



State of Wisconsin  
2023 - 2024 LEGISLATURE

LRB-4193/1  
FFK:emw

## 2023 ASSEMBLY BILL 528

October 18, 2023 - Introduced by Representatives SHELTON, RATCLIFF, JACOBSON, C. ANDERSON, CONSIDINE, SHANKLAND, J. ANDERSON, BALDEH, CABRERA, CLANCY, CONLEY, HAYWOOD, HONG, JOERS, OHNSTAD, PALMERI, SINICKI, SNODGRASS, STUBBS and VINING, cosponsored by Senators LARSON, L. JOHNSON, SMITH, ROYS, HESSELBEIN, AGARD, SPREITZER, CARPENTER and PFAFF. Referred to Committee on State Affairs.

\*\*\*AUTHORS SUBJECT TO CHANGE\*\*\*

1     **AN ACT** *to repeal* 118.134 (3r), 118.134 (4) (b), 227.43 (1) (bd), 227.43 (3) (br) and  
2           227.43 (4) (br); *to renumber and amend* 118.134 (1m) (b), 118.134 (2) and  
3           118.134 (4) (a); *to amend* 118.134 (1), 118.134 (1m) (a), 118.134 (3) (a), 118.134  
4           (3) (b) 2. and 118.134 (3) (c); and *to create* 20.255 (2) (kg), 20.505 (8) (hm) 29.,  
5           118.134 (1m) (a) 1m., 118.134 (1m) (b) 2., 118.134 (2) (b) and 118.134 (6) of the  
6           statutes; **relating to:** race-based nicknames, logos, mascots, and team names;  
7           providing an exemption from rule-making and emergency rule procedures; and  
8           making an appropriation.

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### *Analysis by the Legislative Reference Bureau*

This bill restores the law as it existed prior to the enactment of 2013 Wisconsin Act 115 governing the use of race-based nicknames, logos, mascots, and team names by school boards and authorizes the Department of Public Instruction to award a grant to a school board that terminates the use of a race-based nickname, logo, mascot, or team name that is associated with a federally recognized American Indian tribe or American Indians.

Under current law, a complaint to object to a school board's use of a race-based nickname, logo, mascot, or team name must include the signatures of at least the number of school district residents that is equal to 10 percent of the school district's

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membership, and the signatures must be obtained within the 120-day period before the complaint is filed. The bill eliminates this requirement. Under the bill, the state superintendent of public instruction must immediately review a complaint submitted by a school district resident and determine whether the use of the nickname or team name by the school board, alone or in connection with a logo or mascot, is ambiguous as to whether it is race-based.

Under current law, the Division of Hearings and Appeals is required to hold a hearing on a complaint objecting to a school board's use of a race-based nickname, logo, mascot, or team name. Under the bill, unless the state superintendent determines that a contested case hearing is not necessary or otherwise postpones the hearing, the state superintendent must hold a hearing within 45 days of receiving such a complaint. The bill also reverses the burden of proof at a hearing challenging the use of a race-based nickname, logo, mascot, or team name so that the burden is on the school board to demonstrate that the nickname, logo, mascot, or team name does not promote discrimination, pupil harassment, or stereotyping.

Under current law, the state superintendent may forego a hearing on a complaint if a school board demonstrates that a federally recognized American Indian tribe that has historical ties to this state has, under an agreement with the school board, approved the school board's use of the nickname, logo, mascot, or team name. The bill restricts the state superintendent's authority to forego a hearing to only those situations in which the American Indian tribe that is referenced, depicted, or portrayed in the nickname, logo, mascot, or team name approved the use.

Under current law, a school district is prohibited from being a member of an interscholastic athletic association that bars a member from using a race-based nickname, logo, mascot, or team name unless the use violates a decision and order issued on or after December 21, 2013. The bill eliminates this prohibition. The bill also eliminates a prohibition against the state superintendent promulgating rules that create a presumption of what constitutes a race-based nickname, logo, mascot, or team name that promotes discrimination, pupil harassment, or stereotyping.

Under the bill, DPI may award a grant to a school board that terminates the use of a race-based nickname, logo, mascot, or team name, regardless of whether the termination is voluntary, in response to an objection, or to comply with an order. The bill specifies that the amount of the grant may not exceed the greater of \$50,000 or the actual cost incurred by the school board to replace the race-based nickname, logo, mascot, or team name. Under the bill, these grants are funded from Indian gaming receipts.

For further information see the state and local fiscal estimate, which will be printed as an appendix to this bill.

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***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***



**ASSEMBLY BILL 528****SECTION 4**

1 superintendent. ~~A signature on a complaint is valid only if the signature is obtained~~  
2 ~~within the 120-day period before the complaint is filed with the state~~  
3 ~~superintendent. If a complainant objects to the use of a nickname or team name by~~  
4 ~~the school board, the state superintendent shall immediately review the complaint~~  
5 ~~and determine whether the use of the nickname or team name by the school board,~~  
6 ~~alone or in connection with a logo or mascot, is ambiguous as to whether it is~~  
7 ~~race-based.~~ The state superintendent shall do all of the following:

8 (a) Notify the school board of the receipt of the complaint ~~and of the state~~  
9 ~~superintendent's determination regarding whether the use of the nickname or team~~  
10 ~~name is ambiguous as to whether it is race-based~~ and direct the school board to  
11 submit, if applicable, any of the information under sub. (1m) (a).

12 (b) Except as provided in sub. (1m), ~~refer the complaint to the division of~~  
13 ~~hearings and appeals for a contested case hearing. The division of hearings and~~  
14 ~~appeals shall schedule a hearing on the referred complaint with reasonable~~  
15 ~~promptness contested case hearing within 45 days after the complaint is filed.~~

16 **SECTION 5.** 118.134 (1m) (a) of the statutes is amended to read:

17 118.134 **(1m)** (a) The state superintendent may determine that no contested  
18 case hearing is necessary ~~or that a hearing date may be postponed for the purpose~~  
19 ~~of obtaining additional information from the school board~~ if, no later than 10 days  
20 after being notified of the receipt of the complaint, the school board submits evidence  
21 to the state superintendent that demonstrates all of the following:

22 2. ~~A The federally recognized American Indian tribe that has historical ties~~  
23 ~~to this state has entered into an agreement with the school board under which the~~  
24 ~~tribe grants under subd. 1m. has granted approval to the school board to refer to,~~  
25 ~~depict, or portray the tribe or American Indians, in general, in a specific nickname,~~

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1 logo, or mascot or to use the name of the tribe ~~or American Indians, in general~~, as a  
2 team name in the specific manner used by the school board and has not rescinded  
3 that approval.

4 3. The use of the nickname, logo, mascot, or team name that has been approved  
5 by ~~a~~ the tribe under as provided in subd. 2. is the use to which the school district  
6 resident objects in the complaint filed under sub. (1).

7 **SECTION 6.** 118.134 (1m) (a) 1m. of the statutes is created to read:

8 118.134 (1m) (a) 1m. The nickname, logo, mascot, or team name that is used  
9 by the school board and that is the basis of the complaint is a reference to, a depiction  
10 or portrayal of, or the name of a specific, federally recognized American Indian tribe.

11 **SECTION 7.** 118.134 (1m) (b) of the statutes is renumbered 118.134 (1m) (b)  
12 (intro.) and amended to read:

13 118.134 (1m) (b) (intro.) If the state superintendent ~~determines that a~~  
14 ~~contested case hearing is not necessary~~ does any of the following, the state  
15 superintendent shall notify the school district resident who filed the complaint under  
16 sub. (1) and the school board of his or her decision in writing:

17 1. Determines that a contested case hearing is not necessary. A decision under  
18 this ~~paragraph~~ subdivision is subject to judicial review under ch. 227.

19 **SECTION 8.** 118.134 (1m) (b) 2. of the statutes is created to read:

20 118.134 (1m) (b) 2. Postpones a hearing date as provided in par. (a).

21 **SECTION 9.** 118.134 (2) of the statutes is renumbered 118.134 (2) (a) and  
22 amended to read:

23 118.134 (2) (a) ~~At~~ Except as provided in par. (b), at the hearing, the school  
24 ~~district resident who filed the complaint under sub. (1)~~ board has the burden of  
25 proving by clear and convincing evidence that the use of the race-based nickname,

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1 logo, mascot, or team name ~~promotes~~ does not promote discrimination, pupil  
2 harassment, or stereotyping, as defined by the state superintendent by rule.

3 **SECTION 10.** 118.134 (2) (b) of the statutes is created to read:

4 118.134 (2) (b) 1. Except as provided in subd. 2., if the state superintendent  
5 determined under sub. (1) that the use of a nickname or team name by a school board  
6 is ambiguous as to whether it is race-based, the use of the nickname or team name  
7 by the school board shall be presumed to be not race-based, and the school district  
8 resident who filed the complaint under sub. (1) has the burden of proving by clear and  
9 convincing evidence at the hearing that the use of the nickname or team name by the  
10 school board promotes discrimination, pupil harassment, or stereotyping, as defined  
11 by the state superintendent by rule.

12 2. If the state superintendent determined under sub. (1) that the use of a  
13 nickname or team name by a school board is ambiguous as to whether it is race-based  
14 but that the use of the nickname or team name in connection with a logo or mascot  
15 is race-based, the school board has the burden of proving by clear and convincing  
16 evidence at the hearing that the use of the nickname or team name in connection with  
17 the logo or mascot does not promote discrimination, pupil harassment, or  
18 stereotyping, as defined by the state superintendent by rule.

19 **SECTION 11.** 118.134 (3) (a) of the statutes is amended to read:

20 118.134 (3) (a) ~~The division of hearings and appeals~~ state superintendent shall  
21 issue a decision and order within 45 days after the hearing. ~~If the division of hearings~~  
22 ~~and appeals~~ state superintendent finds that the use of the race-based nickname,  
23 logo, mascot, or team name does not promote discrimination, pupil harassment, or  
24 stereotyping, ~~the division of hearings and appeals~~ state superintendent shall  
25 dismiss the complaint. Except as provided in pars. (b) and (d), if the ~~division of~~

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1 ~~hearings and appeals~~ state superintendent finds that the use of the race-based  
2 nickname, logo, mascot, or team name promotes discrimination, pupil harassment,  
3 or stereotyping, the ~~division of hearings and appeals~~ state superintendent shall  
4 order the school board to terminate its use of the race-based nickname, logo, mascot,  
5 or team name within 12 months after issuance of the order.

6 **SECTION 12.** 118.134 (3) (b) 2. of the statutes is amended to read:

7 118.134 (3) (b) 2. a. If, at the hearing under sub. (2) or after a decision and order  
8 have been issued under par. (a), the school board presents evidence to the ~~division~~  
9 ~~of hearings and appeals~~ state superintendent that extenuating circumstances  
10 render full compliance with the decision and order within 12 months after the  
11 issuance of that decision and order impossible or impracticable, the ~~division of~~  
12 ~~hearings and appeals~~ state superintendent may issue an order to extend the time  
13 within which the school board must terminate its use of the race-based nickname,  
14 logo, mascot, or team name. Except as provided in subd. 2. b., the extension may not  
15 exceed 24 months and shall apply only to those portions of the decision and order to  
16 which extenuating circumstances apply.

17 b. The ~~division of hearings and appeals~~ state superintendent may extend the  
18 time granted to a school board under subd. 2. a. if the school board presents evidence  
19 to the ~~division of hearings and appeals~~ state superintendent that compliance with  
20 a portion of the decision and order issued under par. (a) may be accomplished through  
21 a regularly scheduled maintenance program and that the cost of compliance with  
22 that portion of the decision and order exceeds \$5,000. The extension granted under  
23 this subd. 2. b. may not exceed 96 months and applies only to that portion of the  
24 decision and order with which compliance will be accomplished through the  
25 regularly scheduled maintenance program and that costs more than \$5,000.

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1           **SECTION 13.** 118.134 (3) (c) of the statutes is amended to read:

2           118.134 (3) (c) Decisions of the state superintendent under this subsection are  
3 subject to judicial review under ch. 227. ~~The venue for a proceeding to review a~~  
4 ~~decision under this section is the circuit court in any county in which territory of the~~  
5 ~~school district is located.~~

6           **SECTION 14.** 118.134 (3r) of the statutes is repealed.

7           **SECTION 15.** 118.134 (4) (a) of the statutes is renumbered 118.134 (4) and  
8 amended to read:

9           118.134 (4) ~~Except as provided in par. (b), the~~ The state superintendent shall  
10 promulgate rules necessary to implement and administer this section.

11           **SECTION 16.** 118.134 (4) (b) of the statutes is repealed.

12           **SECTION 17.** 118.134 (6) of the statutes is created to read:

13           118.134 (6) Regardless of whether or not an objection is made under sub. (1)  
14 or an order is issued under sub. (3), if a school board adopts a resolution to terminate  
15 the use of a race-based nickname, logo, mascot, or team name that is associated with  
16 a federally recognized American Indian tribe or American Indians, in general, the  
17 state superintendent may award a grant to the school board for the costs associated  
18 with adopting and implementing a nickname, logo, mascot, or team name that is not  
19 race-based. The state superintendent may not award a grant under this subsection  
20 in an amount that exceeds the greater of \$50,000 or a school board's actual costs to  
21 adopt and implement a nickname, logo, mascot, or team name. The state  
22 superintendent shall pay the awards under this subsection from the appropriation  
23 under s. 20.255 (2) (kg).

24           **SECTION 18.** 227.43 (1) (bd) of the statutes is repealed.

25           **SECTION 19.** 227.43 (3) (br) of the statutes is repealed.



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1           **SECTION 20.** 227.43 (4) (br) of the statutes is repealed.

2           **SECTION 21. Nonstatutory provisions.**

3           (1) The department of public instruction shall submit in proposed form the  
4 rules required under s. 118.134 (4) to the legislative council staff under s. 227.15 (1)  
5 no later than the first day of the 4th month beginning after the effective date of this  
6 subsection.

7           (2) Notwithstanding s. 227.135 (1), the department of public instruction is not  
8 required to prepare a statement of scope of the rules required under s. 118.134 (4).

9           (3) Sections 227.137, 227.139, and 227.19 (5) (b) 3. do not apply to the rules  
10 required under s. 118.134 (4).

11           (4) Using the procedure under s. 227.24, the department of public instruction  
12 may promulgate rules required under s. 118.134 (4) for the period before the effective  
13 date of the rules submitted under sub. (1), but not to exceed the period authorized  
14 under s. 227.24 (1) (c), subject to extension under s. 227.24 (2). Notwithstanding s.  
15 227.24 (1) (a), (2) (b), and (3), the department is not required to provide evidence that  
16 promulgating a rule under this subsection as an emergency rule is necessary for the  
17 preservation of the public peace, health, safety, or welfare and is not required to  
18 provide a finding of emergency for a rule promulgated under this subsection.

19           **SECTION 22. Initial applicability.**

20           (1) This act first applies to a complaint objecting to the use of a race-based  
21 nickname, logo, mascot, or team name that is filed with the state superintendent of  
22 public instruction on the effective date of this subsection.

23           **SECTION 23. Effective dates.** This act takes effect on the first day of the 4th  
24 month beginning after publication, except as follows:

