| **SUBJECT: HB 2935 The CROWN Act** OAR 581-022-\_\_\_\_ - Agreements Entered into with Voluntary OrganizationsOAR 581-021-0045 – Discrimination Prohibited OAR 581-021-0046 - Program Compliance Standards**STAFF NAME & OFFICE**: Winston Cornwall, Government and Legal Affairs Team Emily Nazarov, Government and Legal Affairs Team**SUMMARY:**Limits authority of school district to become member of voluntary organization that administers interscholastic activities unless organization implements *policy that prohibits discrimination based on race, color or national origin*] **equity focused policies that meet certain requirements (New Rule 581-022-\_\_\_\_)**. Clarifies meaning of race to include natural hair, hair texture, hair type and protective hairstyles for purposes of prohibited discrimination under antidiscrimination statutes (Amends Existing Rule 581-021-0045). Clarifies that valid dress code or policy may not have disproportionate adverse impact on members of protected class to extent that is greater than impact on persons generally (Amends Existing Rule 581-021-0046). **X** New Rule**X**  Amend Existing Rules[ ] Repeal Rule | **[ ]  First Reading****[ ] Presentation****[ ] No Presentation****[x]  Action****[ ] Temp Rule****[ ] Presentation****[x] No Presentation** |
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**BACKGROUND**

**History**

The CROWN Act which stands for “Creating a Respectful and Open World for Natural Hair,” is a law that prohibits race-based hair discrimination, which is the denial of employment and educational opportunities because of hair texture or protective hairstyles including braids, locs, twists or knots. First introduced in California in January 2019 and signed into law on July 3, 2019, the inaugural CROWN Act expanded the definition of race in the Fair Employment and Housing Act (FEHA) and state Education Code, to ensure protectionn in both workplaces as well as K-12 public and charter schools. Since then the CROWN Act has galvanized support from federal and state legislators in the movement to end hair discrimiination nationwide. The U.S. Congress passed the CROWN Act of 2020 on September 21, 2020. The Oregon Legislature introduced HB 2935 in January 2021, which Governor Brown signed into law on June 2, 2021, becoming the 12th state in the Union to pass its version of the CROWN Act.

**Purpose**

OAR 581-021-0045, Discrimination Prohibited, is the core rule that ensures equal opportunity, defines general and specific discrimination prohibitions, and states the 10 Oregon protected classes in its K-12 public and charter schools.This rule has been in place since September 30, 1976.

OAR 581-021-0046, Program Compliance Standards, provides assurances of equal opportunity and expressly prohibits discrimination is several programs, benefits and activities situated in Oregon K-12 public and charter schools. This rule has been in place since September 30, 1976.

OAR 581-022-\_\_\_\_, Agreements Entered into with Voluntary Organizations, will be a new rule that limits the authority of a school district to become a member of voluntary organization that administers interscholastic activities unless organization implements *policy that prohibits discrimination based on race, color or national origin* equity focused policies that meet certain requirements.

**Areas of Discretion**

The Board has some discretion regarding two areas: the inclusion and clarification of language related to the definition of certain terms and protected classes. Otherwise, the rules have been written strictly mirroring statute.

**Stakeholder Voice/Input**

Two stakeholder groups, the CROWN Act Coalition (Coalition), a group of Oregon advocates with long-term interests, statewide reach, and the Oregon Department of Education Rules Advisory Committee (RAC), an eclectic group of ODE partners, school district representatives from the field and community organization leaders provided insightful, candid critiques of these proposed rules. Both groups contain individuals that represent the communities and students directly served by these rules. The Coalition met with ODE in July, August and September and reviewed the first draft of these rules from which ODE created a second draft. The RAC provided its critiques during and after the ODE presentation at its October 14th meeting. ODE amended these rules as recommended and presented the changes to the RAC at its November 9th meeting.

Students and school staff who identify as persons of race, color and national origin may be most affected by these critiques. The two stakeholder groups are particularly concerned about the rules’ impact on students and their interaction with school districts and charter schools as the school staff must address their concerns with the Oregon Bureau of Labor and Industries (BOLI) if they wish to appeal to an agency outside of their employer.is, locs, twists, and knots in the workplace and public schools

**SUMMARY OF PREVIOUS BOARD ACTION**

This is a second read and adoption of the proposed rules.

**HAS THE RULE CHANGED SINCE LAST BOARD MEETING?**

[ ]  N/A; first read—hasn’t been before board

[ ]  No; same as last month

[x]  Yes – As follows:

1. Amend the definition of national origin (in both existing rules) to add: **including, but not limited to individuals who identify as Syrian, Muslim, Middle Eastern, Arab, Sikh, and Jewish.**
2. Change the definition of “disproportionate” to “disproportionate adverse impact” means:

(10) Dress Codes. Districts may enforce an otherwise valid dress code or policy, as long the code or policy**:**

**(a)** Provides, on a case-by-case basis, for reasonable accommodation of an individual based on the health and safety needs of the individual**; and**

**(b)(A) Does not have a disproportionate adverse impact on members of a protected class, including age, disability, national origin, race, color, marital status, religion, sex, sexual orientation, or gender identity, to a greater extent than the policy impacts persons generally.**

**(b) For purposes of this paragraph, “disproportionate adverse impact” *means an impact that is not appropriate or fair in consideration of the individual’s protected class status.***

**POLICY ISSUE OR CONCERNS**

Most of the policy choices related to these rules were made by the Oregon Legislature. For these policy choices, the rules have been written strictly mirroring statute. The ODE staff responsible for these rules focused on creating a new rule and amending two existing rules.

Two places where policy choices were made, as a result of concerns expressed by the field, the two aforementioned stakeholder groups, and discussions with ODE staff, were in the defintions of two specific terms (disproportionate, voluntary organizations) and the clarification/inclusion of equity terminology (culture, ethnicity) to enhance descriptions of protected classes (national origin, race). The exact language where policy choices were made in each of the three rule proposals follow:

**OAR 581-021-0045 (Discrimination Prohibited)**

**c) “National origin” includes:**

**(A) An individual’s or individual’s parent’s or guardian’s place of origin;**

**(B) Latinx and other protected class ethnicities;**

**(C) An individual’s religious or cultural ancestry that the individual associates with their personal identity;**

**(E) Physical characteristics that are historically associated with a place of origin, protected class ethnicity, or religious or cultural ancestry, including but not limited to individuals who identify as Syrian, Muslim, Middle Eastern, Arab, Sikh, and Jewish; and**

**(F) An individual whose first spoken language is not English or who is not proficient in speaking English, or who is under the custody of a parent or guardian whose first spoken language is not English or who is not proficient in speaking English.**

**(d) “Protective hairstyle” means a hairstyle, hair color, or manner of wearing hair that includes, but is not limited to, locs, twists, and braids, regardless of whether the braids are created with extensions or styled with adornments.**

**(e) “Race” includes:**

**(A) Black, African American, American Indian, Alaska Native, Asian, Native Hawaiian, Pacific Islander, other protected class races, and multiracial individuals;**

**OAR 581-021-0046 (Progran Compliance Standards)**

(10) Dress Codes. Districts may enforce an otherwise valid dress code or policy, as long the code or policy**:**

**(a)** Provides, on a case-by-case basis, for reasonable accommodation of an individual based on the health and safety needs of the individual**; and**

**(b)(A) Does not have a disproportionate adverse impact on members of a protected class, including age, disability, national origin, race, color, marital status, religion, sex, sexual orientation, or gender identity, to a greater extent than the policy impacts persons generally.**

**(b) For purposes of this paragraph, “disproportionate adverse impact” *means an impact that is not appropriate or fair in consideration of the individual’s protected class status.***

**OAR 581-022-\_\_\_\_ (Agreements Entered into with Voluntary Organizations)**

**Exact language mentioned above that defines the protected classes of national origin and race.**

**A district shall adopt, and adhere to, a policy under which it may be a member of and pay fees, if any, to a voluntary organization that administers interscholastic activities or that facilitates the scheduling and programming of interscholastic activities only if the organization:**

**EQUITY IMPACT ANALYSIS**

Negative/Positive Effects

The adverse impact on populations most affected by these rules that the Board should consider are:

* Lowered academic achievement and aspirations
* Increased anxiety
* Loss of self-esteem and confidence
* Depression and post-traumatic stress
* General deterioration in physical health
* Feelings of alienation in the school environment
	+ Fear of other children, staff, other parents, spectators
* Absenteeism from school

The possible positive opportunities, assets and access these rules provide are the exact opposite of the adverse impacts. Oregon K-12 public and charter schools continue to engage in successful strategies that work to eliminate the opportunity and achievement gap. These rules, we anticipate, will contribute to that continued advancement. ODE believes our comments from the field, stakeholder groups and staff discussions have identified potential unintended consequences, addressing those items with policy choices that provide more specific definitions of terms and clarifications of national origin and race as protected classes.

The two potential barriers to more equitable outcomes may be political and emotional in nature. Prior Board rules and resolutions such as Every Student Belongs and Black Lives Matter, respectively, have resulted in very positive receptions and support in many communities. These commitments have promoted feelings of confidence and commitment, specifically to educational communities of race, color and national origin However, in a number of educational communities, local school boards and citizens have responded very negatively to these actions and sought to rescind them in their communities. This level of adverse impact sometimes limits or prevents students, school staff, parents and interested parties from coming forward to Oregon K-12 public and charter schools due to perceived and actual retaliation.

**FISCAL ANALYSIS**

The fiscal impact of the proposed rule changes to school districts, or K-12 public and charter schools is minimal as the rule amendments expand existing definitions and prohibitions but does not change the core responsibilities and actions required of those rules.

The proposed rules fit within the budget of the agency given several of the implementation strategies involve current Government and Legal Affairs team responsibilities.

**EFFECT OF A “YES” OR “NO” VOTE**

If the Board votes “YES,” Oregon students and school staff attending K-12 public schools will likely receive greater protections regarding alleged hair discrimination related to national origin and race.

If the Board votes “NO,” Oregon students and school staff will likely continue to experience alleged harassment and disproportionate treatment related to national origin and race causing adverse impact.

**STAFF RECOMMENDATION**

[x]  Approve [ ]  Approve next month [ ]  No recommendation at this time

***Prompted by:*** [x]  State law changes [ ]  Federal law changes [ ]  other

**ATTACHMENTS**

Attachment 1: