

# BOND

## SCHOOL LAW INFORMATION MEMO

JUNE 8, 2023

### Prohibition on Using Native American Mascots in Public Schools

Late in 2022, the New York State Education Department (NYSED) announced that “public school districts are prohibited from utilizing Native American mascots” and must begin to formulate a plan to change them. After a final vote on the regulation early this year, Part 123 of the Regulations of the Commissioner of Education Relating to Prohibiting the Use of Indigenous Names, Mascots, and Logos by Public Schools (Part 123) became effective on May 3, 2023.

In [recently issued guidance](#) released by NYSED, Part 123 requires that districts formally commit to changing any “team names, mascots, and logos derived from, or that have connections to, Indigenous peoples, in the past or at present, which are being used without the express consent of such people” via a resolution by the Board of Education by June 30, 2023. If a district obtains written consent from the appropriate Indigenous nation or tribe, they must submit such documentation to NYSED to comply with Part 123 without changing any team names or mascots. Important to note is that Part 123 does not regulate “school buildings, districts or towns named after Indigenous nations, tribes, people, or derivatives” and would not require a name change if any of the buildings or a public school district’s name itself had any Indigenous connection.

The regulation further prohibits school district employees from displaying paraphernalia or clothing associated with the retired Indigenous team name, mascot and logo—meaning that school personnel cannot wear any apparel that contains the retired team name or Indigenous insignia representing such team name or mascot.

Part 123 also will require additional capital construction to replace certain facility related items that display the prohibited team names, mascots and logos. Such items may include turf fields, scoreboard and gymnasium wood floors, amongst others. NYSED has advised districts to “employ the most economical approach” when addressing facility modifications that are required by Part 123, suggesting solutions such as only replacing such portions of a gymnasium floor or turf field that contain a prohibited mascot or logo. State Building Aid is available to subsidize any capital expenses that may come with modifications to comply with Part 123. Districts must submit applications for capital construction projects to the Office of Facilities Planning for review, approval and permitting and should also seek additional funding through the district’s budget or capital project process.

Boards of Education are tasked with determining whether their district needs to change any team names, mascots or logos that are prohibited by the regulation and are encouraged to foster a productive dialogue about any potential changes with community members. Consequently, if a school district does not comply with this regulation, NYSED has the authority under Education Law Section 306(2) to remove school officers or withhold applicable State Aid.

Part 123 requires that all public school districts eliminate team names, mascots or logos with connections to Indigenous Nations or peoples by the end of the 2024-2025 school year. However, upon a showing of good cause, the Commissioner of Education may grant an extension to comply with the new regulation upon application. Any individual aggrieved by the action or inaction of their school district may commence an appeal to the Commissioner of Education or petition for the removal of their school officers.

As the June 30, 2023 deadline approaches for Boards of Education to pass a resolution committing to these changes, we continue to monitor any and all information released by NYSED and their Office of Indigenous Education on Part 123 compliance. If you have questions about the topics referenced in this memo, please contact any attorney in Bond’s School Law practice or the attorney at the firm with whom you are regularly in contact.

*\*Special thanks to Bond Associate Trainee Emily Fallon for assisting with researching and drafting this memo.*



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