
STATE OF WISCONSIN

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of

THE OSSEO-FAIRCHILD SCHOOL DISTRICT NICKNAME AND LOGO

Complaint # 10-LC-01

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Appearances:

Edward Dombrowski, Interim Superintendent, Osseo-Fairchild School District, appearing on behalf of the Osseo-Fairchild School District.

Harvey S. Gunderson, appearing on behalf of the complainants.

On May 20, 2010, the Department of Public Instruction (department) received a complaint from Carol S. Gunderson, Harvey S. Gunderson, Betty Wolcott, 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, and Marie D. Anderson, residents of the Osseo-Fairchild 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 June 10, 2010, the department, based on evidence submitted by the district, made the following determinations:

1. The district's use of the "Chieftains" nickname and "Chieftain Logo" is unambiguously raced-based, and
2. The district does not have permission from a federally recognized American Indian tribe to use the "Chieftains" nickname or "Chieftain Logo."

Pursuant to section 118.134 of the Wisconsin Statutes and section 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 June 28, 2010 before Paul A. Sherman, School Administration Consultant.

FINDINGS OF FACT

1. The complainants are residents of the district.
2. Among the residents of the district are members of approximately six different American Indian Nations.
3. The district was established in 1968 through the consolidation of the Osseo School District and the Fairchild School District. Since 1968, the district has used the nickname "Chieftains." From 1968 to 2004, the district, at various times, used a logo depicting the head of an American Indian male in a feather headdress.
4. On April 12, 2004, following several years of controversy related to the district's use of the "Chieftains" nickname and logo, the Osseo-Fairchild School Board adopted a policy entitled "Osseo-Fairchild Logo Use Policy" (policy). The stated purpose of the policy is to "use the Chieftain name and logo to preserve and foster the story of the Native American people who lived in the area and established proud traditions and culture." The policy declared, "The name of the School District, its teams, and student groups shall be "Chieftains." The policy also created a new logo designated "Chieftain Logo." The policy identified the "Chieftain Logo" as "a Ho-Chunk Indianhead with a headdress."
5. The policy required the formation of a "Chieftain Ambassador Committee" to educate each district in the district's athletic conference about the policy and ask their help in preventing actions that may be viewed as disrespectful to American Indians. The district did not form or use a "Chieftain Ambassador Committee."
6. The policy required display of a narrative in the high school commons, written by students, describing local American Indian history. The policy required the students who wrote the narrative to limit its scope to the past 75 years. The policy further directed students preparing the narrative to interview only Ho-Chunk residents who had lived in the district 10 years or longer and Ho-Chunk Students who had attended district schools five years or longer.
7. The policy does not permit the use of the "Chieftain Logo" on sports uniforms or athletic warm-ups, but does permit the use of the "Chieftain Logo" on athletic jackets, caps, sweatshirts, t-shirts, and other wearing apparel.
8. "Home of the Chieftains" is displayed in the high school gymnasium, the basketball scorers' table, the football field grandstand, and the baseball field billboard. The word "Chieftains" appears on athletic warm-ups.

9. The “Chieftain Logo” is displayed in the high school gymnasium, the basketball scorers’ table, the football field grandstand, the baseball field billboard, and in the high school commons.
10. The “Chieftain Logo” was designed by a resident of Whitehall, Wisconsin with reference to a photograph of Frank Thunder. Mr. Thunder’s name is not a part of the logo. Mr. Thunder was a resident of Fairchild and a member of the Ho-Chunk Nation. Mr. Thunder’s descendants gave permission for creation and use of the “Chieftain Logo.”
11. Ho-Chunk Nation Legislature Resolution 7-07-04 C states, “Each district of the Ho-Chunk Nation shall decide issues of offensive and demeaning school nicknames, logos, and mascots and those found offensive and demeaning shall be reported to the Legislature to take appropriate action to voice to the school district the Nation’s opposition to the negative and demeaning portrayal of Native American Indian people.”
12. The Osseo-Fairchild School District is located in District 1 of the Ho-Chunk Nation.
13. In 2003, the racial identity of an American Indian student in the district was frequently questioned by peers. At one point, the student was asked why he did not dress like a real Indian.
14. In 2003, an American Indian student who did not support the use of the “Chieftain Logo” was called a “dirty Indian” by peers.
15. In May of 2010, district athletes taunted an American Indian resident on district property with the “Chieftains” nickname.
16. In 2006, a district student attending a volleyball tournament in the district engaged in an American Indian “war dance” on the court during a timeout.
17. At various times since 2004, students from other school districts, without American Indian nicknames or logos, attending athletic competitions with the district’s teams have donned “Indian headdresses” and engaged in the “Tomahawk Chop.”
18. On one occasion between 2004 and 2010, students from another school district used the phrase “scalp the Chieftains” on a homecoming float.
19. 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.
20. 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.

21. 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.
22. 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 district's use of the "Chieftains" nickname and "Chieftain Logo" is unambiguously race-based.

Following the hearing, the district asked the department to reconsider its determination that the district's use of the "Chieftains" nickname and "Chieftain Logo" is unambiguously race-based. Section 118.134(1) of the Wisconsin Statutes requires the department to examine whether the use of the "Chieftains" nickname, alone or in connection with the "Chieftains Logo," is unambiguously race based. The provisions of section PI 45.04(3)(a) of the Wisconsin Administrative Code applied to the district's use of the "Chieftains" nickname, in conjunction with the "Chieftain Logo," requires a determination that such use is unambiguously race-based. Examination of the facts pertaining to the use of the "Chieftains" nickname and "Chieftain Logo" presented at the hearing yields the same conclusion.

The district's use of the "Chieftain Logo" is unambiguously race-based. The district asserts the "Chieftain Logo" is not race-based because it is a representation of a real person, not a race of people. While it is true that the logo is an artist's rendering of Mr. Thunder, it is equally true the district does not use the image as a representation of Mr. Thunder. The policy, which designated Mr. Thunder's image as the "Chieftain Logo" does not mention Mr. Thunder. Mr. Thunder's name is not part of the logo. The district presented no evidence students or visitors to the district, other than Mr. Thunder's descendants, consider the "Chieftain Logo" to be a representation of Mr. Thunder. Likewise, the district did not present evidence it educates students or visitors to the district that the "Chieftain Logo" is a representation of Mr. Thunder, or who the flesh and blood Mr. Thunder was. A former student in the district testified, "I've spoken to many former athletes who have played at Osseo-Fairchild and we have a common view of the Chieftain logo. We deal with pride and honor. The word Chieftain to us has meant a leader and warrior, someone who commands respect and leads by example." Whether Mr. Thunder actually was a warrior, or a person who led by example, was not mentioned by this witness, or any other witness. The reasonable conclusion to draw from the facts available is that the majority of persons encountering the "Chieftain Logo" see a representation of an American Indian in a feather headdress and nothing more. As such, the "Chieftain Logo" is properly considered race-based.

The “Chieftains” nickname, as used by the district, is unambiguously race-based. The district argues the “Chieftains” nickname is not race-based because “Chieftain” can mean many other things apart from an American Indian leader. While the proposition may be true in the abstract, “Chieftain” in the Osseo-Fairchild School District means an American Indian and has for more than 40 years. With the exception of a few years, the district has always used the “Chieftains” nickname in conjunction with images of an American Indian male in a feather headdress. Any doubt as to whether “Chieftain” was to mean an American Indian was removed by the district itself when use of the “Chieftain Logo” was mandated by board policy in 2004.

The district urges consideration of the “Chieftain Logo” and “Chieftains” nickname, independently of each other, to determine whether or not each promotes discrimination, pupil harassment, or stereotyping. Presumably, in making this request, the district invites the department to permit the district to retain the “Chieftain” nickname and terminate use of the “Chieftain Logo” on grounds that, without the use of the “Chieftain Logo,” the “Chieftains” nickname would cease to be race-based. The department must base its decision on the district’s current use of the nickname and logo, and will not consider the hypothetical situation proposed by the district.

II. The district does not have the permission of a federally recognized American Indian tribe for the use of the “Chieftains” nickname and “Chieftain Logo.”

Pursuant to section 118.134 (1m)(a) of the Wisconsin Statutes, the department may consider evidence a school district has obtained approval from a federally recognized American Indian tribe to use a nickname or logo that is a reference to the name of that specific American Indian tribe. Approval, as defined by section PI 45.02(1) of the Wisconsin Administrative Code, means approval by the governing body of the tribe. The district provided no evidence that the logo or nickname is a reference to a specific American Indian tribe.

Furthermore, the district has not provided evidence of approval by any American Indian tribe. The district does claim the “chieftain logo is an artistic rendering of a person who was a member of an American Indian Tribe. Mr. Thunder’s descendants testified the “Chieftain Logo” was a depiction of their ancestor, and the “Chieftains” nickname and “Chieftain Logo” was being used by the district with their permission. The district points to Ho-Chunk Nation Legislature Resolution 7-07-04 C as further evidence of tribal approval. The resolution provides in part, “Each district of the Ho-Chunk Nation shall decide issues of offensive and demeaning school nicknames, logos, and mascots and those found offensive and demeaning shall be reported to the Legislature to take appropriate action to voice to the school district the Nation’s opposition to the negative and demeaning portrayal of Native American Indian people.” The district did not present any evidence any district of the Ho-Chunk Nation formally discussed or took action on the use of the “Chieftains” nickname or “Chieftain Logo.” The department cannot accept the premise that permission from one American Indian family, combined with inaction on the part of a governing body of an American Indian tribe, constitutes the approval required by the statute.

III. The district did not provide clear and convincing evidence the use of the “Chieftains” nickname and “Chieftain Logo” does not promote discrimination, pupil harassment, or stereotyping.

Section 118.134 of the Wisconsin Statutes requires the district to produce clear and convincing evidence its use of the “Chieftains” nickname and “Chieftain 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 effects of the “Chieftains” nickname and “Chieftain 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, each of the district’s witnesses testified they have never observed what they considered to be discrimination or harassment associated with the use of the nickname or logo. These assertions, alone, do not prove by clear and convincing evidence that the nickname and logo do not promote discrimination, pupil harassment, or stereotyping. Other witnesses testified about incidents related to the nickname and logo involving Osseo-Fairchild students as well as students from other school districts. The witnesses described harassing behavior by students related to the district’s use of the logo including taunting of American Indian persons with the “Chieftains” nickname and race-based name calling; witnesses also described students engaging in stereotyping related to the district’s use of the “Chieftains” nickname including performing mock “war dances,” using phony American Indian headdresses, engaging in the “tomahawk chop,” and using the phrase, “scalp the Chieftains.”

“Respectful” use of the “Chieftains” nickname and “Chieftain Logo” does not constitute clear and convincing evidence the use of the nickname and logo does not promote discrimination, pupil harassment, or stereotyping. The district points to its logo use policy as evidence it uses the nickname and logo respectfully. However, the district presented no evidence as to how the authors of the policy determined what constituted respectful use, or whether the policy results in respect of American Indian people. To the contrary, two American Indian residents of the district testified they found many of the uses to which the “Chieftains” nickname and “Chieftain Logo” are put to be disrespectful. Even if the evidence in the record demonstrated the nickname and logo were used in a universally respectful fashion it would not constitute the clear and convincing evidence required by the statute, particularly in regard to 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. As discussed above, students have attributed behavior (war dances, scalping, dress), values (leading by example), and roles (warrior) to American Indian people solely on the basis the district’s race-based nickname and logo.

The district alleges that the “Chieftain Logo” is used in a limited way and therefore does not promote discrimination, pupil harassment, or stereotyping. Even if it were true that the logo’s use was limited, “limited” use of a logo is not clear and convincing evidence the use of the logo does not promote discrimination, pupil harassment, or stereotyping. A district witness testified the policy results in the “Chieftain Logo” being used in only four places in the district so it is,

“really a trivial matter as far as, well, this is degrading to anybody.” The “Chieftain Logo” is, in fact, displayed in four prominent locations in the district; the gymnasium, the high school commons, the football field grandstand, and the baseball field billboard. In addition, the policy permits the use of the logo on apparel and requires merchandise sold in the school store to include items with the “Chieftain Logo.” It is difficult to imagine a student in the district would not encounter the “Chieftain Logo” on a daily basis when school is in session. Even if the logo only appeared in one place in the district, its use carries the full force and effect of school board policy. Its use is not trivial.

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. 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. Several of the district’s witnesses did assert the findings of social science research were not relevant to the determination of whether the district’s use “Chieftain” nickname and “Chieftain Logo” promotes discrimination, pupil harassment, or stereotyping, unless the research had been conducted on students attending schools within the district. The arguments of the district’s witnesses are unpersuasive. Social science research of the type cited by the complainants is at the core of nearly all educational decision-making in Wisconsin. Furthermore, the U.S. Supreme Court specifically made use of this type of evidence in its landmark school discrimination case *Brown v. Board of Education of Topeka* (347 U.S. 483 (1954)).

CONCLUSIONS OF LAW

1. The Osseo-Fairchild School District nickname “Chieftains” and the “Chieftain Logo” are unambiguously race-based pursuant to section PI 45.04(3) of 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 “Chieftains” name or “Chieftain Logo.”
3. The Osseo-Fairchild School District nickname “Chieftains” and the “Chieftain Logo” promote discrimination, pupil harassment, and stereotyping in violation of section 118.134 of the Wisconsin Statutes.

ORDER

On or before July 27, 2011 the Osseo Fairchild School District shall terminate its use of the “Chieftains” nickname and the “Chieftain Logo.”

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 July 27, 2011, impossible or impractical, the school district shall submit evidence of the extenuating circumstances to the department no later than November 1, 2010.

Dated at Madison, Wisconsin this 27th day of July, 2010.

//signed 7/27/10

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.