
STATE OF WISCONSIN

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of

THE MUKWONAGO SCHOOL DISTRICT NICKNAME AND LOGO

Complaint # 10-LC-03

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Appearances:

Mark L. Olson, Buelow Vetter Buikema Olson & Vliet, LLC, appearing on behalf of the Mukwonago School District.

Barbara E. Munson, appearing on behalf of the complainant.

On July 21, 2010, the Department of Public Instruction (department) received a complaint from Rain Koepke, a resident of the Mukwonago 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 August 11, 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 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 27, 2010 before Paul A. Sherman, School Administration Consultant.

FINDINGS OF FACT

1. The complainant is a resident of the district.
2. The complainant is an American Indian person.
3. The district uses the nickname “Indians” in reference to Mukwonago High School (MHS) athletic teams and students. The district uses a logo at MHS depicting the head of a male person wearing a feather headdress in the “Plains Indian” style (MHS logo). The “Indians” nickname and MHS logo have been used by the district for approximately 86 years.
4. The “Indians” nickname appears, among other places, on district athletic uniforms, the MHS gymnasium floor, and items sold in the school store. The phrase, “This is Indian Country” is painted on a wall of the MHS gymnasium.
5. The MHS logo appears, among other places, on district athletic uniforms, MHS signage, MHS letterhead, MHS Diplomas, MHS transcripts, MHS report cards, the MHS student handbook, and items sold in the school store.
6. Neshnabeg (Potawatomi) people historically resided in the area that became Mukwonago. Potawatomi people are not “Plains Indians,” and did not historically dress in the “Plains Indian” style.
7. Four American Indian persons who are current or former residents of the district are not offended by the district’s use of the “Indians” nickname or MHS logo. Two American Indian persons who are current or former residents of the district are offended by the district’s use of the nickname and logo.
8. The district uses several methods to encourage what it deems to be appropriate behavior related to the “Indians” nickname and MHS logo. These include, among other things, alerting other school districts within the district’s athletic conference about appropriate use of the “Indians” nickname and MHS logo, placing a notice on district publications regarding appropriate use of the nickname and logo, and showing a film, produced by the district, describing appropriate use of the nickname and logo during freshman orientation.
9. The film pertaining to the logo contains images of American Indian persons who are not Potawatomi, incorrectly identifies the activities in which the persons depicted are engaged, and is devoid of any images or discussion of contemporary Potawatomi people. The film describes the MHS logo variously as an “Indian,” and a “Native American silhouette.”

10. During the 2009-10 school year a Mukwonago student attempted to attend a basketball game at MHS dressed in “Native American” attire. A district employee required the student to remove the attire before attending the game.
11. During the 2009-10 school year students from another school district planned to attend a MHS athletic event dressed as “cowboys and Indians.” District employees worked with employees of the other school district to thwart the plan.
12. In 1994 a parent of a Mukwonago High School student filed a complaint alleging, among other things, the district violated s.118.13, Stats. in using the “Indians” nickname and MHS logo. The department reviewed the district’s initial determination of the complaint, and issued a decision on November 3, 1995.
13. The department’s 1995 decision identified two violations of s.118.13, Stats., and directed the district to submit a comprehensive corrective action plan. The district submitted a corrective action plan on December 15, 1995. The department formally accepted the plan and closed the appeal on August 22, 1996.
14. In 2005, The American Psychological Association (APA) recommended the retirement of American Indian mascots, symbols, images, and personalities by schools, colleges, universities, athletic teams, and organizations. The APA recommendation is based on empirical research demonstrating the harmful effects of such mascots, symbols, images, and personalities on American Indian persons.
15. 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.
16. 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.
17. 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

I. The effect of the department’s 1995 decision on the current complaint.

The district repeatedly asserted at the hearing, and again in its written final argument, the department had previously reviewed and approved the district’s use of the “Indian” nickname and MHS logo. This assertion is, as a matter of fact, incorrect. In its 1995 decision the

department concluded, after extensive fact finding, the district had, “failed to effectively eliminate a racially hostile environment which was detrimental to (an American Indian student) which the district knew or should have known existed.” *In the Matter of the Pupil Discrimination Complaint and Appeal by Renee P. v. The Mukwonago Area School District. (Renee P.)*, p. 24. The department further concluded, “The MHS Indian logo in this case appeared to encourage behavior contributing to a racially hostile environment.” *Renee P.* p.24. In addition the department commented, “This decision, therefore, should in no way be construed as an endorsement of the MHS “Indians” nickname or logo.” *Renee P.* p. 22. The department ordered the district to submit a proposed corrective action plan to address the specific violations of state pupil nondiscrimination law found by the department. This plan (District Exhibit 3) was submitted to and approved by the department (District Exhibit 4). In approving the corrective action plan, the department accepted the steps the district intended to take to address violations of existing state pupil nondiscrimination law, it did not determine whether those steps were ultimately successful, and certainly did not approve the district’s use of the “Indian” nickname or MHS logo.

As a matter of law, the department’s 1995 decision is not relevant to the current complaint. The *Renee P.* appeal alleged the district had violated the provisions of s.118.13, Stats. through the approval of and use of the “Indians” nickname and MHS logo. In analyzing the appeal, the department relied on guidance from the Attorney General of Wisconsin, (80 OAG 321 (1992)), and the U.S. Department of Education, (*OCR Investigative Guidance on Racial Incidents and Harassment Against Students*, Federal Register, Vol. 59, No. 47. Thursday, March 10, 1994). The department interpreted s.118.13, Stats. to require a complainant produce a preponderance of evidence demonstrating that a reasonable person similarly situated to the complainant would find that the logo depicts such a negative stereotype that it is detrimental or harmful to a protected class or person. The present complaint, alleging a violation of s.118.134, Stats., requires an entirely different analysis. The only requirement of a complainant is that they be a resident of the district who objects to a district’s use of a race-based nickname, team name, logo, or mascot. Section 118.134(1), Stats. does not require the complainant to allege any specific harm or produce any evidence. The district, on the other hand, bears the burden of proving by clear and convincing evidence that the use of a race-based nickname, team name, logo, or mascot does not promote discrimination, pupil harassment, or stereotyping. s.118.134(2)(a), Stats. Given the significant differences between s.118.13, Stats. and s.118.134, Stats. it would be inappropriate to rely on the legal conclusions of a decision issued under s.118.13, Stats. to resolve a complaint filed under 118.134, Stats.

II. The district did not provide clear and convincing evidence the use of the “Indians” nickname and MHS logo does not promote discrimination, pupil harassment, or stereotyping.

Section 118.134, Stats. requires the district to produce clear and convincing evidence its use of the “Indians” nickname and MHS logo does not promote discrimination, pupil harassment, or stereotyping. 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 observations of the district's witnesses regarding the offensiveness of the "Indians" nickname and MHS 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, several of the district's witnesses, four of whom identified themselves as American Indian persons, testified that they did not find the "Indians" nickname, or MHS logo to be offensive. Two other witnesses who identified themselves as American Indian persons testified on behalf of the complainant that they did find the "Indians" nickname and MHS logo offensive. This testimony demonstrates reasonable American Indian people differ in their personal reactions to a particular nickname or logo. This testimony is not evidence that speaks to the propensity of the district's nickname and logo to promote discrimination, pupil harassment, or stereotyping.

The district's efforts to prevent overt acts of harassment and stereotyping related to the "Indians" nickname and MHS logo does not constitute clear and convincing evidence the nickname and logo do not promote pupil harassment, or stereotyping. The issue before the department is not whether the district is sufficiently vigilant; it is whether the district's use of the nickname and logo promotes conduct requiring such vigilance. District witnesses testified at length about the steps the district takes to ensure students do not engage in behavior the district deems to be disrespectful. The district routinely informs its students it will not tolerate the "tomahawk chop," "war whoops," or face paint at district athletic events because such behavior demonstrates, "the worst kind of ignorance, far beneath the dignity of our proud traditions." (District Exhibit 6). The same message is communicated to parents, spectators, and neighboring school districts. Despite these efforts, there is evidence in the record the "Indians" nickname and MHS logo do promote stereotyping. The district admitted at the hearing that its employees found it necessary to stop a Mukwonago student from attending an athletic event dressed in American Indian attire, and stop students from a neighboring school from attending an athletic event dressed as cowboys and Indians during the 2009-10 school year.

The district's justification for its use of the "Indians" nickname and MHS logo does not constitute clear and convincing evidence the nickname and logo do not promote stereotyping. Stereotyping, as defined by section PI 45.02(12) of the Wisconsin Administrative Code, means attributing behavior, abilities, interests, values, and roles to a person or group of persons on the basis, in whole or in part, of their race. The district produced a short film (District Exhibit 6), which it shows to students during freshman orientation and at other times, explaining its use of the "Indians" nickname and MHS logo. The film begins by stating that the logo used by MHS is "a Native American silhouette." It also admits the representations or depictions in contained within the film are not necessarily representations of the Potawatomi people but other tribes as well. This generalization about all American Indian s as if they are interchangeable, in and of itself, reflects, promotes, and perpetuates the stereotyping that s. 118.134, Stats. addresses. The film identifies the "hallmarks" of Mukwonago High School as cooperation, sportsmanship, nobility, and fire, and then links these traits to the Potawatomi people who once resided in the Mukwonago area. The film describes the Potawatomi in broad strokes as having character traits mirroring the four "hallmarks", with images that are not images of Potawatomi people (and often incorrectly identify the activities in which those depicted are engaged), and without any discussion of life ways of contemporary Potawatomi people. Arrayed against the film's attempt to connect the "Indians" nickname and MHS logo with the Potawatomi who once lived in the

region, remains the fact that the district uses the generic term “Indians”, and the MHS logo depicts a feather headdress, a form of attire entirely foreign to the “rich culture” of the Potawatomi on which the film avers the logo is based. The attempt to attribute certain characteristics to American Indian people by adopting conflicting and inaccurate symbols of American Indian people is the very definition of stereotyping.

The district did not present any academic research studies demonstrating the use of the race-based nickname and logos do not promote discrimination or stereotyping. Several academic research studies, all part of the record, demonstrate the detrimental effects of American Indian nicknames and logos on children. 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) Wisconsin Administrative Code. These studies in the record 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.

CONCLUSIONS OF LAW

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

ORDER

On or before October 8, 2011 the Mukwonago School District shall terminate its use of the “Indians” nickname and the logo depicting the head of a male person wearing a feather headdress.

If the Mukwonago 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 October 8, 2011, impossible or impractical, the school district shall submit evidence of the extenuating circumstances to the department no later than January 1, 2011.

Dated at Madison, Wisconsin this 8th day of October, 2010.

//signed 10/8/10

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 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.