

STATE BOARD OF EDUCATION – ADMINISTRATIVE RULE SUMMARY

Title/OAR #: Native American Mascots/OAR 581-021-0047

Date: May 21, 2015

Staff/Office: Cindy Hunt and April Campbell, Deputy Superintendent’s Office

New Rule Amend Existing Rule Repeal Rule
Hearing Date: _____ February 27, 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 which prohibited the State Board of Education from adopting any rules related to the use of mascots by public kindergartens and public elementary and secondary schools. The bill also prohibits the board from withholding moneys or imposing sanctions on a school district based on the use of a mascot by a public school of this state. However, the bill did not repeal the authority of the board under SB 1509 (2014) to adopt rules relating to mascots and therefore conflicts with the provisions of SB 1509(2014).

Because of the conflict between HB 3536 and SB 1509(2014) it is unclear what the legislature intended as the role for the State Board of Education relating to Native American mascots. If HB 3536 became law, such a conflict would effectively stop or delay the board's current deliberations on the new rule and require the board to seek a legal opinion from the Attorney General about its authority.

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.

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.

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.

| 2013-2014 School Year | | | | | | | |
|--|---|--------------|---|---|---------------------------------|---------------------------------|-------------|
| High School (9-12) | 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 |
| <i>All H.S Native American Students</i> | <i>3,130</i> | | <i>424</i> | <i>504</i> | <i>214</i> | <i>6.84</i> | |
| 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 | | |

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 will also be directly seeking input from the tribes regarding the draft rule language. The rule is not proposed to be adopted until April to allow additional time for this consultation.

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.

Since the last board meeting, a public hearing was held for the draft rules and a letter has been sent to all Oregon Native American Tribes.

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.

For mascots that depict individuals, limits exception to only those macots that include the name of the tribe or tribe that is part of a confederation of tribes.

Specifies who must approve valid agreement.

Specifies minimum contents of agreements.

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 notation 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 consitutes “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? (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:

The rule was amended to remove the requirement that schools with mascot agreement must have a plan for closing the achievement gap between native students and other students. The reason for this is that the numbers of Native students at the schools is quite small (3 to 44 students) and creating such a plan may have the effect of singling out these few students in negative ways.

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.
- No recommendation at this time (rarely used)