OFFICE OF THE SECRETARY OF STATE
SHEMIA FAGAN
SECRETARY OF STATE

CHERYL MYERS
DEPUTY SECRETARY OF STATE

ARCHIVES DIVISION
STEPHANIE CLARK
DIRECTOR

800 SUMMER STREET NE
SALEM, OR 97310
503-373-0701

PERMANENT ADMINISTRATIVE ORDER

FILED
12/29/2021 9:36 AM
ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

ODE 39-2021
CHAPTER 581
OREGON DEPARTMENT OF EDUCATION

FILING CAPTION: OARs for CROWN Act and Gender Identity

EFFECTIVE DATE: 12/29/2021

AGENCY APPROVED DATE: 12/09/2021

CONTACT: Jeremy Wartz
503-947-5736
jeremy.wartz@state.or.us

255 Capitol St NE
Salem,OR 97310

Filed By:
Jeremy Wartz
Rules Coordinator

RULES:
581-021-0045, 581-021-0046, 581-022-2308

AMEND: 581-021-0045

RULE TITLE: Discrimination Prohibited

NOTICE FILED DATE: 10/26/2021

RULE SUMMARY: ORS 659.850 requires the State Board of Education to adopt rules so that a person not be subjected to discrimination in any public elementary, secondary or community college education program or service, school or interschool activity. The rule amendment updates definitions and includes new terminology with definitions in accordance with HB 2935 (2021) and HB 3041 (2021).

RULE TEXT:
(1) For purposes of this rule and OAR 581-021-0046:
(a) “Discrimination” means any act that unreasonably differentiates treatment, intended or unintended, or any act that is fair in form but discriminatory in operation, either of which is based on age, disability, national origin, race, color, marital status, religion, sex, sexual orientation, or gender identity;
(b) “District” means:
(A) A school district, an education service district, a Youth Corrections Education Program provider under contract with the department, a Juvenile Detention Education Program provider under contract with the department, or a program that receives moneys pursuant to ORS 343.243; and
(B) Any educational agency, program, or service under the jurisdiction of an entity described in subparagraph (A) of this paragraph.
(c) “National origin” includes:
(A) An individual’s or individual’s parent’s or guardian’s place of origin;
(B) Latinx and other protected class ethnicities;
(C) An individual’s religious or cultural ancestry that the individual associates with their personal identity;
(D) Physical characteristics that are historically associated with a place of origin, protected class ethnicity, or religious or cultural ancestry, including but not limited to individuals who identify as Syrian, Muslim, Middle Eastern, Arab, Sikh, and Jewish; and

(E) An individual whose first spoken language is not English or who is not proficient in speaking English, or who is under the custody of a parent or guardian whose first spoken language is not English or who is not proficient in speaking English.
(d) “Gender identity” means an individual’s gender-related identity, appearance, expression or behavior, regardless of whether the identity, appearance, expression or behavior differs from that associated with the gender assigned to the individual at birth.
(e) “Protective hairstyle” means a hairstyle, hair color, or manner of wearing hair that includes, but is not limited to, locs, twists, and braids, regardless of whether the braids are created with extensions or styled with adornments.
(f) “Race” includes:
(A) Black, African American, American Indian, Alaska Native, Asian, Native Hawaiian, Pacific Islander, other protected class races, and multiracial individuals; and
(B) Physical characteristics that are historically associated with race, that includes, but is not limited to, any natural hair, hair texture, hair type, or protective hairstyle associated with race.
(g) “Sexual orientation” means an individual’s actual or perceived heterosexuality, homosexuality, or bisexuality.
(2) A person in Oregon may not be subjected to discrimination in any public elementary or secondary school, educational program or service, or interschool activity where the program, service, school, or activity is financed in whole or part by monies appropriated by the Legislative Assembly.
(3) In providing programs or services to students, a district may not, on a discriminatory basis as defined in subsection (1)(a) of this rule:
(a) Treat one person differently from another in determining whether such person satisfies any requirement of condition for the provision of such aid, benefit, or service;
(b) Provide different aid, benefits, or services; or provide aids, benefits, or services in a different manner;
(c) Deny any person such aid, benefit, or service;
(d) Subject any person to separate or different rules of behavior, sanctions, or other treatment;
(e) Aid or perpetuate discrimination by joining or remaining a member of any agency or organization which discriminates in providing any aid, benefit, or service to students or employees;
(f) Otherwise limit any person in the enjoyment of any right, privilege, advantage, or opportunity.
(4) This rule does not affect attendance boundaries, limit placement of students in programs of desegregation, nor supersede any specific statutory requirement for any educational program.

STATUTORY/OTHER AUTHORITY: ORS 326, 659.855

STATUTES/OTHER IMPLEMENTED: ORS 326.051, 659.850

AMEND: 581-021-0046

RULE TITLE: Program Compliance Standards

NOTICE FILED DATE: 10/26/2021

RULE SUMMARY: ORS 659.850 requires the State Board of Education to adopt rules so that a person not be subjected to discrimination in any public elementary, secondary or community college education program or service, school or interschool activity. The proposed rule amendment updates provisions related to dress codes in accordance with HB 2935 (2021).

RULE TEXT:

(1) Access to Course Offerings. A school district shall not provide any course or otherwise carry out any of its educational programs or activities on a discriminatory basis or require or refuse participation therein by any of its students on such basis:

(a) This section does not prohibit grouping of students in any educational program or activity by ability as assessed by objective standards of individual performance;

(b) Where use of an objective standard of measuring skill or progress in an educational program has a discriminatory effect on persons as defined in OAR 581-021-0045, the district shall use appropriate standards which do not have such effect;

(c) This section does not prohibit separating students by sex within physical education classes or activities during participation in wrestling, boxing, rugby, ice hockey, football, basketball, soccer, and other sports the purpose or major activity of which involves bodily contact.

(2) Employment Assistance. A district which actively assists any agency, organization, or person in making employment available to any of its students shall assure itself that such employment is made available without discrimination.

(3) Marital Status. A district shall not discriminate against any student or exclude any student from its educational program or activity including any class or extracurricular activity on the basis of the student's marital status; however the student may request voluntarily to participate in a separate portion of the program or activity of the district.

(4) Athletics. A district which operates or sponsors interscholastic club or intramural athletics shall provide equal athletic opportunity for members of both sexes, all age and ethnic groups, and persons withdisabilities. In determining whether equal opportunities are available, the Superintendent of Public Instruction shall consider among other factors whether the selection of sports and levels of competition effectively accommodate the interests and abilities of all students.

(5) Students Unable to Attend Because of Religious Beliefs. Any student who because of his or her religious beliefs is unable to attend classes on a particular day shall be excused from attendance requirements and from any examination or other assignment on that day. The student shall make up the examination or other assignment missed because of such absence. The absence shall not be counted for the purpose of an attendance policy that may result in exclusion, failure, or reduction of grade based upon a certain number of days.

(6) Textbooks and Curriculum Material. Nothing in this rule shall be interpreted as requiring or prohibiting or abridging in any way the use of adopted textbook or curriculum material. However, where materials are found upon investigation to provide discriminatory impact on the basis of race, color, national origin, religion, sex, sexual orientation, age, disability, or marital status, there should be established resources for employees and students of the district for supplemental alternative nondiscriminatory material.

(7) Use of Appraisal and Counseling Materials. A district which uses testing or other materials for appraising or counseling students shall not use materials which discriminate on the basis of race, color, national origin, religion, sex, sexual orientation, age, disability, or marital status, or use materials which permit or require different treatment of students on such basis unless such differences cover the same occupation and interest areas and the use of such different material is shown to be essential to the elimination of discrimination. Districts shall develop and use internal procedures for insuring that such materials may not discriminate.

(8) Bilingual or Linguistically Different Students. Districts shall develop and implement a plan for identifying students

whose primary language is other than English and shall provide such students with appropriate programs until they are able to use the English language in a manner that allows effective and relevant participation in regular classroom instruction and other educational activities.

(9) Equal Educational Opportunity Plans. Districts shall develop and implement a plan which assures that all students have equal opportunity to participate in the educational programs and activities and equal access to facilities in the district. Said plan shall include courses and components which provide students with an understanding of the pluralistic realities of their society, including multi-cultural/racial/ethnic education and equity in portraying all classes protected under ORS 659.150. Upon the request of the Superintendent of Public Instruction, districts shall submit copies of such plans and other assurances as are deemed necessary and proper.

(10) Dress Codes. Districts may enforce an otherwise valid dress code or policy, as long the code or policy:

(a) Provides, on a case-by-case basis, for reasonable accommodation of an individual based on the health and safety needs of the individual; and

(b)(A) Does not have a disproportionate adverse impact on members of a protected class, including age, disability, national origin, race, color, marital status, religion, sex, sexual orientation, or gender identity, to a greater extent than the policy impacts persons generally.

(B) For purposes of this paragraph, “disproportionate adverse impact” means an impact that is not appropriate or fair in consideration of the individual’s protected class status.

(11) Interpretation of Rules. The Superintendent of Public Instruction may issue written interpretations concerning rules for nondiscrimination upon the written request of parties to a complaint at the district level.

STATUTORY/OTHER AUTHORITY: ORS 326, 659. 855

STATUTES/OTHER IMPLEMENTED: ORS 326.051, 659.850

ADOPT: 581-022-2308

RULE TITLE: Agreements Entered Into with Voluntarily Organizations

NOTICE FILED DATE: 10/26/2021

RULE SUMMARY: ORS 659.850 requires the State Board of Education to adopt rules so that a person not be subjected to discrimination in any public elementary, secondary or community college education program or service, school or interschool activity. The proposed new rule requires a district to adopt policy to be a member of and pay fees, if any, to a voluntary organization that administers interscholastic activities or that facilitates the scheduling and programming of interscholastic activities. Moreover, the policy establishes a complaint process and performs an annual survey.

RULE TEXT:

(1) For purposes of this rule:

(a) "Discrimination" means any act that unreasonably differentiates treatment, intended or unintended, or any act that is fair in form but discriminatory in operation, either of which is based on age, disability, national origin, race, color, marital status, religion, sex, sexual orientation, or gender identity;

(b) "District" means:

(A) A school district, an education service district, a Youth Corrections Education Program provider under contract with the department, a Juvenile Detention Education Program provider under contract with the department, or a program that receives moneys pursuant to ORS 343.243; and

(B) Any educational agency, program, or service under contract or the jurisdiction of an entity described in subparagraph (A) of this paragraph.

(c) "National origin" includes:

(A) An individual's or individual's parent's or guardian's place of origin;

(B) Latinx and other protected class ethnicities;

(C) An individual's religious or cultural ancestry that the individual associates with their personal identity;

(D) Physical characteristics that are historically associated with a place of origin, protected class ethnicity, or religious or cultural ancestry, including but not limited to individuals who identify as Syrian, Muslim, Middle Eastern, Arab, Sikh, and Jewish; and

(E) An individual whose first spoken language is not English or who is not proficient in speaking English, or who is under the custody of a parent or guardian whose first spoken language is not English or who is not proficient in speaking English.

(d) "Protective hairstyle" means a hairstyle, hair color, or manner of wearing hair that includes, but is not limited to, locs, twists, and braids, regardless of whether the braids are created with extensions or styled with adornments.

(e) "Race" includes:

(A) Black, African American, American Indian, Alaska Native, Asian, Native Hawaiian, Pacific Islander, other protected class races, and multiracial individuals; and

(B) Physical characteristics that are historically associated with race, that includes, but is not limited to, any natural hair, hair texture, hair type, or protective hairstyle associated with race.

(f) "Sexual orientation" means an individual's actual or perceived heterosexuality, homosexuality, or bisexuality.

(g) "Gender identity" means an individual's gender-related identity, appearance, expression or behavior, regardless of whether the identity, appearance, expression or behavior differs from that associated with the gender assigned to the individual at birth.

(2) A district shall adopt, and adhere to, a policy under which it may be a member of and pay fees, if any, to a voluntary organization that administers interscholastic activities or that facilitates the scheduling and programming of interscholastic activities only if the organization:

(a) Implements and adheres to equity focused policies that:

(A) Address the use of derogatory or inappropriate names, insults, verbal assaults, profanity, or ridicule that occurs at an interscholastic activity, including by spectators of the interscholastic activity;

(B) Prohibit discrimination;
(C) Permit a student to wear religious clothing in accordance with the student's sincerely held religious belief and consistent with any safety and health requirements; and
(D) Balance the health, safety, and reasonable accommodation needs of participants on an activity-by-activity basis;
(b) Maintains a transparent complaint process that:
(A) Has a reporting system to allow participants of interscholastic activities or members of the public to make complaints about student, coach, or spectator behavior;
(B) Responds to a complaint made under subparagraph (b)(A) of this paragraph within 48 hours of the complaint being received; and
(C) Resolves a complaint received under subparagraph (b) of this paragraph within 30 days of the complaint being received unless the organization determines that there is good cause to extend the timeline for resolving the complaint;
(c) Develops and implements a system of sanctions against schools, students, coaches, and spectators if a complaint made under paragraph (b) of this subsection is verified; and
(d) Performs and annual survey of students and their parents to understand and respond to potential violations of equity focused policies adopted under this rule or violations of OAR 581-021-0045, 581-021-0046, or 581-021-0047.
(3) Subsection (2)(a)(A) of this rule only applies to school districts and any educational agency, program, or service under contract or the jurisdiction of a school district unless the inappropriate name, insult, verbal assault, profanity, or ridicule is directed toward an individual because of the individual's age, disability, national origin, race, color, marital status, religion, sex, or sexual orientation.

STATUTORY/OTHER AUTHORITY: ORS 326, 659.855

STATUTES/OTHER IMPLEMENTED: ORS 332.075, 659.850