



## **Confederated Tribes of Siletz Indians Tribal Council**

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May 18, 2015

Oregon State Board of Education  
255 Capitol St., NE  
Salem, OR 97310-1300

Re: Proposed Rule OAR 581-021-0047  
Comments of the Confederated Tribes of Siletz Indians of Oregon

To Whom It May Concern:

The Confederated Tribes of Siletz Indians of Oregon (“Siletz Tribe”) submit the following comments regarding the Board of Education’s proposed amendments to OAR 581-021-0047, the Native American Mascot rule. This rule amendment is required by the 2014 amendments to ORS 332.075.

The Siletz Tribe is extremely disappointed in the proposed rule. As drafted, it continues the virtually complete prohibition on use of traditional Indian names and symbols that was prohibited by the current version of the rule. A number of Indian tribes headquartered in Oregon went to the Oregon legislature because the Board of Education refused to listen to tribes’ concerns in adopting the rule. In particular, the Siletz Tribe was extremely concerned that the rule would require it to cease use of the name “Warriors” for the Siletz public school that has been in existence for many years in the community of Siletz (now a charter school known as the Siletz Valley School), a proud tradition of the many different tribes and bands of Indians that were removed from their aboriginal homelands in the 1850s and settled on the Siletz Coast Reservation. Also, the Siletz School has proudly used the image of a Siletz Indian warrior in conjunction with the school, also for many years. The Siletz School has had a substantial percentage of Indian students in its school population for its entire history, and the school is indelibly associated with and claimed by the Confederated Tribes of Siletz Indians.

The original legislation to overturn the Board’s rule was vetoed by then-Governor Kitzhaber, for unknown reasons (he never consulted with tribes on the question). A substitute bill was then introduced and enacted, which some groups and the Board still opposed but which became law. The Siletz Tribe was assured throughout this legislative process that the legislation would permit it to retain its traditional school name and image. While the legislation was couched in language that was less than mandatory, the Siletz Tribe and other tribes were assured that the legislation would allow the retention of traditional Indian school names and images in appropriate circumstances, and that the mandatory consultation requirement would ensure that the Tribe’s views were considered and protected in any rule adoption as required by the statutory

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amendment. Instead, the Siletz Tribe's views and interests were ignored by the Board of Education, and nothing at all has changed. The Board's amended rule acts as if the law was never changed in 2014. It essentially prohibits any Indian or Native American names or symbols. The Siletz Tribe vehemently disagrees with the apparent sentiment of the Board that the Siletz Warriors and the images used by the Siletz School denigrate the Tribe or Native American culture in any way or fashion, or have any discriminatory impact.

The Siletz Tribe submits the following specific comments only to set out and state its position on this matter, since the Board has already ignored every comment or statement the Siletz Tribe has made on this issue as well as ignoring the will of the Oregon legislature. The Siletz Tribe will not pretend that its comments will have any effect on the decision of the Board to adopt the proposed rule amendment. It is clear at this point that the only place an actual change in the Board's policy may possibly occur is in further legislative action, or in appropriate legal action.

With this preface, the Siletz Tribe has the following specific comments about the proposed rule:

**Section (1):** SB 1509 used the term "Native American tribe," but the Siletz Tribe and most other tribes as well as the United States refer to tribes as Indian tribes.

Under subsection (a), federally-recognized Indian tribes with headquarters in Oregon should be spelled with the correct legal names as set out in federal law. For example, the Confederated Tribes of the Warm Springs Indian Reservation (subsection (A)) is the Confederated Tribes of the Warm Springs Reservation of Oregon, the Cow Creek Band of Umpqua Indians (subsection (F)) is the Cow Creek Band of Umpqua Tribe of Indians, the Confederated Tribes of the Grand Ronde (subsection (E)) is the Confederated Tribes of the Grand Ronde Community of Oregon, the Klamath Tribe (subsection (H)) is the Klamath Tribes, the Confederated Coos, Lower Umpqua and Siuslaw Tribes (subsection (G)) is the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians, and the Coquille Tribe (subsection (J)) is the Coquille Indian Tribe. A list of federally-recognized Indian tribes with official names is published annually in the Federal Register. *See* 80 Federal Register 1942 (Jan. 14, 2015).

**Section (3):** This section is tied to Section (2), which prohibits the use of any Native American mascot by a public school. The Siletz Tribe disagrees that the use of a Native American mascot (as that term is defined in subsection (1)(b) of the Rule) when used with the approval of a federally recognized Indian tribe, in a manner that the Tribe determines approves, and presented in a culturally acceptable fashion constitutes discrimination under Oregon law.

Despite the clear intent of SB1509, codified at ORS 332.075, to allow the use or continued use of appropriate Native American names with tribal approval when that name is "associated with or . . . significant to the Native American tribe entering into the agreement with [a district school board]," the proposed rule completely prohibits the use of such names such as "Warriors," "Indians," "Chiefs" or "Braves." The Siletz School has long used the name "Warriors" and used the symbol of a Warrior with an Indian head dress, and the Siletz Tribe has

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approved and condoned such use because the name and symbol are used in a culturally acceptable manner. The Siletz Tribe has testified more than once that this name and symbol are associated with and significant to the Siletz Tribe, and that their use has been a source of cultural and personal empowerment for Siletz members and children for decades. The Siletz Tribe and its membership are proud of these symbols, and proud to support the Siletz School in its present policy of the use of these symbols.

The proposed rule at Section 3(b) prohibits the Siletz School's continued use of these symbols and mascots. This prohibition directly conflicts with the language and intent of SB 1509. ORS 332.075(1)(g) sets out express requirements for continued use of such symbols. The statute does not give the State Board authority to continue to prohibit the use of such symbols through rule-making. The reference in the statute to rule-making limits the Board's rule-making authority to rules that are adopted in consultation with the federally-recognized tribes in Oregon and that "prescribe the requirements for approval." *Id.* The Board's proposed rule completely ignores the consultation that occurred on this issue with the Siletz Tribe and other tribes in Oregon, and it prohibits, not prescribes<sup>1</sup> the use of these symbols.

This principle is also reflected in ORS 332.075(1)(g)(C), which requires the Board to approve any agreement for the use of a Native American mascot if it meets the requirements of Section (1)(g) and any rules adopted by the Board pursuant thereto. The inclusion of this language was meant to proscribe the authority of the Board to refuse to allow such agreements and the appropriate use of Native American mascots as defined by the statute, and it was not intended to allow the Board to eviscerate this directive through essentially prohibiting all Native American mascots by rule. The Board's proposed rule on this issue is inconsistent with the statute enacted by the Oregon Legislature in 2014, is illegal as a matter of Oregon law, and must be changed to preserve the validity of the rule.

#### **Section (4):**

Subsection (b): This section would appear to allow for the continued use by the Siletz School of the mascot name "Warriors" and mascot image of a warrior with a head-dress except for the prohibition on the use of the term "Warriors" in Section (3). The Siletz School uses the term "Siletz" in conjunction with the mascot name "Warriors" on its signs, shirts and other symbols.

As drafted, this subsection makes no sense. Sections 3(a) and (b) of the proposed rule completely prohibit the use of any name that could be associated with a person. Section 3(c) only allows the use of mascot names that depict "an animal or other image that is not a person." Section 4(b) purports to allow the use of a mascot image that "depicts an individual" only if the name of the particular tribes is included in the name of the mascot. The language in Section 3(c) that states "except as provided in subsection (4) of this section" is not clear, when read in conjunction with Section (4), that the use of an individual image is specifically permitted.

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<sup>1</sup> "Prescribe" is defined in relevant part as "to lay down as a guide, direction, or rule of action" or "to specify with authority."

Section (4) should specifically state that this use is permitted, despite the general prohibition language in Section (3).

The language of Section (4)(b) still does not help the Siletz Tribe, which approves the use of the name “Warriors” in conjunction with the image of an individual Indian warrior because that “mascot” is associated with and is significant to the Siletz Tribe.

Subsection (d): There is absolutely no reason to impose a five year ban on a school that notifies the State Board of Education that it intends to enter into an agreement with a specific tribe regarding an Indian mascot from entering into an agreement with another tribe, except to discourage the use of Native American mascots at all, and to make their use as difficult as possible. No justification for this severe penalty has been given by the Board.

Section (f)(A): The Siletz Tribe is concerned that the language of this subsection is unduly restrictive. The school and tribe should of course attempt to come to an agreement as to the projected acceptable uses of the mascot, and any projected names and pictures of the mascot as it will be used by the school. But this language provides no flexibility at all for uses and images to change over time, with the agreement of the tribe, as circumstances may evolve. There is no provision in the rule for any amendment of an agreement to address such minor changes – the rule provides only for formal renewal of an agreement at the end of an agreement term. Again, this provision seems intended only to make discourage the use of any Native American mascot under any circumstances, and to make practical implementation of an agreement as difficult as possible. Section (h) of the proposed rule should be amended to allow a tribe and a public school to “jointly revoke or modify an agreement by petitioning the State Board of Education.”

Section (f)(B): The Siletz Tribe requested that a provision to this effect – describing how Native American history and culture will be included in the curriculum of the public school – be included in an agreement, and it is glad to see that this provision is in the final proposed rule.

Section (f)(C): The Siletz Tribe strongly objects to the inclusion of this provision in the proposed rule – a plan for the school to address any achievement gap between Native American students and other students at the school. This provision has nothing to do with the intent of the Native American mascot statute. By including it and applying it only to schools that have an agreement to use a Native American mascot, the State Board is discriminating between such schools and every other public school in the State of Oregon. The Board should be addressing this achievement gap in every public school in the State. Imposing this requirement only on schools with an agreement to use a Native American mascot is insulting, and likely discriminatory and illegal.

Section (f)(I): This subsection has the same problems as the previous section discussed in these comments. School policies addressing harassment, intimidation, bullying or cyberbullying complaints has nothing to do with a policy on the use of Native American mascots. To impose these requirements only on schools that enter into an agreement for the use of Native American mascots is discriminatory and likely illegal. The Siletz Tribe does not understand why this provision is part of these proposed regulations at all.

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Section (f)(J): Same objection as the previous two comments. This requirement has nothing to do with agreements between a tribe and public school for the use of a Native American mascot. It is discriminatory to impose this requirement only on public schools that have entered into such an agreement, and likely illegal.

Section (h): See our suggested revision to the proposed language of this section as set out in our comments to Section (f)(A) above.

This concludes the Siletz Tribe's comments. The Siletz Tribe requests the State Board to modify the proposed rule to comply with the intent of SB 1509.

Sincerely,

  
Delores Pigsley  
Tribal Chairman

Cc: Siletz Tribal Council  
Brenda Bremner, General Manager  
Craig Dorsay, Tribal Attorney