

DRAFT

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581-021-0047

Prohibits 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.

(J) 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) Except as provided in subsection (4) of this section, ~~To~~ 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.

(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) 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.

(c) Except as provided in subsection (4) of this section, ~~A~~ 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 person. 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 that represents, is associated with or is significant to a Native American Tribe 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 public school may only enter into an agreement with a Native American Tribe for the use of a mascot that depicts an individual if the name of the particular tribe or tribe that is part of a confederation of tribes is included in the name of the mascot.

(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 for five years from the date of the notice to the State Board of Education.

(e) 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.

(f) An agreement entered into under this subsection must contain 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 plan for how the public school will be addressing any achievement gap between American Indian/Alaska Native students in the public school and other students;

(D) A description of how the agreement will be enforced both between the school and tribe and within the public school;

(E) The time period of the agreement which may not exceed 10 years;

(F) A review of the agreement by the tribe and public school at least once every five years;

(G) A description of how disputes and complaints relating to the agreement will be resolved;

(H) 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;

(I) 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

(J) 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;

(g) The State Board of Education shall approve an agreement if the agreement meets the requirements of ORS 332.075 and this rule.

(h) A tribe and a public school may jointly revoke an agreement by petitioning the State Board of Education.

~~(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