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ODE Rules Advisory Committee

October 14, 2021

Agenda Overview

9:00 am- 12:30 pm

- I. Introductions & Opening Remarks
- II. ODE Rules-at-a-Glance
 - A. Rules Pertaining to Type 10 Drivers - OAR 581-053-0030; Content of IEP - OAR 581-015-2200; Educational Adequacy Standards for Long-Range Facility Plans -- Technical Assistance Program; Student Success Act Summer Program; & Every Student Belongs
- III. ODE Draft Rules
 - A. HB 2935 CROWN Act
 - B. HB 3041 Gender Identity
 - C. Senate Bill 744 Implementation (Suspension of Assessment of Essential Skills)
 - D. HB 2056 Access to Linguistic Inclusion
 - E. Individualized COVID-19 Recovery Services
- IV. Open Space/Questions
- V. Closing



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Nine Federated Tribes of Oregon: Confederated Tribes of Grande Ronde

The Confederated Tribes of Grand Ronde
Treaty Areas

LEGEND
● Treaty Areas
▨ Unceded Territory
▲ Treaty Signature Location



Welcome, Opening Remarks

- Technical and Virtual reminders
- Suggested Protocol and Dialogue
- How to use shared Notespace/Workspace during presentation

Suggested Protocol for Dialogue

- Trust is earned - *and* let's attempt to move in conversation like we've got several years working together already behind us.
- Engage tension, don't indulge drama.
- Listen to your gut!
- Share space - help collectively balance the insights of verbal and quick processors with the wisdom of those who might appear more reticent.
- Confidentiality - this is not a social-media space. Lessons can be shared but leave the details.
- Dialogue, not selling - let's converse not pitch.
- Assume best intent, attend to impact
- Pay attention (neighbors, yourself, group process and dynamics)

Core Principles

- Collaborative Rulemaking Process
- Engagement/Consultation Before Pen Hits Paper
- Coordinating Engagement Opportunities to Not Overburden Partners
- In-Person Engagement (when possible)
- Different Perspectives in the Same Room (when possible)
- Advisory to ODE Staff (State Board of Education is statutorily responsible for promulgating rules.)
- Not One-Size Fits All
- Engage Community Partners, including those who will be directly affected by the rules
- Loop Back to Partners - to explain how their input shaped (or did not shape) the outcome or administrative rules

Process

RAC is Advisory to ODE Staff who make final recommendations to SBE for final decision.

Notification

Agenda will be sent out by RAC Coordinator

RAC Meetings

Discuss Early Draft Rule or Policy Concepts

State Board of Ed

Staff will take Oregon Administrative Rules to State Board of Education

RAC Meetings

Staff may bring back draft rules to RAC

State Board of Ed

Final adoption of rules or policies

Engagement Opportunities for Administrative Rules

Oregon Department of Education

Ensures rules comply with state law.

Staff technical advisory committee

Ensures rules align with program/grant purpose. Discuss how rules will impact affected communities.

State Board of Education

Ensures rules align and advance ODE Education Equity Stance. Provides staff with direction on administrative rules. Adopts administrative rules and sets educational policy and standards for all public school districts.

ODE Rules Advisory Committee

Ensures rules comprehensively address impact on affected communities. Address fiscal, small business & racial equity impacts.



The General Public

Submits oral or written public testimony and/or comments at scheduled OAR Hearings and State Board meetings.



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ODE Rules-at-a-Glance

581-053-0330 Rules Pertaining to Type 10 Drivers

Subject: OAR 581-053-0330 Rules Pertaining to Type 10 Drivers

Concept: Technical adjustment to clarify permissible operation by qualified drivers

Background: With new CTE grant opportunities, questions arose last year regarding what kinds of trailers, if any, an activity driver could tow with an approved Type 10 vehicle (van/sedan/truck/etc with 10 or fewer occupants and weight less than 10,000 lbs.), a topic on which the rule was silent.

581-053-0330 Rules Pertaining to Type 10 Drivers

Proposed Rule Changes:

- (1) A type 10 driver shall:
 - **(cc) Not tow a trailer with a gross vehicle weight rating (GVWR) of more than 10,000 pounds, or of a weight greater than recommended by the towing vehicle's manufacturer or by the hitch manufacturer, whichever is less;**
- *Proposed to clarify what is permissible while maintaining a non-commercial standard and ensuring a vehicle is not overloaded.*

Next Steps: 1st Reading at State Board of Education meeting in December.

OAR 581-015-2200 Proposed Amendment

Subject: Content of IEP rule

Concept: Inclusion of language from Lane v. Brown settlement agreement

Background: In December, 2015 ODE, Vocational Rehabilitation, and the Office of Developmental Disabilities Services entered into a settlement agreement in the Lane v. Brown case, sometimes referred to as the “sheltered workshop” case. One of the underlying concerns of the lawsuit was that students with disabilities were not being informed about supported employment services. The proposed changes incorporate language from this agreement into the rule. ODE guidance to school districts has been consistent with this language since entering the agreement.

OAR 581-015-2200 Proposed Amendment

Proposed Rule Changes:

(2) For the purposes of transition, the IEP must include:

(a) Beginning not later than the first IEP to be in effect when the child turns 16, or as early as age 14 or younger, if determined appropriate by the IEP team (including parent(s)), and updated annually thereafter:

(A) Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills; and

(B) The transition services (including courses of study) needed to assist the child in reaching those goals.

a. (l) Regarding employment, planning shall include information about and opportunities to experience supported employment services provided by Oregon Vocational Rehabilitation or the Oregon Office of Developmental Disability Services. These services must be provided in a competitive integrated employment setting, as defined by OAR 411-345-0020. Information about these services shall also be provided to the parent by the school district at each annual review for IEPs to be in effect when the child turns 16, or as early as age 14 or younger, if determined appropriate by the IEP team (including parent(s)).

OAR 581-015-2200 Proposed Amendment (cont.)

- Why or why not? RAC feedback was considered and discussed; however, we decided to keep the proposed amendments as is, as we do not believe that the amendments require any revision to the IEP form and it is important to keep the amendments consistent with DOJ recommendations in order to satisfy our settlement agreement obligations.
- **Next Steps** - present to Board for 2nd Reading/Adoption at October meeting.

OAR 581-027-0030, -0040, 0043 Proposed Amendments

Subject: Updates to the Technical Assistance Program's OARs

Concept: Provides 6 preference points specific to asbestos testing for the Asbestos TAP grant to prioritize districts with the greatest need.

Incorporates a new rule for educational adequacy analysis as part of the Long-Range Facility Planning grant requirements to help districts determine how school facilities perform in key areas that promote student learning.

Starting in 2022, TAP will offer districts a new Asbestos Environmental Hazard Assessment grant. The new Educational Adequacy Review Standards will help direct community discussions around the educational vision for local schools and prioritize improvements to facilities that are needed to achieve that vision.

OAR 581-027-0030 Technical Assistance Grant Program Procedures

Proposed Amendment:

Provides 6 preference points specific to the Asbestos Environmental Hazard Assessment TAP grant.

The preference points are designed to give priority to districts that:

- Have a student population under 2,500 ADMr
- Have 25% or more of students in poverty
- Have 50% or more of its schools built before 1980
- Have staff who need asbestos awareness or AHERA-related training
- Are due to conduct their 3-year AHERA reinspection
- Have completed annual updates to ODE's Building Collection by February 15 of each year.

OAR 581-027-0040 Long-Range Facility Plan Requirements

OAR 581-027-0043 Educational Adequacy Review Standards

Proposed Amendment:

The proposed amendment will require this analysis to include a rating or indication of the degree to which each of the District's campuses meets the Department's Educational Adequacy Review Standards as described in OAR 581-027-0043. These standards focus on five primary facets of good indoor learning environments that directly correlate to student outcomes.

1. Acoustics and Noise
2. Air Quality
3. Lighting
4. Temperature
5. School Capacity and Classroom Space

Next Steps

The proposed amendments to the Technical Assistance Program's OARs are up for their second read as part of October's State School Board meeting.

SSA Summer Program Grant rules

Subject: Revising SSA summer program rules

Concept: SSA program rules were first adopted in March 2020. In March 2021, temporary rules were adopted for funding and program requirements to address COVID impacts. (These temporary rules expire on September 19, 2021.)

As we move back to the original permanent rules, ODE would like to make some revisions based on lessons learned during the SSA Summer year 1 implementation. These additional changes proposed today reflect [RAC feedback from the August 31st meeting](#)

SSA Summer Program Grant rules

Proposed Rule Changes:

(C) Students' **mental health including social and emotional well-being-learning, trauma-informed practices, strength-based and equity-centered approaches.**

(B) held at an ~~physical~~ **approved accessible** location, **as determined by the Department of Education**

(g) **Provide effective and culturally responsive outreach methods to ensure enrolled students represent:**

(A) demographics of the school's student population; and

(B) ~~to the extent practicable,~~ **students that are currently and historically underserved and could benefit most from summer programming;** ~~student groups that are experiencing a significant achievement gap within the school;~~

Next Steps: Approval State Board of Education Meeting on October 21st

Every Student Belongs Rule

Subject: Every Student Belongs Rule

Concept: Align Every Student Belongs rule with the newly-passed House Bill 2697

Background: In 2020, the State Board of Education passed the “Every Student Belongs” rule. During the 2021 legislative session, the legislature passed a bill very similar to the rule. These minor changes bring the rule and the law into closer alignment.

Every Student Belongs Rule

Proposed Rule Changes:

- These changes are a “technical fix” to the original rules that align the ORS and OAR.
- Align definitions with House Bill 2697, for example:
 - “Symbol of Hate” means nooses, symbols of neo-Nazi ideology or the battle flag of the Confederacy
 - “School property” means any property under the control of an education provider.
- Re-writes various other provisions of the rule to better align language with HB 2697

Next Steps:

- Second reading and possible adoption at the October 21 State Board of Education meeting

Waiver of TAG Identification the 2020-21 School Year

OAR 581-022-0104

Subject: Waiver of TAG Identification the 2020-21 School Year

Concept: This waiver was adopted by the State Board as a temporary rule. This is the permanent rulemaking. Waiver applies to 2020-21 school year only.

Proposed Rule Changes: Inclusion of ...

(3) Waivers. The following standards are waived for the 2020-21 school year:

(f) Identification of Academically Talented and Intellectually Gifted Students. The identification of talented and gifted students as required in OAR 581-022-2325 is waived.

Waiver of TAG Identification the 2020-21 School Year OAR 581-022-0104

Changes to Rule Draft since previous RAC: None.

State Board Feedback/Questions (if any): None.

Next Steps: 2nd Read/Adoption at the October SBE meeting.

State Standards for the 2021-22 School Year

OAR 581-022-0106

Subject: State Standards for the 2021-22 School Year

Concept: This rule sets forth the rules in Division 22 that are in effect for the 2021-22 school year.

Proposed Rule Changes: Division 22 rules in effect.
Waiver – Essential Skills for class of 2022. Operational Plans.

State Standards for the 2021-22 School Year

OAR 581-022-0106

Changes to Rule Draft since previous RAC: None.

State Board Feedback/Questions (if any): None.

Next Steps: 2nd Read/Adoption at the October SBE meeting.



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ODE Draft Rules



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HB 2935 The CROWN Act

OAR 581-021-0045 - Discrimination Prohibited

OAR 581-021-0046 - Prog. Compliance Standards

OAR 581-022-____ - Agreements Entered into with Voluntary
Organizations

Winston Cornwall

Government and Legal Affairs

Office of the Director

OAR 581-021-0045 Proposed Amendment

Subject:

Proposed Rule Change – Discrimination Prohibited

Concept:

Inclusion and clarification of language from HB 2935 relating to discrimination; amending ORS 659.850

Objective 1:

Clarifies meaning of race to include natural hair, hair texture, hair type and protective hairstyles for purposes of prohibited discrimination under antidiscrimination statutes.

OAR 581-021-0045 Proposed Amendment

Proposed Rule Changes:

(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.

Questions

Questions for Input:

1. Are the inclusions and clarifications clear?
2. Are the changes consistent with the agency's commitment to equity?
3. Are there any potential unintended consequences that we haven't considered?

OAR 581-021-0046 Proposed Amendment

Subject:

Proposed Rule Change – Program Compliance Standards

Concept:

Inclusion/clarification of language from HB 2935 relating to discrimination; amending ORS 659.850

Objective 2:

Clarifies that valid dress code or policy may not have disproportionate adverse impact on members of protected class to extent that is greater than impact on persons generally.

OAR 581-021-0046 Proposed Amendment

Proposed Rule Changes:

- (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 their health and safety needs;
 - (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” means fair in form but discriminatory in operation, no matter how slight the adverse impact is.

OAR 581-022-____ Proposed New Rule

Subject:
Agreements Entered into with Voluntary Organizations

Concept:
Inclusion/clarification of language from HB 2935 relating to discrimination; amending ORS 659.850 and ORS 332.075

Objectives:
Limits authority of school district to become member of voluntary organization that administers interscholastic activities unless organization implements *policy that prohibits discrimination based on race, color or national origin*] equity focused policies that meet certain requirements.

OAR 581-022-____ Proposed New Rule: Agreements with Voluntary Organizations

(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;

OAR 581-022-____ Proposed New Rule: Agreements with Voluntary Organizations

(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;

OAR 581-022-____ Proposed New Rule: Agreements with Voluntary Organizations

(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;

OAR 581-022-____ Proposed New Rule: Agreements with Voluntary Organizations

(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 an 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, sexual orientation, or gender identity.

Questions

Questions for Input:

1. Are the inclusions and clarifications clear?
2. Are the inclusions and clarifications consistent with the agency's commitment to equity?
3. Are there any potential unintended consequences that we haven't considered?

Next Steps

Our plan is to present this rule change to the State Board for first reading in October and second reading in December.

We will continue to work with the CROWN Act advocates as we work to implement this bill.

Proposed Rules Impacts

Racial Equity:

- These changes and additions seeks to ensure students who identify by race, color and national origin will have equal opportunity with regard to protected hairstyles and dress codes, along with due process from voluntary organizations that administer interscholastic activities.

Fiscal/Small Business Impact:

- None identified/anticipated.



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Gender Identity as a Protected Class

OAR 581-021-0045

Kate Hildebrandt
Director's Office

OAR 581-021-0045: Gender Identity Discrimination

Subject: Discrimination

Concept: Gender identity added as a protected class.

Background: Oregon currently has nine protected classes under discrimination laws, including sexual orientation. Oregon has prevented discrimination based on gender identity since 2007 by including gender identity under the definition of “sexual orientation.”

HB 3041 creates gender identity as a standalone protected class and defined gender identity. The bill was championed by Basic Rights Oregon and other organizations supporting trans rights.

Proposed Rule Changes

OAR 581-021-0045: Gender Identity Discrimination

(1) ~~Discrimination Defined:~~ 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, ~~or~~ sexual orientation, or gender identity;

...

(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)~~ (g) “Sexual orientation” means an individual’s actual or perceived heterosexuality, homosexuality, or bisexuality, ~~or gender identity, regardless of whether the individual’s gender identity, appearance, expression or behavior differs from that traditionally associated with the individual’s sex at birth.~~

Questions

OAR 581-021-0045: Gender Identity Discrimination

Questions for Input:

- This bill presents an opportunity to reinforce an anti-discrimination message with school districts and to highlight resources for the trans community. What kind of messaging, outreach, or resources should ODE create/highlight?
- Outside of school districts, what other organizations/community partners should ODE reach out to promote this change?

Next Steps

OAR 581-021-0045: Gender Identity Discrimination

State Board? Further engagement?

- Oct 21 - Present rule changes to State Board for initial reading
- Nov 9 - Return to RAC to share updates and present on feedback
- Dec 9 - return to State Board for final adoption
- Ongoing - work with ODE partners and Basic Rights Oregon on implementation planning and rollout

Proposed Rule Impacts

OAR 581-021-0045: Gender Identity Discrimination

Racial Equity:

- Students with multiple marginalized identities are more likely to experience discrimination. Adding gender identity as a standalone protected class continues to support trans and nonbinary students of color in being protected from discrimination.

Fiscal/Small Business Impact:

- School districts have already been required to address discriminated based on gender identity, so their obligations and staffing should not need to change.
- ODE will provide technical assistance to districts to help them continue to implement this provision.



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Senate Bill 744 Implementation (Suspension of the Assessment of Essential Skills)

Dan Farley
Office of Teaching, Learning, and
Assessment

Senate Bill 744 Background

Subject: [Senate Bill 744](#)

Concept: Maintains Oregon's challenging high school credit requirements for graduation. Students are required to have knowledge and skill in reading, writing, and math to graduate with a diploma in Oregon.

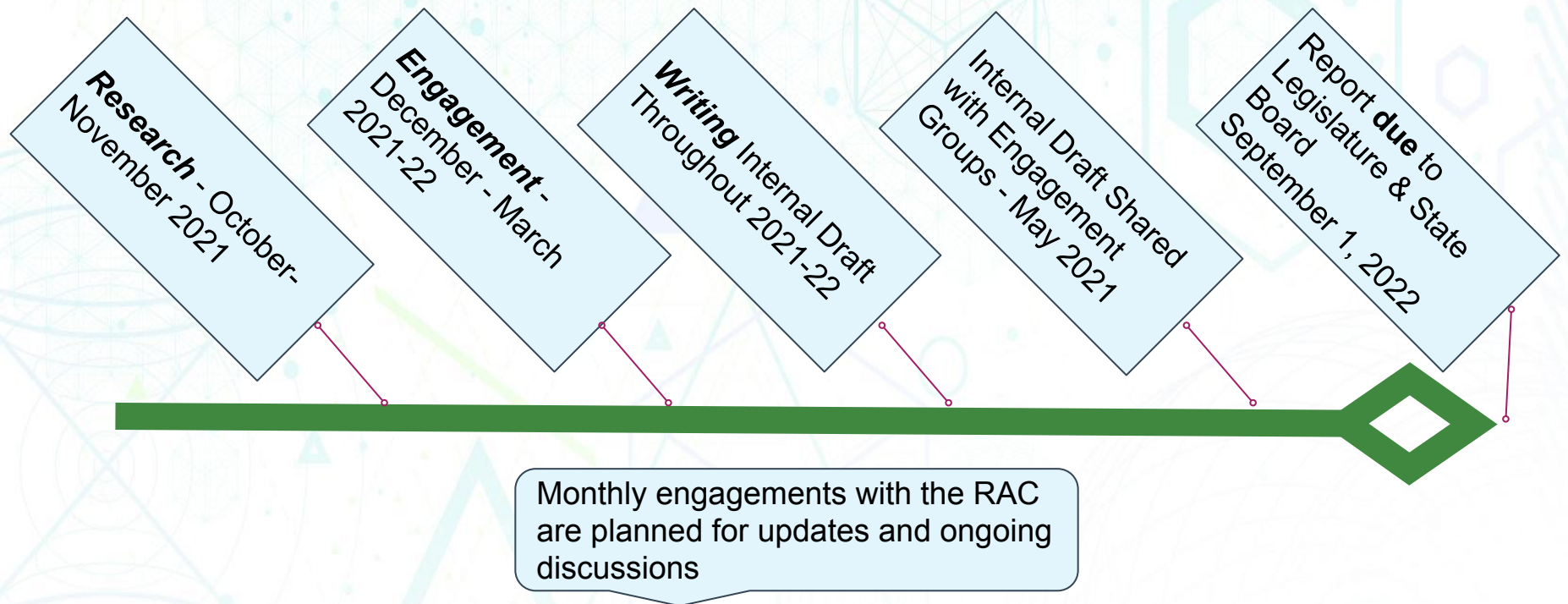
Background: Senate Bill 744 directs ODE to use a transparent process that is equitable, accessible and inclusive to:

- Review existing state requirements for earning each of the diplomas and alternative certificates as prescribed by state law and rules adopted by the State Board of Education.
- Review equity and disparities that may exist including identification of the causes of disparities that have resulted from the requirements and whether the requirements have been applied inequitably to different student populations.

Senate Bill 744 Background (cont.)

- Research other state graduation models, to compare requirements.
- Examine local implementation and the expectations of employers and post-secondary institutions by engaging with Oregon's diverse communities, educators, and business and industry partners to hear what Oregonians value and expect of the Oregon Diploma.
- Temporarily suspends the requirement for students to demonstrate proficiency in the Essential Skills. The purpose is to research the current requirements to ensure that they are equitable, accessible, and inclusive.
- Produce a report to the Legislature and the State Board of Education by September 1, 2022 that includes a summary of the review and research conducted. The report will also make recommendations regarding graduation policy for legislative and State Board consideration.

SB 744 Implementation Expected Timeline



SB 744 Engagement

Required Engagement

Government to Government

Nine Federated Tribes in Oregon (Tribal members including students)

Students

- Students experiencing disabilities
- Students who are from immigrant or refugee populations
- Students from racial/ethnic groups that have experienced graduation outcome disparities
- Students who are emerging bilinguals
- Youth-led organizations

Community Partners

- Communities of Color
- Communities Across Oregon

SB 744 DRAFT Engagement Plan (Next Steps)

- Bi-Monthly Engagements with the Oregon State Board
- Monthly Engagements with the RAC
- Flexible, multi-tiered engagement strategy is under consideration:
 - Required individual engagements with student groups, Tribes in Oregon, and community partners
 - Regional Community Conversations across Oregon
 - State survey tool for general public access
 - Key Partner Organizations

SB 744 Implementation Proposed Rule Changes

Proposed Rule Changes:

Pursuant to SB 744, students are not required to demonstrate proficiency in relation to Essential Skills in order to receive an Oregon Diploma through the 2023-24 school year

- The State Board will be asked to extend the suspension of the Assessment of Essential Skills at OAR 581-022-2115
(22) The Essential Skills graduation requirements established by Sections 3, 4, and 5 of this rule are waived for students graduating in the 2021-2022, 2022-23, & 2023-24 school years

SB 744 Implementation Proposed Rule Impacts

Racial Equity:

- Oregon's graduation rates show that Oregon's historically and currently underserved students are not experiencing equitable access to learning resources in our education systems
 - Students who are Indigenous and Tribal Members
 - Students of Color
 - Students Experiencing Disability
 - Students who are Emerging Bilinguals
- In addition, the ways that Oregon's historically and currently underserved students meet graduation requirements conveys the same opportunity disparities
- Systems that continue to generate inequitable outcomes must be interrogated for differences in student opportunity

Fiscal/Small Business Impact:

- Oregon's business community maintains interest in ensuring that the Oregon diploma denotes that students have achieved a certain level of employability.

SB 744 Implementation Questions

Questions for Input:

SB 744 requires that ODE “use a transparent process that is equitable, accessible, and inclusive.”

- *Question #1: What might give you confidence in the transparency of the SB 744 implementation process?*
- *Question #2: What questions do you want to make sure that ODE asks as part of the engagement process?*
- *Question #3: What questions, concerns, and/or recommendations do you have regarding the engagement process?*
- *Question #4: Do you have any questions regarding the scope of the overall project and the role of the RAC?*



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Access to Linguistic Inclusion (HB 2056)

Ben Wolcott and Tina Roberts
OTLA

Access to Linguistic Inclusion

Subject: Multilingual student achievement

Concept: Updates definitions of “English Language Arts” and “World Language” for the purposes of high school credit accrual and K-12 instruction

Background: Provides a means of formal recognition of the knowledge and skills of multilingual students

Access to Linguistic Inclusion Rule Changes

Rule number	Rule title	Change
581-002-0200	Class Size Collection	English Language Arts (Reading or Language Arts) → Language Arts (including Reading, Writing, and Literature); minor grammatical corrections
581-021-0200	Standard Education for Oregon Students	English Language Arts → Language Arts
581-022-0215	Extended Diploma	English → Language Arts; Second language → World language; minor grammatical corrections
581-022-0102	Definitions	Added definition for Language Arts and World Language
581-022-2000	Diploma Requirements	Section 6: English Language Arts → Language Arts
581-022-2010	Modified Diploma	English Language Arts → Language Arts
581-022-2030	District Curriculum	English → Language Arts
581-026-0300	Virtual Public Charter Schools	English language arts → Language Arts
581-021-0580	Definitions	Updated definition of World Language

Questions

Questions for Input:

- Most of these changes are not optional--they have partner ORSs which they must match.
- OAR 581-022-0215 changes (second language → world language) are not directly imposed by the law but we believe they are necessary, as they deal with content area labels for high school credit accrual. Does the RAC concur?
- What kind of district review mechanisms should ODE recommend/require to ensure that credits authorized by the new law are awarded equitably?

Next Steps

State Board? Further engagement?

- State Board first read Dec 9
- State Board second read January or March
- Ongoing engagement with multiple internal and external partners such as TSPC, HECC, OEA, district personnel, various advisory groups, and others

Proposed Rule Impacts

Racial Equity:

- Increases district latitude to recognize student achievement in languages other than English
- Intended beneficiaries are multilingual students whose primary language is not English and students with indigenous heritage

Fiscal/Small Business Impact:

This law has no fiscal impact.



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Individualized COVID-19 Recovery Services

Lisa Joy Bateman, Diana Cruz, Eric Wells
Office of Enhancing Student Opportunities

Subject: Individualized COVID-19 Recovery Services (ICRS)

Concept: [Unfinished learning](#) from the 2020-21 school year must be addressed for all students. For some students experiencing disability, universal efforts to address unfinished learning will not be sufficient. These students require Individualized COVID-19 Recovery Services.

Background: “During the COVID-19 pandemic, some LEAs report having difficulty consistently providing the services determined necessary to meet the child’s needs and address each of the goals in a child’s IEP. As a result, some children may not have received appropriate services to allow them to make progress anticipated in their IEP goals. It will be critically important for IEP Teams to make individualized decisions about each child’s present levels of academic achievement and functional performance and determine whether, and to what extent, **compensatory services may be necessary to mitigate the impact of the COVID-19 pandemic on the child’s receipt of appropriate services.**”

Overall, the Department encourages IEP Teams to focus on the individual needs of the child, whether the child received appropriate services, and how additional services may support the child to make progress in light of the child’s unique circumstances.”
([OSERS, 9/30/21](#), emphasis added)

Proposed Rule Changes

581-015-2228

Individualized COVID-19 Recovery Services

(1) For the purposes of this rule, eligible students are defined as those students aged 3-21 who are eligible for and receive special education services under the Individuals with Disabilities Education Act.

Proposed Rule Changes

(2) For the purposes of this rule, Individualized COVID-19 Recovery Services are defined as those services determined necessary for ~~children with disabilities~~ eligible students based on the unique needs that arise from their disability due to the impact of the COVID-19 ~~Pandemic~~ pandemic, which may include but are not limited to:

- (a) Special education and related services;
- (b) Supplementary aids and services;
- (c) Additional or intensified instruction;
- (d) Social emotional learning support; and
- (e) Peer or adult support.

Proposed Rule Changes

~~(23)~~ The IEP team for each eligible ~~child with a disability~~ student shall ~~individually~~ consider the need for Individualized COVID-19 Recovery Services at least at each initial IEP meeting and each regularly scheduled annual review meeting ~~through the 2022-23 school year.~~

~~(3) Notwithstanding section (2) above, decisions regarding Individualized COVID-19 Recovery Services shall be made earlier if requested by the parent.~~

~~(4) Notwithstanding section (2) above, decisions regarding Individualized~~ (a) IEP teams shall consider the impact of COVID-19 on the eligible student's ability to engage in their education, develop and re-establish social connections with peers and school personnel, and adapt to the structure of in-person learning.

Proposed Rule Changes

(b) For initial IEPs, IEP teams shall also review the impact of COVID-19 Recovery Services shall be made earlier when school or district based members of the IEP team suspect, or have reason to suspect, the potentialon the eligible student's initial evaluation, initial evaluation timeline, and eligibility determination in considering the need for Individualized COVID-19 Recovery Services ~~for a child with a disability, based on circumstances.~~

(c) For annual reviews, IEP teams shall also consider the impact of COVID-19 on the implementation of the eligible student's IEP in considering the need for Individualized COVID-19 Recovery Services.

Proposed Rule Changes

(4) Any member of the IEP team, including but not limited to: parents and eligible students, may request that the IEP team meet to review the need for Individualized COVID-19 Recovery Services at any time.

- ~~(a) A lack of expected progress toward the annual goals and in the general curriculum, if appropriate;~~
- ~~(b) The results of any reevaluation of a child with a disability;~~
- ~~(c) Information about a child shared by the child's parent that needs to be addressed; or~~
- ~~(d) A student's anticipated~~

Proposed Rule Changes

(a) IEP teams are not required to meet more than once annually to consider the need for Individualized COVID-19 Recovery Services; unless there is reason to suspect that the eligible student may need any additions or modifications to their Individualized COVID-19 Recovery Services.

(b) IEP teams that considered the need for Individualized COVID-19 Recovery Services at an initial IEP or annual review meeting on or after June 24, 2021 shall review the need for Individualized COVID-19 Recovery Services at the next annual review, but are not required to do so before then unless there is reason to suspect that the eligible student may need any additions or modifications to their Individualized COVID-19 Recovery Services.

Proposed Rule Changes

(5) When Individualized COVID-19 Recovery Services are recommended, the eligible student's IEP must be updated to reflect the recommendation.

(6) Each school district or program shall provide written notice to ~~and seek input from~~ the parents of each ~~child with a disability~~ eligible student regarding:

~~(a) The~~ the opportunity for the IEP team to meet to consider Individualized COVID-19 Recovery Services;

~~(b) Whether they are interested in their child receiving Individualized COVID-19 Recovery Services; and~~

~~(c) Their preferred timing of the IEP meeting to consider the need for these services.~~

~~(6) Each determination made by a school district or IEP team related to~~

Proposed Rule Changes

(7) After each determination is made, the school district or program shall provide written notice to the parent and/or adult student with a disability regarding the determination of need for Individualized COVID-19 Recovery Services. This notice shall include the following documentation:

(a) A statement of the Individualized COVID-19 Recovery Services recommended based on the meaningful input of all IEP team members, including parents and eligible students, as appropriate;

(b) The projected dates for ~~a child with a disability must be disclosed to the parent through prior written notice using the~~ initiation and duration of Individualized COVID-19 Recovery Services ~~Review sample form developed by the Department or a form developed by the school district that contains the same content;~~

Proposed Rule Changes

(c) The anticipated frequency, amount, location, and provider of the services described in subsection (7)(a) of this rule; and whether these services are being provided within the standard instructional day for the eligible student;

(8) If the district or program and parent hold an IEP meeting to discuss the need for Individualized COVID-19 Recovery Services and do not reach an agreement regarding such services, the school district or program and parent may request a Facilitated IEP meeting. If the district or program and the parent choose to participate in a Facilitated IEP meeting, the district or program shall notify ODE.

Proposed Rule Changes

(~~8~~9) Nothing in this rule shall affect or otherwise alter a ~~parent's~~parent's right to seek mediation under OAR 581-015-2335, request a due process hearing under OAR 581-015-2345, a complaint under OAR 581-015-2030, or other ~~parental rights~~remedies available under the procedural safeguards.

(~~9~~10) Nothing in this rule relieves the district or program of its duty to create an ~~appropriately individualized~~appropriate IEP for every eligible ~~child with a disability~~student, regardless of whether the ~~child~~eligible student requires Individualized COVID-19 Recovery Services.

(11) The requirements of this rule shall take effect upon adoption and shall remain in effect until July 1, 2023 unless extended by the State Board of Education.

Questions

Questions for Input:

- Should we include a clause like (4)(b) to explicitly cover IEP teams that considered ICRS after adoption of the temporary rule?
- The considerations in (3)(a) came from recent OSERS guidance. Are there any other considerations that Oregon should think about adding?
- Which set of wording for FIEP in clause (8)?
- Does the rule continue to provide sufficient opportunity for parents and families to meaningfully engage in the decision-making process related to ICRS?

Next Steps

State Board? Further engagement?

- ODE has completed large group and targeted engagement related to this rule. RAC is intended to be our final engagement before presenting to the State Board.
- Interested persons are still able to [submit comment and input](#) to the State Board.
- First Read is anticipated on October 21.
- Second Read and Possible Adoption is anticipated on December 9.

Proposed Rule Impacts

Racial Equity:

- ODE has consistently recognized the disproportionate impact of COVID-19 on specific student populations, including students experiencing disability. This rule is an effort to mitigate the disproportionate impact by providing a consistent pathway to Individualized COVID-19 Recovery Services if determined necessary and appropriate by the IEP team of each eligible child with a disability.

Fiscal/Small Business Impact:

- This rule will have minimal fiscal impact on ODE.
- Provision of Individualized COVID-19 Recovery Services may have a significant impact on district finances.
- However, through the ARP Act, both ESSER-III and a supplemental IDEA Allocation provided additional resources for school districts to address loss of instruction due to COVID-19.

Preview of November 9 Agenda

- Rules-at-a-Glance:
 - Farm-to-School Program OARs
 - Rules Pertaining to Type 10 Drivers - OAR 581-053-0030
- Updates/Policies:
 - Legislative Concept Process
 - SB 744 Implementation
- Draft Rules:
 - SB 513 - Civics requirement for graduation
 - LGBTQ2SIA+ Temporary Rules
 - Remote Learning Program Standards



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Thank you!





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OPEN SPACE

**Any further questions or comments
on any agenda item or any topic not
on our agenda...**