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CHAPTER 581
OREGON DEPARTMENT OF EDUCATION

FILING CAPTION: Discrimination OAR Updates

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RULES:
581-002-0001, 581-002-0003, 581-021-0045, 581-021-0046, 581-022-2370

AMEND: 581-002-0001

RULE TITLE: Definitions

NOTICE FILED DATE: 12/28/2022

RULE SUMMARY: These rules outline the definitions used in the complaint process and procedures resolution in a school district.

RULE TEXT:
For purposes of OAR 581-002-0001 to OAR 581-002-0023:
(1) “Department” means the Oregon Department of Education.
(2) “District” means:
(a) A school district, an education service district, a public charter school, 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.
(3) “Public Charter School” means an elementary or secondary charter school offering a comprehensive instructional program operating under a written agreement entered into between a sponsor and an applicant pursuant to ORS chapter 338.
(4) “Sponsor” means:
(a) The board of the common school district or the union high school district in which the public charter school is located that has developed a written charter to create a public charter school.
(b) The State Board of Education pursuant to ORS 338.075.

STATUTORY/OTHER AUTHORITY: ORS 326.051, ORS 339.303, ORS 659.850 to 659.855

STATUTES/OTHER IMPLEMENTED: ORS 659.850 to 659.855, ORS 339.285

AMEND: 581-002-0003

RULE TITLE: Scope

NOTICE FILED DATE: 12/28/2022

RULE SUMMARY: These rules outline the violations and those which are applicability to the complaint and appeal process.

RULE TEXT:
OAR 581-002-0001 to OAR 581-002-0023 apply to appeals of complaints alleging:
(1) A violation of ORS 339.285 to 339.303 or OAR 581-021-0550 to 581-021-0570 (Restraint and Seclusion);
(2) A violation of ORS 659.850 or OAR 581-021-0045 to 581-021-0046 (Discrimination and Program Compliance Standards for Purposes Related to Discrimination);
(3) If the entity against whom the complaint is filed is a school district, education service district, or public charter school, a violation of OAR 581-021-0038 (Requirements Related to Sexual Harassment);
(4) If the entity that is the subject of the complaint is a school or program operated by a school district, education service district, or public charter school, a violation of OAR 581-021-0047 (Prohibition against Using Native American Mascots);
(5) If the entity against whom the complaint is filed is a school district, an education service district, a Youth Corrections Education Program provider under contract with the department, or a program that receives moneys pursuant to ORS 343.243 (3) or (4), a violation of ORS 659.852 (Retaliation); or
(6) A violation of the Oregon Administrative Rules, chapter 581, division 022 (Division 22 Standards).

STATUTORY/OTHER AUTHORITY: ORS 326.051, ORS 339.303, ORS 659.850 to 659.855

STATUTES/OTHER IMPLEMENTED: ORS 339.303, ORS 659.850 to 659.855, ORS 339.285 to 339.303

AMEND: 581-021-0045

RULE TITLE: Discrimination Prohibited

NOTICE FILED DATE: 12/28/2022

RULE SUMMARY: ORS 659.850 requires the State Board of Education to adopt rules to ensure compliance that a person not be subjected to discrimination in any public elementary, secondary or community college education program or service. These rules outline the terms and definitions used to implement this policy.

RULE TEXT:

(1) For purposes of this rule and OAR 581-021-0046:

(a) "Disability" includes a person who has a physical or mental impairment that substantially limits one or more major life activities, a person who has a history or record of such an impairment, or a person who is perceived by others as having such an impairment.

(b) "Discrimination" means any act that 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;

(c) "District" means:

(A) A school district, an education service district, a public charter school, 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.

(d) "National origin" includes:

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

(B) Latinx/a/o/e and other protected class ethnicities, including Afro-Latinx/a/o as defined in OAR 581-017-0693, Central American as defined in OAR 581-017-0693, Indigenous as defined in OAR 581-017-0693, and South American as defined in OAR 581-017-0693;

(C) An individual's actual or perceived 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.

(e) "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.

(f) "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.

(g) "Public Charter School" means an elementary or secondary charter school offering a comprehensive instructional program operating under a written agreement entered into between a sponsor and an applicant pursuant to ORS chapter 338.

(h) "Race" includes:

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

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

(i) “Sex” includes male (M), female (F), and non-binary (X).
(j) “Sexual orientation” means an individual’s actual or perceived heterosexuality, homosexuality, or bisexuality.
(k) “Sponsor” means:
(A) The board of the common school district or the union high school district in which the public charter school is located that has developed a written charter to create a public charter school.
(B) The State Board of Education pursuant to ORS 338.075.
(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)(a) A district must issue notice of nondiscrimination for the purpose of notifying students, staff, and third parties that the district does not discriminate on the basis of age, disability, national origin, race, color, marital status, religion, sex, sexual orientation, and gender identity.
(b) Notice of nondiscrimination as required by this subsection must:
(A) Be continuously available on the district website, accessible either by a direct link on the front page of the website or by a direct link on the footer of every page of the website.
(B) Be posted in multiple locations, including but not limited to public-facing documents such as staff and student handbooks, annual publications, official school board documents, bulletins, graduation announcements, catalogs, recruitment materials, and school related applications.
(C) Be made available in the languages of the communities served by the district.
(D) Be disseminated annually to staff, students, and families of students as an individual notice that is accessible and written in plain language.
(E) Contain:
(i) A statement of non-discrimination that specifies the basis for non-discrimination being age, disability, national origin, race, color, marital status, religion, sex, sexual orientation, and gender identity;
(ii) The contact information of staff designated to respond to questions of discrimination, including their name or title, address, email address, and telephone number; and
(iii) A link to or the web address for the district’s discrimination complaint process and procedures.
(5) 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: 12/28/2022

RULE SUMMARY: ORS 659.850 requires the State Board of Education to adopt rules to ensure compliance that a person not be subjected to discrimination in any public elementary, secondary or community college education program or service. These rules outline the implementation this policy.

RULE TEXT:

(1) The definitions in OAR 581-021-0045 apply to this rule.

(2) Access to Course Offerings. A 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.

(3) 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.

(4) 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.

(5) Athletics. A district which operates or sponsors interscholastic club or intramural athletics shall provide equal athletic opportunity for members of all sexes, all age and ethnic groups, and persons with disabilities. 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.

(6) 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.

(7) 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 age, disability, national origin, race, color, marital status, religion, sex, sexual orientation, or gender identity, there should be established resources for employees and students of the district for supplemental alternative nondiscriminatory material.

(8) 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 age, disability, national origin, race, color, marital status, religion, sex, sexual orientation, or gender identity, 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.

(9) 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.

(10) 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 659.550. 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.

(11) Dress Code. If a district has a formal or informal dress code policy, the policy must:

(a) Not discriminate against members of a protected class, including age, disability, national origin, race, color, marital status, religion, sex, sexual orientation, and gender identity;

(b) Be gender-affirming, racially affirming, and culturally affirming;

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

(d) When revised, be revised with input from members of protected classes, including age, disability, national origin, race, color, marital status, religion, sex, sexual orientation, and gender identity.

(12) 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

AMEND: 581-022-2370

RULE TITLE: Complaint Procedures

NOTICE FILED DATE: 12/28/2022

RULE SUMMARY: The rule outlines the process and procedures for prompt resolution of a complaint in the school district.

RULE TEXT:

(1) Each school district must establish a process for the prompt resolution of a complaint by:

(a) A person who resides in the district;

(b) Any parent or guardian of a student who attends school in the district; or

(c) Any person who alleges that they have been subjected to discrimination, or a third party representing such persons or groups of persons.

(2) A school district's complaint procedure must:

(a) Be in writing available at the main administrative office and, if the school district has a website, in a form available on the home page of the school district's website;

(b) Include the name of the person, position, or office within the school district with the responsibility for responding to the complaint; and

(c) Specify the time period during which the complaint will be addressed and a final decision issued. If the complaint procedure has multiple steps, the procedure must establish the time period for each step as well as the overall time period for completing the complaint procedure.

(3) A school district's complaint procedure may:

(a) Distinguish between those complaints that may be appealed under OAR 581-002-0040 and OAR 581-002-0001 to OAR 581-002-0023, and other complaints;

(b) Offer mediation or other alternative dispute resolution processes as an option available if all parties to the complaint agree in writing to participate;

(c) Impose a time limitation for filing a complaint that is the later of either:

(A) Two years after the alleged violation or unlawful incident occurred or the complaint discovered the alleged violation or unlawful incident. For incidents that are continuing in nature, the time limitation must run from the date of the most recent incident; or

(B) One year after the affected student has graduated from, moved away from, or otherwise left the school district.

(d) Include more than one but no more than four steps for addressing the complaint.

(4) The procedure for hearing and acting on complaints alleging violation of the Oregon Administrative Rules, Chapter 581, division 22 (division 22 standards), ORS 339 to 330.303 or OAR 581-021-0550 to 581-021-0570 (Restraint and Seclusion), ORS 659.850 or OAR 581-021-0038, 581-021-0045, 581-021-0046, 581-021-0047 (Discrimination); or ORS 659.852 (Retaliation) must include the following:

(a) The point at which the district's decision if final; and

(b) A final decision in written or electronic form that addresses each allegation in the complaint and contains reasons for the district's decision and notifies the complainant that the district's decision may be appealed to the Deputy Superintendent of Public Instruction under OAR 581—002-0023.

(5) This rule applies to appeals filed with a school district on or after January 1, 2018.

STATUTORY/OTHER AUTHORITY: ORS 326.051

STATUTES/OTHER IMPLEMENTED: ORS 327.103, 326.051