

Wis. court: Parents can't sue over Indian nickname

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MADISON, Wis.—Students' parents lacked the legal standing to try to stop the state from forcing the Mukwonago Area School District to dump its Indians nickname and logo, a state appeals court ruled Thursday in a decision that could affect similar efforts elsewhere.

The district didn't challenge the Department of Public Instruction's order to drop the nickname, but if it had, the dispute would have been between the district and DPI, not the students' parents and the state agency, the 2nd District Court of Appeals ruled.

Unless the state Supreme Court takes up the case, Mukwonago will have to change its nickname and logo by February 2014, said John Johnson, the DPI's education services director.

"DPI followed the law in making the decision," Johnson said.

Critics have long argued that the use of American Indian mascots and nicknames is offensive and demeaning. In 2010, state lawmakers passed a bill that gave the DPI the authority to force schools to drop race-based nicknames, logos and mascots if a complaint is filed and the agency determines the names or images are discriminatory.

School nicknames are a point of pride with many alumni, parents and students, and some feel that forcing schools to abandon names they've had for decades erodes communities' cultural identities.

Samuel Hall, an attorney for the Mukwonago parents and others in Berlin who have a similar lawsuit pending, said he plans to ask the state Supreme Court to take up the matter. He questioned who, if not taxpayers, should have legal standing to sue in such cases.

"We are disappointed in the court's ruling and believe that all taxpayers should be given their day in court to challenge a law and a process that could cost them thousands of dollars and otherwise impact their community," he said in a statement.

Since then, several schools have had to change nicknames, including the Kewaunee School District, which swapped its Indians nickname for the Storm in 2010 after a retired teacher complained about it. The DPI ordered Osseo-Fairchild to drop its Chieftains nickname that year, and it has ordered Berlin High School to ditch its Indians moniker—an order parents have challenged in court.

The Mukwonago district, which is about 30 miles southwest of Milwaukee, has used the Indians nickname and a logo of an Indian man wearing a feathered head dress for more than 80 years. An area resident filed a complaint about the name and logo about two months after the law was passed.

DPI employee Paul Sherman held a hearing and determined the nickname and logo were race-based and that the district hadn't gotten the permission of any Native American tribe to use them. A month later, the department ordered the district to drop the name and logo.

The district didn't challenge the order, but parents of some current and former Mukwonago students sued, contending that Sherman was biased because he worked for the DPI and they say agency officials have advocated against race-based nicknames. They argued they had standing to sue because they're taxpayers and Mukwonago's efforts to change its name and logo would cost them money; Hall's briefs estimated the district would have to spend \$100,000.

Waukesha County Circuit Judge Donald Hassin Jr. ultimately sided with the parents and blocked the order, preserving the nickname.

State attorneys argued on appeal that Sherman was fair, and that the parents should have asked a judge to review Sherman's decision rather than immediately filing a lawsuit. They also argued that the parents lacked the legal

standing to sue because they weren't a party to the proceedings.

The 2nd District Court of Appeals sided with the state. In a unanimous decision, the three-judge panel ruled the parents had no standing because they weren't a party to the original proceedings, which took place between the agency and the school district. The parents also should have sought judicial review of the DPI's order before they sued, the court said, calling their tactics an "end-run collateral attack."

The ruling could affect the Berlin lawsuit, which the state has tried to counter with the same arguments.

The court didn't address whether Sherman was biased, saying it wasn't necessary.

Mukwonago Superintendent Paul Strobel didn't immediately respond to a phone message Thursday seeking comment. Barbara Munson, an Oneida Indian who chairs the Wisconsin Indian Education Association's Indian Mascot and Logo Task Force, said she hopes the appeals court ruling encourages other Wisconsin districts with Indian mascots to change.

"It's a decision I was hoping would happen," Munson said. "It really is deeply my hope that school districts do the right thing and eliminate this form of stereotype."
