

STATE BOARD OF EDUCATION – ADMINISTRATIVE RULE SUMMARY**Title/OAR #:** First Reading—Native American Mascots/OAR 581-021-0047 and resolution**Date:** December 10, 2015**Staff/Office:** Cindy Hunt and April Campbell, Deputy Superintendent's Office **New Rule** **Amend Existing Rule** **Repeal Rule****Hearing Date:** _____ February 27 and December 21, 2015 _____ **Hearings Officer Report Attached****Prompted by:** **State law changes** **Federal law changes** **Other****Action Requested:** **First Reading/Second Reading** **Adoption** **Adoption/Consent Agenda**

PROPOSED/AMENDED RULE SUMMARY: Rule amendment provides exception to ban on use by public schools of Native American mascots for those public schools that enter into written agreements with an Oregon federally recognized Native American Tribe. The rule amendment was prompted by passage of SB 1509 in 2014 by the Oregon Legislature.

BACKGROUND:State Board Action

In 2012 in Oregon, fifteen high schools had Native American mascots—with names such as the “Warriors,” the “Braves,” the “Chieftains,” the “Indians,” and the “Indian Eagles.” Many of these communities also have images as part of their mascot which are meant to depict Native Americans. In all cases, the schools and communities believe they are respectfully honoring Native Americans. To suggest that such images may be offensive risks community outrage: community members believe they are unfairly being charged with being disrespectful or racist. The very topic invites passion on both sides and is divisive.

While the communities of these high schools believe they are honoring Native Americans, there is a growing body of social science literature and empirical research that indicates there are harmful effects of such racial stereotyping and inaccurate racial portrayals. These stereotypes are particularly harmful to the social identity development and self-esteem of American Indian young people. Research indicates that using Native Americans as mascots promotes discrimination, pupil harassment, and stereotyping.

The Oregon State Board of Education has been given the responsibility by the Oregon Legislature in state statute to ensure that persons are not subjected to unlawful discrimination in our public schools on the basis of race, color, religion, sex, sexual orientation, national origin, marital status, age or disability. Native American students are also entitled to an educational environment that is not hostile and is conducive to the attainment of educational goals. The board has a responsibility to consider the research and weigh this against the community's desire to maintain its traditions.

In 2012, after consideration of these issues and hearing extensive public testimony, the board adopted a resolution and a rule which prohibited public schools from using Native American mascots on or after July 1, 2017.

Legislative Action

The 2013 Legislature adopted SB 215 which was later vetoed by the Governor. The Governor cited to the state board's process and findings in his veto message as one reason for his veto. The 2014 Legislature adopted SB 1509 which represents a negotiated compromise between the Governor and proponents of the legislation. Proponents of the legislation argued that Oregon tribes should have more of an active role in the decision of whether a public school should be allowed to use a Native American mascot. Although the bill did not specifically overturn the existing state board rule, the bill has the following components:

- Allows districts that enter into an agreement with an Oregon federally recognized Native American Tribe to use a mascot that represents, is associated with or is significant to the tribe. Agreement must be approved by the state board.
- Directs the state board to adopt rules relating the agreement and the agreement approval process.
- Direct the state board to consult with the tribes as part of rule adoption process.
- Rule must be adopted by January 1, 2017.

The Legislature also discussed the National Collegiate Athletic Association (NCAA) policy on mascots. This policy allows universities to keep their Native American nicknames and imagery if it is based on a particular tribe and have the formal permission to do so by the respective tribe.

The 2015 Legislature introduced HB 3536 and HB 3560. The House Education Committee conducted a public hearing on HB 3536. The Department of Education submitted public testimony on this bill. The bill failed to be passed out of this committee prior to the deadline for moving bills from this committee therefore HB 3536 is dead. HB 3560 never received a public hearing and also failed to be adopted.

Oregon Native American Students

At the January board meeting, the board asked for more information about the achievement and the number of Native American students at the schools that have Native American mascots. Below is the most recent data available for the schools.

High School (9-12)	2013-2014 School Year						
	Fall Membership Native American High Schools 9-12 (2013-2014)	% of Pop.	Four Year HS Diplomas Awarded (2013-2014)	Five Year HS Diplomas Awarded (2013-2014)	# of Dropouts in HS (2013-2014)	Drop Out Rate in HS (2013-2014)	
All Oregon High School Students	178,581	3,130	2%	31,077	33,774	7,055	3.95
All H.S Native American Students	3,130		424	504	214	6.84	
Amity High School	13	2%	1	0	0	0	
Banks High School	3	1%	1	3	0	0	
Roseburg High School	44	2%	7	11	2	2.7	
Lebanon High School	26	2%	6	2	0	0	
Siletz Early College	43	11%	10	7	5	11.63	
Mohawk High School	2	2%	0	0	0	0	
Molalla High School	11	1%	3	3	0	0	
Oakridge High School	8	5%	1	0	0	0	

Philomath High School	11	2%	1	6	0	0
Reedsport Community Charter High	21	8%	5	0	0	0
Rogue River	2	1%	0	0	0	0
Scappoose High School	18	5%	3	9	1	5.88
Warrenton-Hammond High	3	1%	1	0	0	0
Total	203		39	41	8	

The 2006-07 and 2007-08 and 2008-09 four year cohort graduation rates for Native American students in Oregon (50.3%, 51.2% and 51% respectively) fall far short of the 40/40/20 goal. For the school year 2013-2014, out of 3,130 Native American students enrolled in all Oregon high schools, there was a total of 203 Native American Students enrolled in schools specifically with high schools that have Native American mascots. There is also a disproportionately high dropout rate among Native American students in Oregon. While the Native American student population comprised 2.0% of the 2009-10 October enrollments for grades 9-12, they represented 4.1% of all dropouts that year. These numbers remained the same for the school year 2013-2014. Discipline data for Native American youth is also alarming. The most recent discipline data collected by the Department of Education reveals that Native American students receive a disproportionate number of days of suspension compared to the total student population.

Rulemaking Process:

In the summer of 2014 the Department of Education sought input from the nine federally recognized tribes regarding the rule language prior to beginning the rule drafting process. The Department also directly sought input from the tribes regarding the draft rule language.

The Department of Education established a rule work group to provide information and recommendations to the State Board of Education. Representatives of the following entities were invited to participate in the workgroups:

- Nine federally recognized tribes.
- School districts with Native American mascots.
- The Oregon Legislature.
- Oregon Indian Education Association.
- Oregon School Boards Association.
- Confederation of Oregon School Administrators.
- Oregon Education Association.
- Oregon Department of Education.

The workgroup participated in two facilitated meetings. At one of the meetings draft rule language was presented to the workgroup for input and comment.

A public hearing was held for the draft rules in February and a letter has been sent to all Oregon Native American Tribes. Additionally another public hearing is scheduled in December for the revised rule.

Rule Summary:

The rule amendments do the following:

Lists the nine federal recognized Oregon Native American Tribes.

Allows an exception to the previous ban on the use of Native American mascots for public schools that enter into written agreements with the Native American Tribe that the mascot represents, is associated with or is significant to.

Specifies who must approve valid agreement.

Specifies minimum contents of agreements.

The rule amendments were changed since the last time the board heard the rules to narrow the exception granted by the rules. Changes to the rule draft narrow the exception to the ban to only those public schools who have a mascot that represents, is associated with or is significant to a Native American Tribe. To meet this are of the following requirements must be met:

- The tribe entering into the agreement determines that the district's mascot represents, is associated with or is significant to the tribe;
- The proper name of the particular tribe or the proper name of a tribe that is part of the confederation of tribes entering into the agreement was included in the name of the mascot on January 1, 2013; and
- The public school at which the mascot is used is located within the traditional area of interest of the tribe that enters into the agreement.

ISSUES/CONCERNS THAT SURFACED DURING RULE WORK:

Should a district be allowed to approach multiple tribes until they get an approval from a tribe?

There was general agreement that districts should not be allowed to do this. Some workgroup members felt that districts should be limited to the closest tribe or tribe on whose ceded lands the district was located.

When the consultation begins between the district and tribe would there be a time frame for that negotiation and a notification to the State Board of Education?

There was general agreement that notification should be sent and that the timeframe should either be limited by the parties or to one year.

Should an Oregon tribe provide approval of a mascot that is of a tribe from outside of Oregon?

No.

Should the agreement include a requirement of the district to support a comprehensive educational program focused on American Indian/Alaska Native history and culture with an emphasis on the background of the local tribe?

There was general agreement that this should be required although workgroup members were concerned about what a comprehensive educational program was.

Who should set the standards for instruction?

The quality should be established by the district in collaboration regarding content with the tribe. The Department established academic standards.

For an agreement to valid, who should approve?

Governing boards of district and tribe.

What constitutes "respectful images"?

There was a lot of debate regarding this. Some participants felt that the tribe should determine what images could be used. Other participants felt that there should be parameters such as “no live dress up” imagery as part of sporting events.

Should the agreement address enforcement?

Yes. With possible monitoring and reporting. Also could use existing district policies and government to government relationships.

Should there be a timeline on how long the agreement will be in effect?

Yes. The workgroup generally arrived at 10 years although some group member advocated for shorter or longer time periods.

Should districts be allowed to unilaterally adopt different non-Native mascot?

Yes. Agreements should not require districts to keep Native American mascots.

Should the agreements address achievement gaps that exist between Native American and other students?

While this was not discussed at the workgroup, the Department did receive input that this should be addressed in the agreements.

Should the rule align with the NCAA policy?

The NCAA policy was discussed by the legislature during the committee hearings on the bill and some of the language of SB 1509 is similar to the NCAA policy. Additionally some workgroup members believe that Oregon should align with this national standard that only allows Native mascots that are specific to a particular tribe. Other workgroup members are concerned that this would cause a change to existing mascot names and remove local control.

What level of involvement should State Board have with the contents of the agreements?

There was general consensus that as long as the agreements meet the minimum standards adopted by the State Board, the board should approve the agreement with dictating details of the agreements.

CHANGED SINCE LAST BOARD MEETING?

- N/A; first read—hasn’t been before board
- No; same as in May
- Yes – As follows:

The State Board of Education last heard this rule in May. At that meeting the board voted to reject the staff recommendation and did not adopt the rule. Since that time, board members have requested that the exception to the ban within the rule be narrowed and that a resolution confirming the board’s commitment to the original ban be drafted.

The rule amendments were changed since the last time the board heard the rules to narrow the exception granted by the rules. Changes to the rule draft narrow the exception to the ban to only those public schools who have a mascot that represents, is associated with or is significant to a Native American Tribe. Under the rule amendments, the following requirements must be met for a school district to retain a Native American mascot:

- The tribe entering into the agreement determines that the district’s mascot represents, is associated with or is significant to the tribe;
- The proper name of the particular tribe or the proper name of a tribe that is part of the confederation of tribes entering into the agreement was included in the name of the mascot on January 1, 2013; and

- The public school at which the mascot is used is located within the traditional area of interest of the tribe that enters into the agreement.

Staff believes that there are presently only three school districts with Native American mascots that could potentially meet these requirements:

- Molalla Indians
- Rogue River Chieftains
- Siletz Warriors

Additionally, to meet these requirements the school district must enter into an agreement with a specific tribe. The Department has not received any agreements so it is unknown at this time whether these three districts would be able to enter into such an agreement.

The original 2012 ban which prohibited the use of Native American macots would continue to apply to all of the other school districts that presently continue to have a Native American mascot. These school districts would continue to be required to change their mascots prior to July 1, 2017.

FISCAL IMPACT:

There will be a cost to those districts and tribes that choose to negotiate written agreements as it is anticipated that this process will require staff time and consultation with legal counsel.

STAFF RECOMMENDATION:

- Adopt administrative rule as prepared this month
- Adopt administrative rule and resolution in January.
- No recommendation at this time (rarely used)

BEFORE THE OREGON DEPARTMENT OF EDUCATION

RULE HEARING: OAR 581-021-0047, Native American Mascots

HEARING OFFICER'S REPORT

The Department held a public hearing on February 27, 2015, to receive public comment on the proposed rule amendments. Notice of hearing was published in a timely manner in the Secretary of State's bulletin and was sent to interested parties and persons who requested notice pursuant to ORS 183.335 (7). The hearing was held at the Department's offices in Salem, Oregon before Cindy Hunt, Hearing Officer.

Paul Young, Rogue River School District Superintendent testified that the rules were more specific than what was presented to the workgroup. He is specifically concerned about subsection (4)(b) of the rules and its applicability to specific districts. His school district has not started negotiations with a tribe. He noted although his district has not started negotiations with a tribe, the School Board had the great-grandson of Chief Joseph, Nez Perce Tribe, as member of the board for 40 years. He deferred additional comments regarding proposed amendments to Larry Parsons.

Tony Mann, Molalla River School District Superintendent testified that an earlier draft of the rules had specific names of mascots that were acceptable such as 'Indians' and 'Braves'. He noted that the amendments were not reflective of the workgroup. Also by taking these out the draft implies that the state board has veto authority over particular names. He also suggested changing "individual" to "person" subsection (4)(b) to be consistent with other places in the rule draft. He also testified that relationships between districts and tribes is what is most important. He also submitted written testimony.

Larry Parsons, Roseburg School District Superintendent testified that he thought subsection (4)(b) did not reflect intent of original Senate Bill. He also testified that a requirement for agreements to include history and achievement gap plan should not be included because it implies that just these schools must do this. He believes all schools should be doing this and that this is reflected in law. He also submitted written testimony.

Larry Rich, Roseburg Schools principal testified that he was concerned about which tribe a district must enter into an agreement with. Is it the closest? He noted specific concern that the rule would allow for multiple uses of a Tribe's name. He had concerns the rule language was vague and inconsistent; specifically noting section subsection (6) (b) which enforces the ban on or before July 1, 2017. He is also concerned that subsection (4)(b) applies to names of mascots such as "Indians."

Ed Edmo, testified about the racism that he directly experienced as a Native American in Oregon. He also testified about the harm associated with Native American mascots. He is against any loosening of the original State Board ban. He also suggested taking the issue forward to the Governor.

Se-ah-dom Edmo, Oregon Indian Education Association, provided a summary from across the nation regarding viewpoints on Native American mascots and specifically on how many groups believe both names and images to be racist and psychologically harmful to students. She is also concerned about how Native Americans who are members of one of nine Oregon tribes are the only voice as there are several other non-Oregon tribes represented in public school systems throughout the state. She also stated that the state and districts will be sued. She is also working with districts that do not have Native American mascots to encourage them to not

engage in athletic events/activities with districts who keep mascots. She suggested limiting the number of districts a tribe could enter into agreement with or limit agreements between a tribe and district of which the tribe claims traditional territory. She also submitted a power point.

Sam Sachs, racial justice advocate, provided testimony that he is against any loosening of the ban. He encouraged districts to eliminate usage of mascots and “do the right thing”. He also mentioned a potential lawsuit against the state and districts.

Robin Butterfield, who facilitated the workgroup testified that she thought there is movement on this topic and that most students are not wedded on Native mascots. She also testified that students are misinformed by images and that educators have a responsibility.

April Campbell from the Department of Education also attended the hearing.

Respectfully submitted this 27th day of February, 2007

Cindy Hunt
Hearing Officer