

# Native American Mascots: An Emerging Legal Landscape - Part One

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## Education Law Notes

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By Zachary Schurin



Earlier this month, **The CABA Journal** (see page 11) published a portion of an article by Pullman & Comley attorney Zach Schurin entitled “Native American Mascots: An Emerging Legal Landscape.” The article examines the legal issues that Connecticut schools with Native American team names and mascots should consider.

Over the course of the next week, the full article, with CABA's generous permission, will be published on this blog in three sections. Part One of the article is below.

### **Native American Mascots: An Emerging Legal Landscape - Part One**

In recent years school team names and mascots, particularly mascots that use Native American imagery, have come under heavy scrutiny in school districts across the country. Opponents of the continued use of such mascots argue that Native American team names and logos perpetuate negative stereotypes, are unnecessarily offensive and undermine student self-esteem. On the other hand, supporters of the continued use of such mascots point to tradition and community pride in the face of “cancel culture.”

Efforts to retire Native American mascots have clearly been gaining ground. According to the website [FiveThirtyEight.com](http://FiveThirtyEight.com), in 2014 there were 2,128 high schools in the United States with native mascots. As of October 2020 that number was down to 1,232. In professional sports, this past July the NFL's Washington franchise officially dropped its former name and is now simply the “Washington Football Team,” while in December Major League Baseball's Cleveland Indians announced they would be dropping the “Indians” name after the 2021 season.

Not surprisingly the debate over this issue has spilled over into the legislative arena. California, Maine, Oregon and Wisconsin have severely restricted the use of native mascot names and images through legislation or state department of education policy, while Tennessee went the other way and passed a 2017 law expressly prohibiting school districts from banning mascots “that honor persons or cultures.” Here in Connecticut in January 2020, former Speaker of the Connecticut House of Representatives Joseph

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Aresimowicz discussed the possibility of state legislation restricting the use of native mascots in schools although no such legislation was proposed.

While outside of these legislative enactments there is little if any so-called “blackletter law” regarding the use of Native American mascots by public school districts, certain themes emerge from the handful of decisions that courts and administrative agencies from around the country have issued on this controversial subject. Opponents of the continued use of Native American mascots are increasingly relying on evidence of adverse psychological impacts on students *of both Native American and non-Native American ancestry* to support legal challenges. Most of these cases however have proven unsuccessful since, as described below, both Title VI of the Civil Rights Act of 1964 and most state civil rights laws require evidence of demonstrable harm to specific students as opposed to generalized complaints about offensive stereotypes.

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