

STATE BOARD OF EDUCATION – ADMINISTRATIVE RULE SUMMARY

Title/OAR #: Adoption—Radio Frequency Identification Device Policy for Students - OAR 581-021-0505)

Date: March 3, 2016

Staff/Office: Sarah Drinkwater & T.J. Crockett / Office of Student Services / Pupil Transportation & Fingerprinting

New Rule **Amend Existing Rule** **Repeal Rule**

Hearing Date: Feb 22, 2016 **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: Requires districts that wish to use Radio Frequency Identification (RFID) to track students develop a policy; establishes standards that protect privacy and insure security, requires notification to parents and students, and allows parents and students to opt-out of required programs.

BACKGROUND: HB 2386 passed the legislature in 2013 (now ORS 339.890) and requires districts to create policy before implementing a RFID program to track students and requires ODE to create rules for district policies to follow. ODE is not required to adopt rules until a school board notifies ODE that they intend to create a policy.

In November 2015, Bend-LaPine school district notified ODE that they intended to create a policy for a voluntary program that would track students on district school buses. In order to participate in the program, students would be required to use RFID. So, ODE now must create rules for district policy development.

ORS 339.890 is not limited in the use of RFID, so the rules created by ODE would apply to all aspects of the school district.

ISSUES/CONCERNS THAT SURFACED DURING RULE WORK: The initial workgroup was comprised of representatives from Bend-LaPine and Great Albany School Districts, COSA, OSBA, ACLU and OSEA. Policy questions that arose as part of the workgroup include:

- At what point is a student able to opt-out of the RFID program?
- Where in the school can students be tracked?
- What is the range from a RFID reader that a student can be tracked?
- How to protect personally identifiable information?

CHANGED SINCE LAST BOARD MEETING? (so members can focus on what's different)

N/A; first read—hasn't been before board

No; same as last month

Yes – As follows:

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FISCAL IMPACT: There is no fiscal impact as districts are only required to adopt a policy if they choose to invest in RFID for tracking students.

EFFECT OF YES VOTE: Districts will be able to adopt policy to use RFID to track students.

EFFECT OF NO VOTE: Districts would not be able to use RFID technology and ODE would not be in compliance with HB 2386 (2013).

STAFF RECOMMENDATION:

- Adopt administrative rule as prepared this month
- Adopt administrative rule next month
- No recommendation at this time (rarely used)

Created by CH on 1/11/16

OAR 581-021-0505

Radio Frequency Identification Device Policy for Students

- (1) Any school district that plans to use a Radio Frequency Identification Device (RFID) for the purpose of locating or tracking a student or taking student attendance shall adopt a policy regarding the use of RFID. The policy shall incorporate the standards outlined in this rule.
- (2) Privacy and security standards:
 - (a) No personally identifiable information may be stored on the RFID;
 - (b) The RFID may not have a readable range of more than 10 feet;
 - (c) All data collected as part of a RFID program shall be considered part of the student record and shall be retained in accordance with state and federal student record laws and data privacy and security standards;
 - (d) Data collected as part of a RFID program shall be retained for no more than 72 hours, except records for the purpose of taking attendance; and
 - (e) RFID reader locations must be conspicuously marked.
- (3) Notification to parents and students:
 - (a) Districts that are beginning a RFID program shall provide notice to parents and students at least 30 days before the district implements use of the RFID program. The notification shall:
 - (A) Specify the purpose for the RFID program;
 - (B) Specify where the RFID readers will be located;
 - (C) Outline the expectations of participation in the program including any possible disciplinary actions for not following the RFID program rules;
 - (D) Inform parents and students of the right to not participate in the RFID program and how to opt out;
 - (E) Outline the procedure to not participate in the RFID program; and
 - (F) Be communicated in at least two formats, one of which shall be the school district website, if available.
 - (b) Districts that have established RFID programs shall provide a notice to parents and students annually at least 30 days prior to the first day of classes. The notification shall meet the requirements outlined in paragraph (a) of this subsection.
 - (c) If the district expands the use of RFID beyond the purpose specified in the notification requirement of paragraphs (a) or (b) of this subsection, the district shall provide notice to parents and students at least 30 days prior to the start of

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the new use of the RFID. The notification shall meet the requirements outlined in paragraph (a) of this subsection.

- (4) Notwithstanding subsection (3) of this rule, districts may create RFID programs without notification if the district creates a form allowing parents to voluntarily opt-in to a RFID program.
 - (a) The form created under this section shall:
 - (A) Require a parent signature or signature of a student if the student is 14 years of age or older for consent to join the RFID program;
 - (B) Specify the purpose for the RFID program;
 - (C) Specify where the RFID readers will be located;
 - (D) Outline the expectations of participation in the program including any possible disciplinary actions for not following the RFID program rules;
 - (E) Outline the procedures to discontinue participation in the RFID program; and
 - (F) Expire one year from the date that the form is signed by the parent.
 - (b) RFID programs administered under this section shall not require any student to use RFID who does not have a consent form on file.
 - (c) Districts wishing to expand the RFID program to students without a valid consent form on file must provide 30 day notification as outlined in section (3) of this rule.
- (5) Parents or students who are 14 years of age or older may provide notice in writing that they no longer wish to participate in a RFID program as outlined in section (3) or (4) of this rule. The district shall:
 - (a) Not ask for the reason or justification for the request;
 - (b) Not impose a time restriction for a request to be made;
 - (c) Ensure that the request is completed within three school days; and
 - (d) Not initiate or continue any disciplinary action against the student for not following the RFID program rules.
- (6) As used in this rule:
 - (a) “Personally identifiable information” means data that could potentially identify a specific individual.
 - (b) “RFID” means a Radio Frequency Identification Device.

Stat. Auth.: ORS 339.890

Stat. Implemented: ORS 339.890