 1939 was unclear, they presumed it was to honor the American Indians that once resided in the Berlin area, and believed that was the reason for the continued use of the nickname to this day. A witness for the district asserted that certain practices related to the nickname were eliminated because they were deemed insensitive, but did not describe in detail what those practices were, or why they were deemed insensitive while other practices related to the use of the nickname were not. Through testimony and in final argument the district asserts its use of the nickname and logos promotes the respectful memory of American Indians. While district witnesses testified they had not observed students engaging in stereotypical behavior related to the nickname at school or school sponsored events, one of the complainant's witnesses testified he had observed such behavior on at least one occasion. The district presented no evidence it educates students in the social or historical background of the nickname or logo through its curriculum or other related efforts. The district presented no evidence the logo depicts a specific American Indian Person, or is an accurate representation of any of the various American Indian tribes it purports to honor. Nor did the district provide any evidence as to how the nickname or logos are used in relation to contemporary American Indian peoples. The only conclusion that the department can draw from these facts is that the district's use of the nickname and logos constitutes a stereotype as defined in PI 45.02(12) Wis. Admin. Code. Specifically the district's use attributes a very limited number of behaviors, abilities, interests, values, and roles (male, warrior/hunter, people of the past) to "Indians" based in whole or part on their race.

II. The district did not provide clear and convincing evidence the district's use of the "Indians" nickname and logos does not promote discrimination.

Discrimination is any action which is detrimental to a group of persons on the basis, in whole or in part, of race. PI 45.02(5) Wis. Admin. Code. Several academic research studies, all part of the record, demonstrate the detrimental effects of American Indian nicknames and logos on children. These studies show exposure to stereotypical images of American Indians in the context of nicknames and logos lowers self-esteem of American Indian students, regardless of whether the image involved is positive or negative. The studies also demonstrate exposure to such

stereotypes increases the tendency of children of any race to endorse stereotypes of other racial minorities.

The district did not present any academic research studies demonstrating the use of the race-based nickname and logos do not promote discrimination, pupil harassment, or stereotyping. Nor did the district present similar evidence refuting the findings of the research studies contained in the record. Rather, in its final argument the district asserted the findings of social science research were not relevant to the determination of whether the district's use of the "Indians" nickname and logo promotes discrimination, pupil harassment, or stereotyping, and that American Indian tribes had "discounted" these studies. The district's argument is unpersuasive. The department has examined the research contained in the record and finds it to be reliable, and its findings as to the effects of race-based nicknames and logos are broadly applicable. Furthermore there is not one iota of evidence in the record that any American Indian tribe considered these studies and then "discounted" them.

III. Other evidence provided by the district is not relevant.

The observations of the district's witnesses regarding the offensiveness of the "Indians" nickname and logo do not constitute clear and convincing evidence the use of the nickname and logo does not promote discrimination, pupil harassment, or stereotyping. At the hearing, all of the district's witnesses testified that they had not observed the "Indians" nickname, or logo to be used in an offensive manner at school or school sponsored events. This testimony is not evidence that speaks to the propensity of the district's nickname and logos to promote discrimination, pupil harassment, or stereotyping.

The observations of the district's witnesses that many residents of Berlin favor the continued use of the "Indians" nickname and logo do not constitute clear and convincing evidence the use of the nickname and logo does not promote discrimination, pupil harassment, or stereotyping. At the hearing, all of the district's witnesses testified that they knew people in favor of retaining the district's nickname and logo. In final argument the district asserted a survey conducted by the *Berlin Journal* found overwhelming support for retaining the nickname and logo. This evidence is not evidence that speaks to the propensity of the district's nickname and logos to promote discrimination, pupil harassment, or stereotyping.

Evidence of an American Indian presence in the Berlin area does not constitute clear and convincing evidence the use of the nickname and logo does not promote discrimination, pupil harassment, or stereotyping. A district witness testified at length regarding the history of the American Indian presence in Berlin. This evidence is not evidence that speaks to the propensity of the district's nickname and logos to promote discrimination, pupil harassment, or stereotyping.

CONCLUSIONS OF LAW

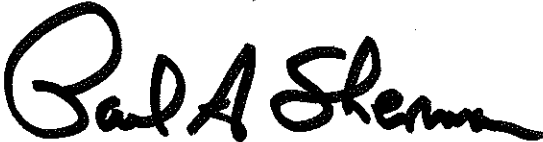
1. The Berlin Area School District nickname "Indians" and the logos depicting the head of a male person wearing a feather headdress, arrows, and feathers, are unambiguously race-based pursuant to section PI 45.04(3) if the Wisconsin Administrative Code.
2. The Berlin Area School District does not have the permission, pursuant to section 118.134(1m) of the Wisconsin Statutes, of a federally recognized American Indian Tribe to use the "Indians" nickname or logos depicting the head of a male person wearing a feather headdress, arrows, and feathers.
3. The Berlin Area School District's use of the nickname "Indians" and the logos depicting the head of a male person wearing a feather headdress, arrows, and feathers promotes discrimination, and stereotyping in violation of section 118.134 of the Wisconsin Statutes.

ORDER

On or before September 16, 2012, the Berlin Area School District shall terminate its use of the "Indians" nickname and the logos depicting the head of a male person wearing a feather headdress, arrows, and feathers.

If the Berlin Area School District believes extenuating circumstances, as described in section 118.134(3)(b)2 of the Wisconsin Statutes, render full compliance with this order on or before September 16, 2012, impossible or impractical, the school district shall submit evidence of the extenuating circumstances to the department no later than January 1, 2012.

Dated at Madison, Wisconsin this 16th day of September, 2011.



Paul A. Sherman
School Administration Consultant

APPEAL RIGHTS

This decision is the final agency decision regarding this appeal. Any person aggrieved by this final decision and order may, within 20 calendar days after service of this decision, request a

rehearing by filing a written petition for rehearing which specifies in detail the grounds for the relief sought and supporting authorities, as provided by section 227.49 of the Wisconsin Statutes. In a petition for rehearing, the State Superintendent of Public Instruction shall be named as respondent. Any person aggrieved by this final decision may, within 30 calendar days after service of this decision, petition for judicial review by filing a petition for review with the appropriate circuit court and serving the petition on the department. Such a petition for judicial review must name the State Superintendent of Public Instruction as the respondent.

Parties to this action:

Thomas L. Sobieski, N8161 State Road 49, Berlin, WI, 54923

Berlin Area School District, 295 E. Marquette Street, Berlin, WI, 54923-1272