

**Comments of
Jennifer Walter
to the
Oregon Board of Education
December 10, 2015**

The Board Should Adopt Rules to Implement SB 1509

There is no question in my mind that the legislature erred in promulgating SB 1509. The rule passed by the board in 2012 was well reasoned and well justified. However, the reality is that a confrontation with the legislature would not be good for education in Oregon. Moreover, failure to do so risks a much worse outcome – that the issue will be taken away from the board and all Native American mascots will remain in place.

A couple of Oregon tribes advocate for the continuation of mascots, arguing that the issue should fall completely under their control, including allowing the continuation of mascots that do not represent a tribe but rather stereotype an entire race.

A reasonable compromise is to adopt a rule that permits truly tribal mascots. To do that, you need to pass a rule that requires the board to approve the name and determine that the proposed images are historically accurate.

The Board Should Make Three Changes to the Proposed Rules

I have reviewed the draft resolution and rules on the Native American mascot issue. While I believe that this revision goes a long way to resolving the issue in a way that recognizes the interests of all Oregonians, as well as the sovereignty of Native American tribes located in Oregon, it does not go far enough for me to be able to support it.

Therefore, I am asking you to make the following three changes:

1. While the whereas clauses in the resolution include much of the background information on this controversy, it leaves out one that I consider crucial in the discussion: the fact that individual Native American Oregonians have communicated regularly with the board and the department that these mascots are offensive to them.
2. The rule as written allows for the possibility of adopting the nicknames Redskins and Savages as mascots. It may be that staff has told you that you can't except out these particular names because those names were not excluded in the legislation. But do you personally want to be identified with a rule that includes the possibility? Do you think that the legislature is going to overrule you on this? I don't think that there are more than

a handful of people in the legislature that would vote in favor of allowing these nicknames.

3. **This is the most important change: Do not approve a rule that allows a tribe to have the sole discretion to decide what images represent the tribe. The language of 581-021-0047 (4) (b)(A) does that. I believe that the intent of SB 1509 always was to allow existing Native American racial mascots to be continued. The draft rule is written in a way that narrows the schools that can continue their Native American mascots to three, all of whom have employed Plain Indian images as their mascots.**

You should not approve a rule that delegates sole determination of whether an image represents a tribe to that tribe. It would not be fair to block Native American Oregonians who are not members of the tribe from having notice and an opportunity to comment on the issue. I don't mind giving deference to a tribe's conclusion about an image, but allowing one tribe to approve the use of an image representative of another, it would infringe on the rights of another tribe. You would not be recognizing tribal sovereignty, you would be giving one tribe the right to exercise sovereignty over an entire race and more than 500 nations. Doing so would turn a tribal mascot into a racial mascot.

What I Will Do

If you do not adopt a rule, I will work in the legislature to avoid the worst outcome.

If you adopt the rule with the changes I am requesting, I will work in the legislature to defend your actions.

You don't have to do what I ask, but, having watched all of you discuss this issue, I think you know that it is the right thing to do, despite the pressure on you to just pass out this rule. If you adopt the rule without making the second and third changes, I will pursue the matter in court. SB 1509 violates the equal protection clause of the 14th amendment. Here's the question you should ask your staff: If we make these changes, is it more likely that the rule will withstand a court challenge under the Fourteenth Amendment of the United States Constitution?

If you don't make these changes, then you will be taking government action on the basis of race. That is subject to strict scrutiny by courts and courts will not give any deference to your decision. I can accept a tribal mascot with images that accurately portray local tribes. But I can not accept a so-called tribal mascot that stereotypes a race and distorts the image that Oregon school children will receive about Pacific Northwest Native Americans.

I understand that it may be easy to just dismiss me as a single person, whose position is not worthy of deliberate consideration, but I am willing to do what it takes to eliminate racial mascots in Oregon schools. It will cost me a lot of time, but almost no money, to pursue this in

the courts. I don't intend that as a threat, but simply to tell you how strongly I feel about this issue.

Proposed Change to Resolution

Whereas, Native American Oregonians have expressed opposition to the continuation of Native American mascots;

Proposed Changes to Draft 581-021-0047

Insert the following as a new 581-021-0047(2): Under no circumstances, including pursuant to subsection (4), may a school use Redskins or Savages as a mascot or nickname.

Delete: "Redskins," "Savages" from 581-021-0047 (3)(a).

Insert the following language at the end of 581-021-0047 (4)(e)(C): after finding that all requirements for approval have been met, including that all images are historically representative of the tribe.