
STATE OF WISCONSIN

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of

THE KEWAUNEE SCHOOL DISTRICT NICKNAME AND LOGO

Complaint # 10-LC-02

CONCLUSIONS OF LAW, AND ORDER

Appearances:

Mary S. Gerbig, Davis & Kuelthau, appearing on behalf of the Kewaunee School District.

Clif Morton, appearing on behalf of the complainant.

On June 25, 2010, the Department of Public Instruction (department) received a complaint from Marsha Beggs Brown, a resident of the Kewaunee 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 section 118.134 of the Wisconsin Statutes.

On July 14, 2010, 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 in a feather headdress is unambiguously raced-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 in a feather headdress.

Pursuant to section PI 45.01(4) of the Wisconsin Administrative Code, the district's race-based nickname and logo are presumed to promote discrimination, pupil harassment, or stereotyping unless the district produces, at hearing, clear and convincing evidence refuting this presumption. A hearing on the matter was to be held at the department's offices, 125 South Webster Street, Madison, Wisconsin, on August 4, 2010, at 11:00 in Room 041.

On August 3, 2010, the department received a letter from the district's attorney indicating the district had discontinued the use of the term "Indians" as a nickname, and discontinued the use of a logo depicting the head of a male person wearing a feather headdress. The district's attorney indicated any actions or measures to effectuate the change would be completed within the timeframe identified under section 118.134(3)(a) of the Wisconsin Statutes.

CONCLUSIONS OF LAW

1. The Kewaunee School District nickname "Indians" and the logo depicting the head of a male person are unambiguously race-based pursuant to section PI 45.04(3) if the Wisconsin Administrative Code.
2. The 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 logo depicting the head of a male person wearing a feather headdress.
3. The Kewaunee School District nickname "Indians" and the logo depicting the head of a male person wearing a feather headdress promote discrimination, pupil harassment, and stereotyping in violation of section 118.134 of the Wisconsin Statutes.

ORDER

Consistent with the district's agreement to end the use of the "Indians" nickname and logo as soon as possible, but within the timeframe specified under section 118.134 of the Wisconsin Statutes, the Kewaunee School District shall fully terminate its use of the "Indians" nickname and logo depicting the head of a male person wearing a feather headdress no later than August 10, 2011.

If the 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 August 10, 2011, impossible or impractical, the school district shall submit evidence of the extenuating circumstances to the department.

Dated at Madison, Wisconsin this 11th day of August, 2010.

//signed 8/11/10

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 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 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.