

STATE BOARD OF EDUCATION – ADMINISTRATIVE RULE SUMMARY

OAR # & Title : First Reading: Retaliation Prohibited / OAR 581-021-0043

Date: August 31, 2015

Staff/Office: Emily Nazarov, Government and Legal Affairs

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

Hearing Date: _____ **Hearings Officer Report Attached**

Prompted by: **State law changes** **Federal law changes** **Other**

Action Requested:

First Reading/Second Reading Agenda **Adoption** **Adoption/Consent**

PROPOSED/AMENDED RULE SUMMARY: Establishes process whereby a student or parent may file a complaint if a student has suffered retaliation for making a good faith report of a possible violation of state or federal law.

BACKGROUND:

HB 3371 (2015) prohibits retaliation by a school against a student who makes a good faith report of a possible violation of state or federal law, rule, or regulation. Students may not be suspended, expelled, dis-enrolled, denied academic or educational opportunities, harassed, threatened or have transcripts withheld for making good faith reports of possible violations of state or federal laws, rules or regulations. HB 3371 creates a private right of and allows the State Board of Education or the Higher Education Coordinating Commission, as appropriate, to impose sanctions against schools that violate the measure.

The proposed rule establishes the process whereby a student may file a complaint with the appropriate education entity and appeal to the Department of Education. The rule also establishes the process the Department would use to investigate an appeal, and what sanctions would be available to the Department in the event the Department makes a finding that retaliation did occur.

HB 3371 first applies to violations in the 2015-16 school year.

ISSUES/CONCERNS THAT SURFACED DURING RULE WORK:

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:

Example: In response to public comment, the effective date was pushed back from February 2010 to September 2010.

STAFF RECOMMENDATION:

- Adopt administrative rule as prepared this month
- Adopt administrative rule next month
- No recommendation at this time

FISCAL IMPACT: No fiscal impact resulting from rule

EFFECT OF ADOPTING STAFF RECOMMENDATIONS: HB 3371 first applies to violations in the 2015-16 school year. Adopting this rule would provide the process necessary to handle complaints of retaliation.

EFFECT OF NOT ADOPTING STAFF RECOMMENDATIONS: HB 3371 first applies to violations in the 2015-16 school year. If the rule is not adopted, ODE does not have a process in place for handling complaints of retaliation.

COMMENTS:

581-021-0043

Retaliation Prohibited

(1) Definitions:

(a) "Education program" means an education program provided by a school district, a public charter school, an education service district, a longer term care and treatment facility as described in ORS 343.961, the Youth Corrections Education Program, and the Oregon School for the Deaf.

(b) "Retaliation" means suspension, expulsion, disenrollment, grade reduction, denial of academic or employment opportunities, exclusion from academic or extracurricular activities, denial of access to transcripts, threats, harassment or other adverse action that substantially disadvantages a student in academic, employment or extracurricular activities.

(2) A student of an education program may not be subjected to retaliation by an education program for the reason that the student has in good faith reported information that the student believes is evidence of a violation of a state or federal law, rule or regulation.

(3) Education programs must establish a process for the prompt resolution of a complaint by a student or the student's parent, guardian, or person in a parental relationship, alleging retaliation in violation of section 2, chapter 434, Oregon Laws 2015 (Enrolled HB 3371).

(4) A student or the student's parent, guardian, or person in a parental relationship, may file with a school district, a public charter school, an education service district, a Long Term Care and Treatment facility, the Youth Corrections Education Program, or the Oregon School for the Deaf a complaint alleging that an education program offered by the entity is violating or has violated a provision of section 2, chapter 434, Oregon Laws 2015 (Enrolled HB 3371).

(5) After exhausting the local complaint process as required under (4) of this rule, a student or the student's parent, guardian, or person in a parental relationship, may file an appeal with the Superintendent of Public Instruction under OAR 581-022-1940.

(a) If the Superintendent of Public Instruction investigates the appeal and determines that the education program is out of compliance with section 2, chapter 434, Oregon Laws 2015 (Enrolled HB 3371), the Superintendent of Public Instruction shall issue a written order setting forth any corrective action necessary to get the education program back into compliance and a timeframe within which the education program must complete the corrective action. An order issued by the Superintendent shall be considered an order in other than a contested case under ORS 183.484.

(b) If the education program does not complete the corrective action within the specified timeframe, the Superintendent of Public Instruction shall order appropriate remedies which may include:

(A) Withholding of all or part of each quarterly payment of the basic school support fund due a school district under ORS 327.095, a public charter school under ORS 338.185, or an education service district under ORS 327.021;

(B) Withholding all or part of payment of the State School Fund due a Youth Corrections Education Program provider under contract with the Oregon Department of Education;

(C) Withholding all or part of the state funding due a Long Term Care and Treatment facility or the Oregon School for the Deaf under ORS 327.023; and

(D) Other appropriate remedies.

Stat. Auth.: 2015 OL Ch. 434, Sec. 2 (Enrolled HB 3371)

Stat. Implemented: 2015 OL Ch. 434, Sec. 2 (Enrolled HB 3371)