STATE BOARD OF EDUCATION – ADMINISTRATIVE RULE SUMMARY				
<b>Title/OAR #: Adoption</b> —Native American Mascots/OAR 581-021-0047 and resolution <b>Date:</b>				
January 21, 2016				
Staff/Office: Cindy Hunt and April Campbell, Deputy Superintendent's Office				
New Rule				
Action Requested:  ☐ First Reading/Second Reading				

**PROPOSED/AMENDED RULE SUMMARY:** SB 1509 directed the State Board of Education to adopt rules relating to agreements between public schools and Oregon federally recognized tribes for the appropriate use of Native American mascots. Consistent with this direction, rule amendments provides an exception to the 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.

# **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. Some Oregon tribal members also view the mascots as allowing Native Americans to have a visible presence in communities. It is also believed that the mascots also serve as a catalyst for other discussions between Oregon tribes and public schools relating to tribal history and culture.

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.

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 because of their status as sovereign governments 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.
- Directs 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.

# **Rulemaking Process:**

In the summer of 2014 the Department of Education attempted to consult with the nine federally recognized tribes by seeking input from the tribes regarding the rule language prior to beginning the rule drafting process.

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.

A public hearing was held for the draft rules in February, 2015 and a letter was sent to all Oregon Native American Tribes requesting consultation and input on the draft rules. Additionally another public hearing was held in December for the revised rule.

Since the December board meeting the State Board of Education requested consultation with each of the nine federally recognized tribes in Oregon. Board members, Department staff and the Governor's Education Policy Advisor consulted with members of the tribal council of the Confederated Tribes of the Grand Ronde and members of the tribal council of the Confederated Tribes of the Siletz Indians of Oregon and other representatives of these tribes.

Some tribes and school districts have also begun the process of creation of agreements relating to the mascots and the inclusion of tribal history and culture in the schools. An example of one of these draft agreements is attached to this docket.

# **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.

Specifies who must approve valid agreement.

Specifies minimum contents of agreements.

The rule amendments were changed since the last time the board heard the rules in December.

- The rules no longer require the name of a particular tribe to be part of a mascot.
- The rules require a public school to conduct a public hearing and allow opportunity for members of the public to provide written and oral comments.
- The rules allow a tribe that previously entered into an agreement to revoke prior to the end of the agreement by petitioning the State Board of Education.

Those public schools which enter into an agreement with a tribe would be able to continue using their mascot according to the terms of the agreement. Those public schools which <u>do not</u> enter into an agreement with a tribe would continue to be required to change their mascots prior to July 1, 2017.

# 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 notication 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?

Should the agreement include a requrement 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.

Should school districts be restricted to entering into agreements with tribes whose traditional area includes where the district is located?

This was discussed as a way of facilitating the schools identifying and working with local tribes.

# CHANGED SINCE LAST BOARD MEETING?

	N/A; first read—hasn't been before board
	No
$\boxtimes$	Yes – As follows:

The board last heard this rule and resolution in December.

The rule amendments were changed since the last time the board heard the rules.

- The rules no longer require the name of a particular tribe to be part of a mascot.
- The rules require a public school to conduct a public hearing and allow opportunity for members of the public to provide written and oral comments.
- The rules allow a tribe that previously entered into an agreement to revoke the agreement prior to the end of the agreement by petitioning the State Board of Education.

# 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 RECOMMENDATI	Oľ	N:
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igtie Adopt administrative rule and resolution as prepared t	his month
No recommendation at this time (rarely used)	

#### Update by EN 1-21-16

#### Updated by CH on 1-12-16

#### 581-021-0047

#### **Restricts Public Schools from using Native American Mascots**

- (1) As used in this section:
- (a) "Federally recognized Native American Tribe" means the following:
- (A) The Confederated Tribes of the Warm Springs Indian Reservation.
- (B) The Confederated Tribes of the Umatilla Indian Reservation.
- (C) The Burns-Paiute Tribe.
- (D) The Confederated Tribes of Siletz Indians of Oregon.
- (E) The Confederated Tribes of the Grand Ronde.
- (F) The Cow Creek Band of Umpqua Indians.
- (G) The Confederated Coos, Lower Umpqua and Siuslaw Tribes.
- (H) The Klamath Tribe.
- (JI) The Coquille Tribe.
- (a)(b) "Native American mascot" means a name, symbol or image that depicts or refers to an American Indian Tribe, individual, custom or tradition that is used by a public school as a mascot, nickname, logo, letterhead or team name.
- (b)(c) "Public school" means a school or program operated by a school district, education service district or public charter school.
- (2) To ensure that all public schools are in compliance with ORS 659.850 which prohibits discrimination in public schools, on or after July 1, 2017, the use of any Native American mascot by a public school is prohibited. This prohibition includes the use of team names such as "Redskins," "Savages," "Indians," "Indianettes," "Chiefs," "Chieftains," and "Braves," except as provided in subsection (4).
- \_(2) Except as provided in subsection (4) of this section, Tto ensure that all public schools are in compliance with ORS 659.850 which prohibits discrimination in public schools, on or after July 1, 2017, the use of any Native American mascet by a public school is prohibited.
- (3)(a) The prohibition under this section subsection (2) of this section includes a prohibition on the use of team names such as "Redskins," "Savages," "Indians," "Indianettes," "Chiefs," "Chieftains," and "Braves."
- (b)(3)(a) A public school may continue to use the team name "Warriors" as long as it is not combined with a symbol or image that depicts or refers to an American Indian Tribe, individual, custom or tradition. This paragraph does not apply to those public schools that enter into agreements pursuant to subsection (4) of this section.

- (eb) Except as provided in subsection (4) of this section, Aa public school may continue to use a mascot that may be associated with Native American culture, custom or tradition if the mascot depicts an animal or other image that is not a personan individual. Examples of such mascots include team names and images such as the "Thunderbirds", "White Buffalo" and "Eagles."
- (4) (a) Pursuant to ORS 332.075, a public school may use a mascot including those prohibited under section (2) that represents, is associated with or is significant to a Native American Tribe only if the public school enters into an approved written agreement with that federally recognized Native American Tribe in Oregon that meets the requirements of this subsection.
- (b) A mascot may only be considered under this subsection to represent, be associated with or be significant to a tribe if all of the following requirements are met:
- (A) The tribe entering into the agreement determines that the district's mascot represents, is associated with or is significant to the tribe; and
- (B) The public school at which the mascot is used is located within the traditional area of interest of the tribe that enters into the agreement.
- (c) Any agreement entered into under this subsection shall only be in effect if the public school continues to use a mascot that represents, is associated with or is significant to the Native American Tribe. Nothing in this subsection shall be construed to prevent a public school from changing their mascot to one that is not a Native American mascot.
- (d) At least 60 days prior to entering into an agreement under this subsection, a public school must notify the State Board of Education as to which tribe the public school is intending to enter into an agreement with regarding the use of a mascot. If the public school does not enter into an agreement with the tribe listed in the notice, the public school may not enter into an agreement with another tribe relating to the mascot for five years from the date of the notice to the State Board of Education.
- (e) A public school must conduct a public hearing relating to the agreement and give opportunity for members of the public to provide written and oral comments to the public school about the agreement. The public hearing must be conducted prior to the public school entering into the agreement.
- (f) To be a valid agreement under ORS 332.075 and this rule, an agreement entered into under this subsection must:
- (A) Be approved by the board of the public school and contain the signature of the board chairperson;
- (B) Be approved by the tribal government of a Native American Tribe and contain the signature of the chairperson of the tribal council or other tribal leader designated by the tribe; and
- (C) Be approved by the State Board of Education.
- (fg) An agreement entered into under this subsection must contain a declaration by the tribe that the mascot represents, is associated with or is significant to the tribe and at a minimum:
- (A) A description of the acceptable uses of the mascot that the public school is using. The description must include the name of the mascot and pictures depicting any image, logo or letterhead that is deemed as an acceptable use;
- (B) A description of how American Indian/Alaska Native history and culture will be included in the curriculum of the public school;
- (C) A description of how the agreement will be enforced both between the school and tribe and within the public school;
- (D) The time period of the agreement which may not exceed 10 years;
- (E) A review of the agreement by the tribe and public school at least once every five years;
- (F) A description of how disputes and complaints relating to the agreement will be resolved;

- (G) The process for renewal of the agreement which must include approval by the public school governing body, tribal government and State Board of Education and be consistent with this subsection;
- (H) A copy of school policies adopted in accordance with ORS 339.356 that address complaints based on harassment, intimidation or bullying and cyberbullying and a description of how the policies are distributed to parents and students who attend the public school; and
- (I) A copy of school policies adopted in accordance with OAR 581-021-0049 that address complaints based on race, color, religion, sex, sexual orientation, national origin, marital status, age or disability and a description of how the policies are distributed to parents and students who attend the public school;
- (gh) The State Board of Education shall approve an agreement if the agreement meets the requirements of ORS 332.075 and this rule.
- (hi) A tribe that previously entered into an agreement may revoke the agreement prior to the end of the agreement. The tribe shall inform the -by petitioning the-State Board of Education of the revocation within fifteen (15) days of revocation.
- (4)(5) Nothing in this rule shall be construed to prohibit a public school from:
- (a) Displaying art work, historical exhibits or other cultural educational exhibits or conducting educational programs related to Native Americans as long as the display or program is not associated with a Native American mascot. The display or program may be associated with a Native American mascot if the public school has entered into an agreement with a Native American tribe under this section and the display or program is allowed under the agreement;
- (b) Honoring the contributions of Native Americans by naming a school, building or program after a Native American.
- (5)(6) Each school district, education service district or sponsor of a public charter school shall notify:
- (a) On or before January 1, 2013, the Department of Education if any school operated by the district or sponsor uses a Native American Mascot; and
- (b) On or before July 1, 2017, the Department of Education when a new mascot is adopted for the public school.
- (6)(7) The Superintendent of Public Instruction shall find any school district, education service district or public charter school that violates this section to be in noncompliance with the discrimination prohibitions under ORS 659.855. Pursuant to ORS 659.855, the Superintendent may immediately withhold all or part of state funding from the school district, education service district or public charter school.

Stat. Auth. ORS 326.051, 332.075, 659.850 & 659.855

Stat. Implemented: ORS 326.051, 332.075, 338.115, 659.850 & 659.855

Hist.: ODE 16-2012, f. 6-8-12, cert. ef. 6-11-12

# **Oregon State Board of Education Resolution**

**WHEREAS,** the Oregon State Board of Education's mission is to ensure that every Oregon public school student has equal access to high quality educational services that promote lifelong learning and prepare students for their next steps following high school graduation, including college, work and citizenship; and

**WHEREAS**, all heritages, cultures, races and religions have the right to be treated with dignity and respect; and

**WHEREAS,** student achievement data reveals that the achievement gap for Native American children is widening; and

**WHEREAS**, in 2012, the Board formally adopted rules and a resolution banning Native American Mascots; and

**WHEREAS**, Oregon's nine federally recognized tribes are sovereign governments with a distinctive legal and political status; and

**WHEREAS,** the Oregon Legislature directed the State Board of Education to adopt rules to provide an exception to the ban on Native American mascots for those public schools that enter into an agreement with one of Oregon's federally recognized tribes; and

**WHEREAS**, although some Oregon public schools have changed their mascots, several public schools in Oregon continue to have Native American mascots and some of these mascots do not present culturally accurate images of Native Americans; and

WHEREAS, symbolizing a complex and varied race with a single narrow representation of a male warrior distorts and misrepresents that race to both Native Americans and non-Native Americans and communicates an inaccurate portrayal of American Indian heritage; and

**WHEREAS**, all public schools are required to align instruction to the social sciences academic content standards which include historically accurate descriptions of Native Americans in Oregon; and

**WHEREAS,** the State Board of Education encourages local school districts to work with tribes to remove biased, derogatory, or inflammatory mascots, logos, names, and symbols from their schools; and

**WHEREAS**, the State Board of Education encourages local school districts to work with tribes to ensure that high quality, culturally appropriate educational services are provided to Oregon's Native American children; and

WHEREAS, the inflammatory mascots are countercurrent to the Board's vision for an excellent and equitable education for all students; and

WHEREAS, more than 100 organizations across the nation have endorsed the discontinuation of Native American mascots, including the National Indian Education Association, Oregon Indian Education Association, the Society of Indian Psychologists, the Affiliated Tribes of Northwest Indians, and the US Commission of Civil Rights, have all endorsed the elimination of the use of Indian sports mascots;

# **THEREFORE BE IT RESOLVED** that the Oregon State Board of Education:

- (1) Recognizes its leadership role with issues negatively affecting students and school environments;
- (2) Recognizes the role and responsibility under SB 1509 of the Oregon State Board of Education and Oregon's nine federally recognized tribes as sovereign governments;
- (3) Believes that American Indian/Alaska Native history and culture should be included in the curriculum of Oregon public schools;
- (4) Believes all students, including Native American students, have a right to a safe, inclusive, and equitable school environment free from institutionalized racism; and
- (5) Calls for those public schools who wish to continue using Native American mascots to work with Oregon's federally recognized tribes to ensure that the mascots are honorable, respectful and culturally appropriate.

# MEMORANDUM OF AGREEMENT between BANKS SCHOOL DISTRICT and THE CONFEDERATED TRIBES OF THE GRAND RONDE COMMUNITY OF OREGON

# I. BACKGROUND

The Confederated Tribes of the Grand Ronde Community of Oregon ("Tribe") is a federally recognized Indian Tribe comprised of more than 27 tribes and bands, including the Umpqua, Molalla, Rogue River, Kalapuya and Chasta Bands.

Education is a priority for the Tribe. The Tribe operates an all-day/year-round preschool, a Chinuk immersion program for K-3rd grade students, Chinuk lessons for K-5th grade students, and a Library on its reservation. The Tribe's Education Department offers a variety of programs to help equip Tribal members with the knowledge and skills needed to prosper, support their families, and enhance their community. The Tribe has also developed a curriculum for the teaching of native history that is used by several school districts in Oregon.

The Banks School District ("District") includes the City of Banks, Oregon, which is within the traditional homelands of the Tualatin Kalapuya. Banks sits along an old Indian trail that stretches from western Washington County to Tillamook Bay, which Highway 6 follows today. The Tualatin Kalapuya are alternatively known by the names Atfalati, Twality, as well as Wapato Indians. The Tualatin Kalapuya language is a part of the northern dialect group of the Kalapuya language family. These people had numerous villages across Washington County, with a concentration of winter villages in Patton Valley near Gaston, Oregon. The Tualatin Kalapuya signed three treaties with the United States government, including the Willamette Valley Treaty of 1855, which ultimately resulted in their removal to the Grand Ronde Indian Reservation. The Tualatin were one of the three most populated tribal groups, out of more than 27 tribes and bands, which were removed to the Grand Ronde Reservation. Today the Tribe and its members continue to hunt, fish and gather traditional resources within Washington County, including areas in close proximity to Banks, Oregon.

The District is a public entity serving students in Washington County. The District provides education services for children entering grades K-12. The Bank's High School Mascot is the Braves. This mascot is significant because the Brave is a cultural symbol to the Tribe of honor, spirituality, and peace.

# II. GOALS

The overall goal of this Agreement is to foster a positive relationship between the Tribe and

the District, and to agree on a culturally appropriate way to use and portray the District's mascot. More specifically, the goals are:

# A. Goals of Tribe.

- 1. To build respect and understanding of the Tribe's history and culture.
- 2. To give all youth the opportunity to learn the Tribe's curriculum.
- 3. To foster a culturally respectful representation of Native American symbolism and pride.

# **B.** Goals of District.

- 1. To foster respect and informed understanding of the Tribe and other Native Americans.
- 2. To adopt a culturally appropriate mascot.

# III. MASCOT LEGISLATION

This Agreement is intended to satisfy all the requirements of Or. Rev. Stat. § 332.075.

# IV. EFFECTIVE DATE AND PERIOD OF AGREEMENT

This Agreement is effective upon signature of the authorized officials of the District and the Tribe. This Agreement may be amended if and when the State Board of Education adopts the rules required under Or. Rev. Stat. § 332.075. This Agreement may also be amended by agreement of the parties. The term of the Agreement is for [time frame (must be less than 10 years)]. The Agreement shall be reviewed on a [time frame (must be at least every 5 years)] basis. Renewal of this Agreement shall require approval by the District and the Tribe. If either party wishes to terminate the Agreement, written notice shall be given to the other party thirty (30) days in advance.

# V. ELEMENTS OF THE AGREEMENT

**A.** Acceptable uses of Mascot. The Banks High School Mascot is the Braves. The current Mascot image is:

The Tribe and District shall meet and modify the current mascot image to ensure that it is culturally appropriate. The mascot and the use of the name "The Braves" may be used as follows: as a sports mascot, on all sports equipment and facilities, and used in school spirt merchandise.

The District may approach the Tribe to amend this Agreement to include additional acceptable uses not listed here.

**B. Curriculum.** The Tribe has developed a history curriculum. The curriculum was created because of the need for historically accurate and culturally relevant curriculum in Oregon schools about Oregon Native Americans. The District has reviewed the curriculum and agrees to begin using the curriculum on or before [date]. The District agrees to use the curriculum as provided by the Tribe without revision,

unless approved by the Tribe. In addition, the Tribe and District will work to incorporate into classroom education culturally appropriate materials and activities to educate all students in the District about the history and culture of the Tribe and Native people. Classroom teaching shall include, but not be limited to, history of the Tribe, information on governmental structure of the Tribe, Federal Indian Policy in the United States, and cultural practices of the Tribe. The Tribe agrees to be a resource for information and materials.

**C. Native Club.** The District shall sponsor a Native Club for all students in grades 6-12 that desire to participate. The District agrees to treat the club in the same manner as all school clubs and organizations, and provide time and space for the club to meet.

#### VI. ENFORCEMENT AND DISPUTES

- **A. Representatives.** Each party to this Agreement shall appoint a minimum of one (1) representative each to respond to inquiries about issues addressed in or affected by this Agreement. These representatives shall oversee the implementation of the provisions set forth in this Agreement and address ongoing student issues. The representatives shall make recommendations to the parties as to how the Agreement might be improved based on their experience, and the parties shall consider recommendation during the [annual/or other time frame] review of the Agreement.
- **B. Dispute Resolution.** In the event disputes arise out of or related to this Agreement, the parties herby agree upon the following dispute resolution methods:
- 1. In the event either party believes that the other party has breached this Agreement, the party alleging any breach shall give written notice to the other party in the manner provided herein. The notice shall identify the specific provisions of the Agreement alleged to have been breached and shall specify the factual basis for the breach. The other party shall have thirty (30) days in which to remedy the breach or provide a written response as to why no breach has occurred.
- 2. If the party alleging the breach is unsatisfied with the response, the parties agree to meet within thirty (30) days of the date of receipt of the written response in an effort to resolve the dispute.
- 3. In the event the dispute cannot be resolved informally between the parties, the dispute shall be submitted to a mediator agreed upon by the parties as soon as reasonably practicable after the informal meeting. In the absence of agreement, each party shall select a temporary mediator and the temporary mediators shall jointly select the permanent mediator. The mediation fees and mediator's expenses shall be shared equally between the parties. The parties agree to exercise their best efforts and good faith to resolve the dispute. Either party may also, in its discretion, terminate this Agreement as provided in

Section IV above.

# VII. GOVERNING LAW

This Agreement and all disputes arising out of or related to this Agreement will be governed by the laws of the Confederated Tribes of the Grand Ronde Community of Oregon. In no event shall this or any other provision of the Agreement be construed as a waiver of sovereign immunity of the Confederated Tribes of Grand Ronde.

IN WITNESS WHEREOF, the parties have executed this Agreement upon signature of the authorized officials.

# CONFEDERATED TRIBES OF THE GRAND RONDE COMMUNITY OF OREGON

Tribal Council Chairperson	Date
BANKS SCHOOL DISTRICT	
School District Superintendent	Date
School Board Chairperson	Date