

Commentary: NY State Education Department requires school districts to replace Native American mascots or obtain tribe approval

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THE NEW YORK STATE EDUCATION DEPARTMENT recently issued a letter stating that public school districts must “affirmatively commit to replacing [their] Native American team name[s], logo[s], and/or imagery by the end of the 2022-23 school year” unless



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they obtain approval from a recognized tribe. School districts that fail to make that commitment or otherwise obtain tribe approval may be found in willful violation of the Dignity for All Students Act, which prohibits the creation of a hostile environment that could cause emotional harm to a student. N.Y. Educ. Law §§ 11(7), 12(1). Violation of the Act could result in the removal of school officers and the withholding of state aid, among other penalties. *Id.* § 306.

The Education Department’s letter builds on a 2001 memorandum issued by then Commissioner of Education Richard P. Mills. The memorandum explained that using Native American mascots “can become a barrier to building a safe and nurturing school community and improving academic achievement for all students.”

Commissioner Mills stated that “an immediate and statewide halt to the

use of [Native American] mascots” was not advisable at that time because communities needed the opportunity to discuss the issue, and districts needed to consider the “significant costs” involved in changing a school mascot (such as changing team uniforms and gym floors).

Instead, Commissioner Mills asked districts “to end the use of Native American mascots as soon as practical.”

Some districts have since retired their Native American mascots, but not all. The Education Department’s letter follows a challenge to the Cambridge Central School District’s decision to keep its Indians team name, logo and mascot after previously deciding to retire them based on six months of research into the issue. The commissioner of education ruled that the district’s decision to keep its name and logo after deciding to retire them was arbitrary and capricious because the district failed to offer a meaningful explanation for the shift. See *Appeal of McMillan*, 61 Ed Dept., Decision No. 18,058 (Nov. 29, 2021). Moreover, the commissioner ruled that even if the district had not unreasonably changed its decision, it abused its discretion by maintaining its name and logo. The commissioner explained that numerous studies demonstrated the harms caused by Native American mascots, such as negative psychological effects on Native Americans and activating prejudices in non-Native persons. Given these documented harms, the commissioner declared that it was reasonable to conclude that the use of Native American mascots could violate the Dignity for All Students Act.

The district appealed the commissioner’s decision to the Albany Supreme Court, which affirmed the com-

missioner’s decision in its entirety. Amended Judgment at 8, *Cambridge Cent. Sch. Dist. v. N.Y. State Dep’t of Educ.*, No. 902161-22 (Sup. Ct. Albany Cnty. June 22, 2022). The court held that the commissioner “determined correctly that the continued use of the ‘Indians’ nickname and imagery, given the 20 years that have passed since Commissioner Mills’ directive, and given the imperatives of the District’s Diversity Policy, was itself an abuse of discretion by the [District].” The district filed a Notice of Appeal with the Third Department, which has not issued a decision on the matter.

The Education Department’s letter explains that this judicial decision “establishes that public school districts are prohibited from utilizing Native American mascots.” The Education Department encourages districts that need guidance regarding how to comply with its mandate to reach out to districts that have successfully retired their mascots or their local Board of Cooperative Education Services. The Education Department is also developing regulations to clarify school districts’ obligations on this matter.

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