



Oregon Department of Education

Kate Brown, Governor

Office of the Deputy Superintendent

255 Capitol St NE, Salem, OR 97310

Voice: 503-947-5600

Fax: 503-378-5156

HB 3536: School Mascots
House Education Committee
April 20, 2015

Introduction:

I am Cindy Hunt, Government and Legal Affairs Manager, for the Department of Education. I am here today to provide you with background relating to Native American mascots and the actions of the State Board of Education on this topic.

The State Board of Education has been diligently working toward completing the rulemaking process as directed by the Legislature under SB 1509. A proposed administrative rule will be in front of the board for adoption at the board's May meeting. The Department has also consulted with the Oregon nine federally recognized tribes and allowed multiple avenues for stakeholder input as part of this process. The 2014 Legislature gave the board until January 1, 2017 to implement SB 1509. HB 3536 would effectively stop this process.

The State Board of Education is asking the legislature to give them time to complete their work on this complex issue.

Background:

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. To suggest that such images may be offensive risks community outrage: community members believe they are unfairly being charged with being disrespectful or racist. The very topic invites passion on both sides and is divisive.

While the communities of these high schools believe they are honoring Native Americans, there is a growing body of social science literature and empirical research that indicates there are harmful effects of such racial stereotyping and inaccurate racial portrayals. These stereotypes are particularly harmful to the social identity development and self-esteem of American Indian young people. Research indicates that using Native Americans as mascots promotes discrimination, pupil harassment, and stereotyping.

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. The board

has a responsibility to consider the research and weigh this against the community's desire to maintain its traditions.

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 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.
- Direct the state board to consult with the tribes as part of rule adoption process.
- Rule must be adopted by January 1, 2017.

The 2014 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 to implement SB 1509:

In the summer of 2014 the Department of Education began the rulemaking process by seeking input from the nine federally recognized 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 workgroup:

- Nine federally recognized tribes.
- School districts with Native American mascots.
- Legislative sponsors of SB 1509.
- 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.

The draft rule has been presented twice to the State Board of Education for discussion. Additionally public comment has been received by the board both orally and in writing and a rule hearing has been conducted. The Department has consulted with each of Oregon's nine federally recognized Native American Tribes by communicating to each tribe asking for comments and input. As a result of this communication, the Department has been invited and has presented on the topic to four tribal councils.

Proposed Rule Summary:

The proposed 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.

- For mascots that depict individuals, limits exception to only those mascots that include the name of the tribe or tribe that is part of a confederation of tribes.

- Requires the agreement to include plan to address achievement gaps between Native American students and other students.

- Specifies who must approve valid agreement.

- Specifies minimum contents of agreements.

- Specifies that board will approve agreements that meet these requirements.

The State Board of Education will be considering adoption of the rule at its May meeting.

Legislation:

House Bill 3536 prohibits the State Board of Education from adopting any rules related to the use of mascots by public kindergartens and public elementary and secondary schools. The bill also prohibits the board from withholding moneys or imposing sanctions on a school district based on the use of a mascot by a public school of this state. However, the bill did not repeal the authority of the board under SB 1509 (2014) to adopt rules relating to mascots and therefore conflicts with the provisions of SB 1509(2014).

Because of the conflict between HB 3536 and SB 1509(2014) it is unclear what the legislature intends as the role for the State Board of Education relating to Native American mascots. If HB 3536 became law, such a conflict would effectively stop or delay the board's current deliberations on the new rule and require the board to seek a legal opinion from the Attorney General about its authority.