

**PROPOSED ORDER OF THE
STATE SUPERINTENDENT OF PUBLIC INSTRUCTION
REVISING PERMANENT RULES**

The scope statement for this rule, SS 034-14, was published in Register No. 700, on April 30, 2014, and approved by State Superintendent Tony Evers, on May 13, 2014. Per the Dane County Circuit Court order issued in *Coyne, et al. v. Walker, et al.*, Case No. 11-CV-4573, the Department of Public Instruction is not required to obtain the Governor's approval for the statement of scope or this rule.

The State Superintendent of Public Instruction hereby proposes to repeal and recreate Chapter PI 45, relating to changes as a result of 2013 Wisconsin Act 115.

The rules are being adopted under s. 227.16 (2) (b), Stats., which provides that rulemaking does not need to be preceded by notice and public hearing if the proposed rule brings an existing rule into conformity with a statute that has been changed.

ANALYSIS BY THE DEPARTMENT OF PUBLIC INSTRUCTION

Statute interpreted: 118.134, Stats.

Statutory authority: 118.134 (4), Stats.

Explanation of agency authority:

Under s. 118.134 (4) (a), Stats., the State Superintendent is required to promulgate rules to implement and administer s. 118.134, Stats., the statute on schools' race-based nicknames, logos, mascots, and team names.

Related statute or rule: None.

Plain language analysis:

This proposed rule change will align PI 45 with the statutory changes made as a result of 2013 Wisconsin Act 115. This rule change eliminates PI 45.04, the section creating a presumption that the use of any unambiguously race-based nicknames or team names are presumed to promote discrimination, pupil harassment or stereotyping; revises the complaint procedure to reflect the statutory procedures enacted under 2013 Wisconsin Act 115; and makes other minor changes to the rule to align it with 2013 Wisconsin Act 115.

Summary of, and comparison with, existing or proposed federal regulations: N/A.

Comparison with rules in adjacent states: N/A.

Summary of factual data and analytical methodologies:

This is a change to align PI 45 with the changes in s. 118.134, Stats.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report: N/A.

Anticipated costs incurred by private sector: N/A.

Effect on small business:

The proposed rules will have no economic impact on small businesses, as defined in s. 227.114 (1), Stats.

Agency contact person: (including email and telephone)

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Place where comments are to be submitted and deadline for submission:

Comments can be submitted to Carl Bryan using the contact information above. Comments must be submitted no later than 15 days after publication of the Notice of Submittal of Rules to the Legislative Council Rules Clearinghouse in the Administrative Register.

SECTION 1. Chapter PI 45 is repealed and recreated to read:

CHAPTER PI 45

USE OF RACE-BASED NICKNAMES, LOGOS, MASCOTS, AND TEAM NAMES

PI 45.01 Purpose.

(1) Section 118.134 (1), Stats., allows a school district resident to object to the use of a race-based nickname, logo, mascot, or team name by the school board of that school district by filing a complaint with the state superintendent.

(2) Under s. 118.134 (4), Stats., the state superintendent is required to promulgate rules necessary to implement and administer s. 118.134, Stats.

PI 45.02 Definitions. In this chapter:

(1) “Bias” means an inclination for or against a person or group of persons based, in whole or in part, on race that inhibits impartial or objective judgment affecting pupils.

(2) “Department” means the Wisconsin department of public instruction.

(3) “Discrimination” means any action, policy, or practice, including bias, stereotyping, and pupil harassment, that is detrimental to a person or group of persons and differentiates or distinguishes among persons, or which limits or denies a person or group of persons opportunities, privileges, roles, or rewards based, in whole or in part, on race, or which perpetuates the effects of past discrimination based in whole or in part on race.

(4) “Division” means the division of hearings and appeals in the department of administration.

(5) “Elector” means a U.S. citizen age 18 or older who resides in the school district.

(6) “Federally recognized American Indian tribe” means a tribal entity recognized and eligible for funding and services from the bureau of Indian affairs by virtue of its status as an Indian tribe.

(7) “Logo” means any written, printed, graphic or photographic, badge, emblem, caricature, image, statue, artifact, or other symbolic depiction representative of or in any way connected to the identity of a school, school district, or school board.

(8) “Mascot” means a person, costume, insignia, dance, song, rhythmic beat, or any other object or thing representative of or in any way connected to the identity of a school, school district, or school board.

(9) “Membership” has the meaning given in s. 121.004 (5), Stats.

(10) “Nickname” means any name, title, label, word, or any other designation of any kind representative of or in any way connected to the identity of a school, school district, or school board, but does not include the official name of a school or school district.

(11) “Pupil harassment” means behavior towards pupils based, in whole or in part, on race, that substantially interferes with a pupil's school performance or creates an intimidating, hostile, or offensive school environment.

(12) “School board” means the school board in charge of the public schools of a district.

(13) “School district” has the meaning given in s. 115.01 (3), Stats.

(14) “Stereotyping” means attributing behaviors, abilities, interests, values, and roles to a person or group of persons on the basis, in whole or in part, of their race.

(15) “Use” includes adoption of nicknames, logos, mascots, or team names by a school district board as representative of or in any way connected to the identity of a school, district, or board or the display of nicknames, logos, mascots, or team names at any school or school sponsored event.

PI 45.03 Complaint procedures.

(1) A complaint filed under s. 118.134 (1), Stats., shall be submitted to the state superintendent in writing and include all of the following information:

(a) The complainant's contact information.

(b) A statement that the complainant is a resident of the school district to which the complaint is directed.

(c) Signatures, obtained within the 120 day period before the complaint is filed, of school district electors equal to at least 10 percent of the school district's membership.

(2) Upon receipt of a complaint, the state superintendent shall notify the school district of the complaint, and direct the school board to submit, if applicable, the information under sub. (3).

(3) If applicable, within 10 days of receiving the notice under sub. (2), the school board shall submit evidence of the following:

(a) The school board has a written agreement with a federally recognized American Indian tribe that has historical ties to the state that grants approval to the school board to use the nickname, logo, mascot, or team name used by the school board;

(b) The use of the nickname, logo, mascot, or team name that has been approved by a tribe under par. (a) is the use to which the school district resident objects in the complaint;

(c) That the tribe has not rescinded that agreement.

(4) (a) Except as specified under par. (b), the state superintendent shall refer the complaint to the division for a contested case hearing.

(b) The state superintendent may determine that no contested case hearing is necessary if the board provides the information under sub. (3).

(c) If the state superintendent determines a contested case hearing is not necessary, the state superintendent shall notify the complainant of this decision in writing.

SECTION 2. EFFECTIVE DATE:

The rules contained in this order shall take effect on the first day of the month commencing after the date of publication in the Wisconsin Administrative Register, as provided in s. 227.22(2)(intro.), Stats.

Dated this _____ day of _____, 2015

Tony Evers, PhD
State Superintendent