

Fw: [EXTERNAL] Curriculum Question

Brad Clark <Brad.Clark@sde.ok.gov>

Mon 11/22/2021 1:07 PM

To: Amy Gibson <Amy.Gibson@sde.ok.gov>; Carrie Burkhart <Carrie.Burkhart@sde.ok.gov>

Brad Clark

General Counsel

Oklahoma State Department of Education

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Brad.Clark@sde.ok.gov

From: Brad Clark <Brad.Clark@sde.ok.gov>

Sent: Tuesday, November 16, 2021 10:08 AM

To:

Subject: Fw: [EXTERNAL] Curriculum Question

Attached, please find correspondence from the Oklahoma State Department of Education regarding the concerns you provided regarding an assignment and/or quiz provided in a _____ grade Geography course at _____ Public Schools.

If you have any questions or wish to further discuss these matters, please do not hesitate to contact me.

Brad Clark

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Brad.Clark@sde.ok.gov

From:

Date: Monday, October 11, 2021 at 9:55 AM

To: Tiffany Neill <Tiffany.Neill@sde.ok.gov>

Subject: [EXTERNAL] Curriculum Question

Good Morning,

I am a parent of a child who attends _____ Public Schools. I was made aware of a situation that happened in a _____ geography class, that I felt needed to be brought to the state's attention. While it didn't affect my child directly, it could in the future. _____ gave _____ Geography classes a chromebook assignment/quiz that asked for the students to rate their stance on the following topics: Critical Race Theory, Abortion (including late term & abortion in the case of rape or incest), Gay marriage, Transgender Identity, the execution of Afghan terrorists and numerous other topics. Each question had links to describe the topics in more detail, so that students could read about the ones they didn't have knowledge of. It also gave statistics and links to discuss said topics. There were also "pop-up" links or what appeared to be click-bait associated with the links. First, I would like to know if this would be appropriate in any classroom, especially with 12-13

year old, students? Second, what did this have to do with Geography and what did this teacher have to gain from such information? Third, what would this info be used for exactly and who had access to the answers? Finally, I would like to say that I personally think that the teacher crossed so many lines. These are sensitive topics, most of which I wouldn;t consider to be appropriate at this age level. It saddens me to think that I may have to consider private school in the near future because I can't trust my child being left in the hands of the public school system. The school and administrators were contacted by several parents with children in these classes. To my knowledge, they have not received any further information as to what is being done to handle the situation. I would appreciate your attention to the matter and any information you may be able to share in regards to these topics in the public school system.

Sincerely,



OKLAHOMA STATE
DEPARTMENT of EDUCATION

November 15, 2021

VIA EMAIL ONLY

Re: House Bill 1775 - Complaint

The Oklahoma State Department of Education ("State Department") is in receipt of your written complaint (the "Complaint"), submitted on October 11, 2021, concerning alleged conduct by a teacher at _____ Public Schools. A copy of the Complaint is enclosed hereto. The Complaint identifies that the teacher "gave his Geography class a chromebook assignment/quiz that asked for the students to rate their stance on the following topics:

1. Critical Race Theory;
 2. Abortion (including late term & abortion in the case of rape or incest);
 3. Gay marriage;
 4. Transgender Identity; and
 5. The execution of Afghan terrorists and numerous other topics."
- Id.*

In May 2021, House Bill 1775 was passed by the Oklahoma Legislature and subsequently signed into law. As it relates to public schools, House Bill 1775 prohibits the making of any part of a course certain principles. House Bill 1775 directed the State Board of Education (the "State Board") to adopt administrative rules, subject to approval by the Legislature, to implement the provisions of this law. On Sept. 10, 2021, the State Board adopted emergency rules ("Emergency Rules") relating to House Bill 1775 and provided a process whereby individuals may make a written complaint based on alleged violations of the law and/or administrative rules. A copy of the Emergency Rules is enclosed hereto. While the Complaint does not specifically identify that it is being filed pursuant to the Emergency Rules, the topics alleged to have been made as a part of a course bring this within the jurisdiction of the State Department's jurisdiction and review.

As a part of its review, the State Department has obtained a copy of the full assignment and/or quiz¹ that is referenced in the Complaint. In full, the quiz is approximately forty-one (41) questions covering topics, some (though not all) of which you mention and overall includes subject issues more appropriate for a civics, debate or government course. Questions (among others) include:

¹ <https://www.isidewith.com/political-quiz>

1. Should the U.S. raise taxes on the rich?
2. Should the government raise the federal minimum wage?
3. Should foreign terrorism suspects be given constitutional rights?
4. Should the government increase spending on public transportation?
5. Should producers be required to label genetically engineered foods (GMOs)?
6. Should a photo ID be required to vote? and,
7. Should the electoral college be abolished?

As an initial matter, Oklahoma law continues to provide that local school districts shall exclusively determine curriculum. 70 O.S. § 11-103.6. In other words, while the OSDE believes that the latter of the questions from the quiz are legitimate and appropriate discussions to have in the proper course and forum, these matters are to be exclusively determined by local control at the school district board of education. However, a review of the Oklahoma Academic Standards, to which all public schools are to be aligned in their instructional programs, shows that these questions are not appropriate, or doubtful at best, for a grade *geography* class. Further, the State Department is entirely uncertain as to their relevance in that course of instruction. During its review, the State Department was advised that there was no instruction or classroom discussion regarding the quiz. Rather, the teacher advised that the class was discussing current topics in the United States, he found the quiz online and failed to review it in its entirety. While that may be true, the State Department has conveyed its stance to the school district, stressing age, grade-level and course appropriateness for curricular materials. Furthermore, the State Department has worked with the district to understand additional facts and circumstances, including that as it was notified of the assignment and/or quiz, the district removed and handled as a matter of local control with the teacher involved.

Insofar as House Bill 1775 and the Emergency Rules are concerned, there is no evidence to support a claim that the assignment, quiz or any other statement by the teacher advised students as to any one or more of the principles or concepts prohibited by House Bill 1775 or the Emergency Rules. As such, the State Department is denying the Complaint in these respects.

The State Department appreciates you bringing this matter to our attention. Should you have any questions or wish to further discuss anything, please do not hesitate to contact me.

Sincerely,



Brad S. Clark
General Counsel

**TITLE 210. STATE DEPARTMENT OF EDUCATION
CHAPTER 10. SCHOOL ADMINISTRATION AND INSTRUCTIONAL SERVICES**

*PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY
RULES ARE CONSIDERED PROMULGATED AND EFFECTIVE UPON APPROVAL BY THE
GOVERNOR AS SET FORTH IN 75 O.S., SECTION 253(F):*

SUBCHAPTER 1. GENERAL PROVISIONS

210:10-1-23. Prohibition of race and sex discrimination

- (a) **Purpose.** It shall be the policy of the Oklahoma State Board of Education to prohibit discrimination on the basis of race or sex in the form of bias, stereotyping, scapegoating, classification, or the categorical assignment of traits, morals, values, or characteristics based solely on race or sex. Public schools in this state shall be prohibited from engaging in race or sex-based discriminatory acts by utilizing these methods, which result in treating individuals differently on the basis of race or sex or the creation of a hostile environment.
- (b) **General.**
- (1) **Definitions.**
- (A) **"Public School"** means the board of education of a school district, charter school, virtual charter school or otherwise accredited school, as defined and provided for in 70 O.S. § 1-108, 70 O.S. § 3-132, 70 O.S. § 3-145.3 and 70 O.S. § 3-104, respectively.
- (B) **"Course"** means any forum where instruction or activities tied to the instruction are provided, including courses, training, seminars, professional development, lectures, sessions, coaching, tutoring, or any other class.
- (C) **"Teacher"** means the same as it is defined in 70 O.S. § 1-116.
- (2) **Applicability.** As expressly set forth in 24 O.S. § 24-157(B), this rule shall apply to any Teacher, administrator or other employee of a Public School.
- (3) **Nondiscrimination.** Nothing in this rule shall be intended to prohibit a Public School from employing lawful methods to address discrimination consistent with the requirements of the Equal Protection Clause of the Fourteenth Amendment, Title VI of the Civil Rights Act of 1964 ("Title VI"), Title IX of the Education Amendments of 1972 ("Title IX"), and 70 O.S. § 24-157. Further, nothing in this rule shall interfere or impair a Public School under a court order of desegregation.
- (4) **Severability.** If any specific provision of this rule or its application to any person or Public School is held invalid, the remainder of the rule or the application of its provisions to any school, person, practice or entity shall not be affected.
- (5) **Instruction.** Nothing in this rule shall be construed to prevent the teaching of history, social studies, English language arts, biology or any other subject matter area consistent with the Oklahoma Academic Standards as adopted and approved by the State Board of Education and approved by the Oklahoma Legislature.
- (6) **Title IX of the Education Amendments of 1972.** Nothing in this rule shall be interpreted to prohibit the lawful consideration of sex, as authorized by Title IX, which permits distinctions and/or classifications based on sex in specific circumstances. This includes but is not limited to the provision of single-sex programs, the establishment of separate sex facilities (bathrooms and locker rooms) or sex-specific athletic teams, consistent with the requirements of Title IX and its implementing regulations at 34 C.F.R. Part 106.

- (c) General Prohibition. No teacher, administrator or other school employee shall require or make part of any Course offered in a public school the following discriminatory principles:
- (1) One race or sex is inherently superior to another race or sex.
 - (2) An individual, by virtue of his or her race or sex, is inherently racist, sexist or oppressive, whether consciously or unconsciously.
 - (3) An individual should be discriminated against or receive adverse treatment solely or partly because of his or her race or sex.
 - (4) Members of one race or sex cannot and should not attempt to treat others without respect to race or sex.
 - (5) An individual's moral character is necessarily determined by his or her race or sex.
 - (6) An individual, by virtue of his or her race or sex, bears responsibility for actions committed in the past by other members of the same race or sex.
 - (7) Any individual should feel discomfort, guilt, anguish or any other form of psychological distress on account of his or her race or sex, or
 - (8) Meritocracy or traits such as a hard work ethic are racist or sexist or were created by members of a particular race to oppress members of another race.
- (d) Specific Prohibitions Ensuring Compliance. To ensure compliance with 70 O.S. § 24-157(B) and to not discriminate on the basis of race or sex, as a part of any Course or activities, the following requirements shall apply to Public Schools, any Teacher, administrator, other employee, or other individual, group or representative of a Public School:
- (1) Public schools in this state shall be prohibited from providing, contracting to provide, offering or sponsoring any Course(s), as defined in subsection (b)(1)(B), that includes, incorporates, or is based on discriminatory practices identified in section (c).
 - (2) Public schools in this state shall be prohibited from using any monies, property, or any other assets or resources to engage in race or sex-based discrimination, including discriminatory practices identified in section (c).
 - (3) Public schools in this state shall be prohibited from adopting programs or utilizing textbooks, instructional materials, curriculum, classroom assignments, orientation, interventions, or counseling that include, incorporate or are based on the discriminatory concepts identified in subsection (c).
 - (4) Public schools in this state shall be prohibited from executing contracts or agreements with internal or external entities, persons, companies or businesses to provide services, training, professional development, or any other assistance that includes, incorporates or is based on discriminatory practices identified in section (c). Within sixty (60) days of the approval of this rule, existing contracts or agreements executed by public schools that conflict with this requirement shall be amended to come into compliance with this section. Contracts or agreements executed solely to provide services prohibited by 70 O.S. § 24-157(B) or sections (c) or (d) of this rule shall be cancelled or terminated, consistent with the terms of the contract and applicable law.
 - (5) Public schools in this state shall be prohibited from receiving or applying to receive any monies that require, as a condition of receipt, the adoption of a Course(s), policies, curriculum, or any other instructional material that includes, incorporates or is based on discriminatory practices identified in subsection (c).
 - (6) Public schools in this state shall be prohibited from adopting diversity, equity, or inclusion plans that incorporate the concepts identified in subsection (b) subsection (c). Diversity officers in public schools shall be prohibited from providing any service or performing duties that include, incorporate, or are based on discriminatory practices

identified in subsection (c).

(7) Public schools shall be prohibited from mandating diversity training that includes, incorporates or is based on discriminatory practices identified in subsection (c). This includes providing such training to employees, contractors, staff members, parents, students, or any other individual or group.

(8) Public schools in this state shall be prohibited from adopting policies, including grading or admissions policies, or providing any other benefit or service that applies to students or any school employee differently on the basis of race or sex, unless specifically permitted by Title IX. (See (b)(6)). This prohibition includes segregated classes, programs, training sessions, extracurricular activities, or affinity groups unless otherwise permitted by Title IX. (See (b)(6)).

(e) Parents Rights. Parents and legal guardians of students enrolled in Public Schools in this state shall have the right to inspect curriculum, instructional materials, classroom assignments, and lesson plans to ensure compliance with 70 O.S. § 24-157(B). Consistent with 20 O.S. § 2001-2002 25 O.S. § 2002, no public school shall interfere with or infringe upon the fundamental rights of parents to determine their child's education.

(f) State Department of Education and State Board of Education. To ensure the compliance with the requirements of 70 O.S. § 24-157(B), as a part of any Course, the following requirements shall apply to the State Board of Education and the State Department of Education, respectively:

(1) The State Board of Education shall be prohibited from mandating state standards or promulgating any rule that is based on, includes or incorporates discriminatory concepts of race or sex-based discrimination, including concepts identified in section (c).

(2) The State Department of Education shall be prohibited from providing resources, instructional support, courses, training, seminars, professional development, or any other class to public schools that is based on, includes or incorporates discriminatory concepts identified in section (c). This prohibition includes executing contracts or agreements with external entities, persons, companies or businesses to provide services, training, professional development, or any other assistance that includes, incorporates or is based on discriminatory practices identified in section (c) to public schools under the supervision of the Oklahoma State Board of Education and State Department of Education.

(3) The State Department of Education shall be prohibited from receiving or applying to receive any monies that require, as a condition of receipt, the adoption of programs, policies, curriculum, or any other instructional material that includes, incorporates or is based on discriminatory practices identified in subsection (c).

(g) Public School Policies and Investigations. To ensure compliance, public schools shall be required to adopt policies and procedures, including incorporating into employee and student handbooks, the requirements of 70 O.S. § 24-157(B) and this rule. A public school's policy developed pursuant to this section must specifically notify individuals of the right to file complaints under subsections (g) of this rule. Public schools shall ensure that the parent or legal guardian of all students enrolled in the school are annually notified of the non-discrimination requirements in 70 O.S. § 24-157(B) and this rule.

(1) Public schools shall be required to develop a process for students, parents, teachers, school staff, and members of the public to file a complaint alleging a violation of the provisions of 70 O.S. § 24-157 or this rule. In order for a complaint to be accepted for investigation, it must:

(A) Be submitted in writing, signed and dated by the complainant, including complaints submitted through electronic mail that include electronic signatures;

- (B) Identify the dates the alleged discriminatory act occurred;
 - (C) Explain the alleged violation and/or discriminatory conduct and how 70 O.S. § 24-157 or the provisions of this rule have been violated;
 - (D) Include relevant information that would enable a public school to investigate the alleged violation; and
 - (E) Identify witnesses the school may interview, if applicable, provided the school will not dismiss a complaint for failure to identify witnesses.
- (2) Public schools shall be required to designate at least one employee to receive reports of violations filed by students, parents, teachers, school staff, or members of the public. Public schools shall identify the employee(s) responsible for receiving complaints in policies and materials published pursuant to section (g).
- (A) The contact information of employee(s) responsible for receiving complaints, including telephone and e-mail, shall be included in the policies and materials adopted pursuant to section (g) and shall be made publicly available on the public school's website.
 - (B) The employee(s) responsible for receiving complaints pursuant to this section shall notify the complainant that the complaint has been received and whether it will be investigated within ten (10) days of receipt.
- (3) Public schools shall be required to investigate all legally sufficient complaints that meet the requirements of subsection (g)(1) and make a determination as to whether a violation occurred. A public school must conclude the investigation of a complaint filed pursuant to subsection (g)(1) within ninety (90) days of receipt.
- (A) A complainant shall be notified in writing of a final determination, including the public school's findings of whether a violation occurred.
 - (B) It is permissible for a public school to receive, process, and investigate complaints filed under this subsection in the same manner in which the public school processes and investigates all other complaints of discrimination, provided the public school notifies a complainant pursuant to subsection (g)(2)(ii) subsection (g)(2)(B), reaches a final determination in the investigation within ninety (90) days of receipt of the complaint pursuant to subsection (g)(3) of this rule and complies with subsection (g)(3)(i) subsection(g)(3)(A).
- (4) A complainant may file a complaint alleging a violation of 70 O.S. § 24-157 or this rule directly with a public school pursuant to subsection (g)(1) of this rule or may file a complaint directly with the State Department of Education pursuant to subsection (h)(2) of this rule provided:
- (A) A complainant may not file complaints simultaneously with a public school and the State Department of Education;
 - (B) The State Department of Education may not require a complainant to first file with a public school prior to seeking relief pursuant to (h)(2); and
 - (C) Any complainant who believes that a public school has incorrectly refused to investigate a complaint or has evidence that a public school has reached an incorrect determination may subsequently file a complaint with the State Department of Education pursuant to subsection (h)(2) of this rule.
- (h) Accreditation. Consistent with State Board of Education's authority under 70 O.S. § 3-104.4 (I)(5), public schools in this state shall be evaluated annually to ensure compliance with 70 O.S. § 24-157(B) and the requirements of this rule.
- (1) Public School Application for Annual Accreditation. Consistent with the provisions and requirements of OAC 210:35-3-201, a school's failure to comply with 70

O.S. § 24-157(B) or any requirement in this rule shall, at a minimum, result in the accreditation status of the public school being classified "Accredited With Deficiency." The public school shall have one school year to correct deficiencies.

(A) A public school that fails to correct deficiencies after being classified as "Accredited With Deficiency" for violations of 70 O.S. § 24-157(B) or any requirement in this rule shall be classified, at a minimum, "Accredited With Probation" in the second year of noncompliance for "deliberately and unnecessarily violating one or more regulations." (See OAC 210: 35-3-201(b)(4)C)). The public school shall have one school year to correct deficiencies.

(B) A public school that fails to correct deficiencies after being classified as "Accredited With Probation" for violations of 70 O.S. § 24-157(B) or any requirement in this rule shall be classified "Nonaccredited" in the third year of noncompliance consistent with Oklahoma statutes and the State Board of Education's administrative rules, processes and procedures. (See OAC 210: 35-3-201).

(2) Investigation and Immediate Action. Consistent with the requirements of 70 O.S. § 3-104.4, the Department shall investigate any complaint of any failure to comply with accreditation standards, including compliance with 70 O.S. § 24-157(B) or any requirement in this rule. If the Department determines that a public school has failed to comply with the accreditation standards, including this rule, the Department shall report the information to the State Board for further action, and within the timeline, provided in 70 O.S. § 3-104.4.

(i) Public Reporting. Public School employee(s) designated pursuant to subsection (g)(2) shall be required to report for each complaint filed pursuant to subsection (g)(1) to the State Department of Education within thirty (30) days of resolution of the complaint. The State Department of Education shall report quarterly to the State Board of Education on complaints filed pursuant to subsection (f), including:

- (1) The number of complaints filed with Public Schools;
- (2) The number of complaints dismissed or not investigated;
- (3) The number of complaints opened for investigation;
- (4) The number of cases where, following a full investigation, the Public School determined that a violation occurred; and
- (5) The number of cases where, following a full investigation, the Public School determined no violation occurred.
- (6) The number of cases where, following a full investigation, the State Department of Education has determined that a violation occurred or did not occur.

(j) Suspension or Revocation. Consistent with OAC 210:1-5-6 and subsection (b)(1)(iii) subsection (b)(1)(C), the provisions of this rule shall apply to superintendents of schools, principals, supervisors, librarians, school, classroom teachers or other personnel performing instructional, administrative and supervisory services in the public schools.

(1) Suspension. As a part of its investigation of a legally sufficient complaint filed pursuant to subsection (g), the State Department of Education shall make a determination of whether to initiate proceedings to suspend the license or certificate of any school employee who is found to have violated 70 O.S. § 24-157(B) or any provision of this rule, consistent with the State Board's processes and procedures for suspension of certificates.

(2) Grounds for Revocation. Consistent with OAC 210:1-5-6, subsection (b), the State Board of Education shall initiate proceedings to revoke the license or certificate of any school employee for "willful violation" of 70 O.S. § 24-157(B) or any requirement in this rule. (See OAC 210: 1-5-6(b)(1) - (b)(2)). The requirements and processes outlined in OAC

210:1-5-6, including the rights afforded to certificate holders, shall apply to all revocation proceedings.

- (k) Retaliation. Consistent with the provisions of Title VI and Title IX, no individual shall be retaliated against for: 1) filing a complaint pursuant to subsections (g)(1) or (h)(2) of this rule; or 2) the purpose of interfering with any right or privilege secured by federal civil rights laws and regulations. Any school employee who retaliates against a complainant shall be subject to disciplinary action pursuant to subsection (j) of this rule.
- (l) Whistleblower Protection. Any Teacher who files a complaint pursuant to subsection (g)(1) or (h)(2) of this rule or otherwise discloses information the teacher reasonably believes evidences a violation of 70 O.S. § 24-157(B) or this rule shall be entitled to the Whistleblower Protections in applicable laws, including those at 70 O.S. § 6-101.6b.
- (m) False Reporting. Any Teacher or other school employee who, willfully, knowingly and without probable cause makes a false report pursuant to subsection (g)(1) or (h)(2) of this rule may be subject to proceedings pursuant to subsection (j) of this rule.
- (n) Complaints by School Staff. Any school employee who is discriminated against by a public school in the form of race or sex based harassment, bias, stereotyping, scapegoating, classification, or the categorical assignment of traits, morals, values, or characteristics based solely on race or sex in violation 70 O.S. § 24-157(B), may file an employment discrimination complaint with the Oklahoma Attorney General's Office of Civil Rights Enforcement pursuant to 25 O.S. § 1101, *et seq.*
- (o) Relief. Title VI and Title IX may be enforced by private right of action, whereby aggrieved parties may seek relief, including monetary damages, for violations of federal antidiscrimination laws. Victims of discrimination may file a lawsuit directly against the Public School. In addition to any private rights of action, aggrieved parties may seek applicable remedies through the U.S. Department of Education's Office for Civil Rights or the U.S. Department of Justice's Civil Rights Division.

Fw: Response to Complaint

Brad Clark <Brad.Clark@sde.ok.gov>

Mon 11/22/2021 1:07 PM

To: Amy Gibson <Amy.Gibson@sde.ok.gov>; Carrie Burkhart <Carrie.Burkhart@sde.ok.gov>

Brad Clark
General Counsel
Oklahoma State Department of Education
2500 North Lincoln Boulevard, Suite 117
Oklahoma City, Oklahoma 73105
Office: 405-522-3274
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Brad.Clark@sde.ok.gov

From: Brad Clark <Brad.Clark@sde.ok.gov>
Sent: Friday, November 12, 2021 4:58 PM
To:
Subject: Response to Complaint

Attached, please find a response to the complaint you submitted to the Oklahoma State Department of Education relating to alleged violations of House Bill 1775 (70 O.S. § 24-157) and emergency rules adopted by the Oklahoma State Board of Education.

As always, if you have any questions or want to further discuss this matter, please do not hesitate to contact me.

Brad Clark
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Oklahoma City, Oklahoma 73105
Office: 405-522-3274
Cell: 405-420-4318
Brad.Clark@sde.ok.gov



OKLAHOMA STATE
DEPARTMENT of EDUCATION

November 12, 2021

VIA EMAIL ONLY

Re: House Bill 1775 - Complaint

The Oklahoma State Department of Education ("State Department") is in receipt of your written complaint (the "Complaint"), submitted on October 12, 2021, concerning alleged violations of the prohibited concepts set forth in House Bill 1775 (2021) the Emergency Rules ("Emergency Rules") adopted by the Oklahoma State Board of Education ("State Board").^{1 2} A copy of the Complaint is enclosed hereto. The Complaint identifies two issues regarding Public Schools (the "District"), allegedly violating the aforementioned law and rules, those being:

1. The policy, required to be adopted by the Emergency Rules, did not go before the District Board of Education for adoption; and
2. A violation of the Open Records Act relating to the lack of a District Board of Education agenda showing that the District received permission from the Board of Education.

The OSDE has investigated your complaint³ and, as set forth in detail below, determined that there has not been a violation of House Bill 1775 or the Emergency Rules.

Relating to the first allegation, the Emergency Rules provide:

(g) Public School Policies and Investigations. To ensure compliance, public schools shall be required to adopt policies and procedures, including incorporating into employee and student handbooks, the requirements of 70 O.S. § 24-157(B) and this rule. A public school's policy developed pursuant to this section must specifically notify individuals of the right to file complaints under subsection (g) of this rule. Public schools shall ensure that the parent or legal guardian of all students enrolled in the school are annually notified of the non-discrimination requirements in 70 O.S. § 24-157(B) and this rule.

¹ The Emergency Rules were adopted by the State Board on Sept. 12, 2021, promulgated and made effective upon approval by the Governor as set forth in 75 O.S. § 253(F). A copy of the Emergency Rules is enclosed.

² As it relates to Oklahoma public schools, House Bill 1775 is codified in Oklahoma statute at 70 O.S. § 24-157(B).

³ The Emergency Rules mirror the timeline in Oklahoma law, at 70 O.S. § 3-104.4, for the investigation of a complaint and provide that the State Department will investigate a complaint under the Emergency Rules within thirty (30) days of receipt.

Further emphasizing the intent of the Emergency Rule's complaint provisions' focus on transparency and openness to provide individuals with notice and an opportunity to file a complaint, the Emergency Rules restate the requirement that public schools develop a process for students, parents, teachers, school staff, and members of the public to file a complaint alleging a violation of the provisions of 70 O.S. § 24-157 or this rule. *Id.* at (g)(1).

The Complaint does not allege that the District has not included in employee and student handbooks the requirements of 70 O.S. § 24-157 and the Emergency Rule, as required by the policy and procedure section of the Emergency Rule. Rather, the focus of the Complaint relates to whether the District has policies and procedures in place as required by the Emergency Rules. As a result, the State Department's review will focus on this claim.

On its website, the District houses its Board Policy Manual⁴, consisting of more than 580 pages of policies and regulations. Within the Policy Manual, Policy 3405 and associated regulation 3405-R can be found, relating to "Controversial Issues and Materials." First adopted in 1982, the policy was put in place to "establish guidelines for discussing controversial issues and using controversial materials." Further, the Policy provides that regulations will provide the process and procedures for parents/guardians of the school community to challenge controversial materials. *Id.* Just below Policy 3405 in the District's Policy Manual is Regulation 3405-R, relating to an individual's right to file a complaint pursuant to the Emergency Rules. Consistent with the Emergency Rules' requirement to specifically notify individuals of the right to file complaints under the rule, the District's policy and regulation expressly state:

"[a]ny individual who has witnessed or experienced the violation of Oklahoma Statute Title 70, § 24-157 or Oklahoma Administrative Code 210:10-1-23 and wishes to file a complaint with the District must do so by contacting the Executive Director of Student and Family Services at HB1775complaints@tulsaschools.org or may also be reached at 918-746-6287.

As such, the State Department finds the District has complied with the Emergency Rules' requirement for a public school to adopt policies and procedures for the filing of a complaint regarding an alleged violation of House Bill 1775 and/or the Emergency Rules.

With respect to the second allegation in the Complaint, it is unclear what provision of the Open Records Act⁵ is alleged to have been violated, and how. The purpose of the Open Records Act is to ensure and facilitate the public's right of access to and review of government records. In other words, it relates to access to public body (i.e., school district) records; however, nothing in the Complaint identifies with a request and/or an alleged denial of District records. Even if there were an allegation in the Complaint relating to access to records, nothing in House Bill 1775 or in the Emergency Rules relates to the Open Records Act. Instead, the jurisdiction and enforcement of the Open Records Act lies with civil or criminal proceedings in a court of competent jurisdiction. For these reasons, the Complaint will be dismissed and denied on these grounds.⁶

⁴ <https://resources.finalsite.net/images/v163121115/tulsaschoolsorg/v6iwmqx6kvyrx0ocpixr/PolicyManual2021.pdf>

⁵ 51 O.S. § 21A.1, *et seq.*

⁶ To the extent the Complaint is alleging a violation of the Oklahoma Open Meeting Act, which the State Department believes to be true as the Complaint refers there not being an agenda showing a particular item, the Complaint must be

Should you have any questions or wish to further discuss anything, please do not hesitate to contact me.

Sincerely,



Brad S. Clark
General Counsel

denied. Similar to the Open Records Act, the jurisdiction and enforcement of the Open Meeting Act is with civil or criminal proceedings in a court of competent jurisdiction, and is not a part of House Bill 1775.

[EXTERNAL] Public Schools HB1775 Violation

Tue 10/12/2021 8:08 AM

To: SDE Accreditation Division <SDE.AccreditationDivision@agency.ok.gov>
Cc: Ryan Walters <Ryan.Walters@gov.ok.gov>; Joy L. Hofmeister <Joy.Hofmeister@sde.ok.gov>; Ryan Pleper <Ryan.Pleper@sde.ok.gov>; Brad Clark <Brad.Clark@sde.ok.gov>; Katle Keleher <katle.keleher@kjr.com>

Good morning Accreditation office:

2 Issues in regards to HB1775 for Public Schools

1. Policy did not go before Board instead added without Board Approval
2. Open Records Violation

Requesting that SDE steps in to assist parents.

Official Complaint :

SEPTEMBER 20 2021 I publicly commented on no policy adoption by ... to outline compliance to HB1775 law at the Public School Board meeting on September 20 to all 7 board members. At this point October 12 - I have not been contacted by ... to advise me of any HB 1775 policy. - Regulation 1302-R of Board Policy gives guidelines for this followup.

******PUBLIC CONCERNS AND COMPLAINTS******

An individual or group with a complaint or concern regarding a policy, procedure or operation shall request a conference with the appropriate administrator within ten (10) business days of the event or action that is the subject of the complaint. If the complainant does not know the identity of the appropriate administrator, the board clerk will assist the complainant with identifying the correct individual and provide that person's contact information.

September 10 Oklahoma SDE approves EMERGENCY RULES

Public schools shall be required to develop a process for students, parents, teachers, school staff, and members of the public to file a complaint alleging a violation of the provisions of 70 O.S. §24-157 or this rule. In order for a complaint to be accepted for investigation,

August 2021- CONTROVERSIAL ISSUES AND MATERIALS EVALUATION Policy Added to

Manual

No School Board Agenda shows that ... has received permission from the Board:

8/2/21 School Board Agenda
[8221Agenda_1.pdf \(finalsite.net\)](#)

8/2/21 Meeting Minutes
[8221RegularMeetingMinutes.pdf \(finalsite.net\)](#)

8/23/21 School Board Agenda
[82321Agenda.pdf \(finalsite.net\)](#)

8/23/21 Meeting Minutes
[82321RegularMeetingMinutes.pdf \(finalsite.net\)](#)

School Board Policy 1201

SCHOOL BOARD POLICIES PURPOSE: To provide for the development, maintenance, review, and suspension of Board policies. Adoption of new policies or revision of existing policies is solely the responsibility of the Board of Education. Proposals for new policies or revisions to current policies may be submitted in writing by any interested citizen, District employee, or member of the Board. Proposals shall be submitted to the Superintendent for referral to the Board. Except in the case of an emergency, policy recommendations shall appear twice before the Board; once for information followed by a second reading for adoption consideration. The formal adoption of policies will be recorded in the minutes of the Board meeting. Only those written statements adopted and recorded in the minutes will be regarded as official policy of the Board. Policies will be effective immediately upon adoption unless a specific effective date is provided in the motion to adopt.

Open Records Violation

B. 1. All agendas required pursuant to the provisions of this section shall identify all items of business to be transacted by a public body at a meeting, including, but not limited to, any proposed executive session for the purpose of engaging in deliberations or rendering a final or intermediate decision in an individual proceeding prescribed by the Administrative Procedures Act

Best,

**TITLE 210. STATE DEPARTMENT OF EDUCATION
CHAPTER 10. SCHOOL ADMINISTRATION AND INSTRUCTIONAL SERVICES**

*PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY
RULES ARE CONSIDERED PROMULGATED AND EFFECTIVE UPON APPROVAL BY THE
GOVERNOR AS SET FORTH IN 75 O.S., SECTION 253(F):*

SUBCHAPTER 1. GENERAL PROVISIONS

210:10-1-23. Prohibition of race and sex discrimination

(a) **Purpose.** It shall be the policy of the Oklahoma State Board of Education to prohibit discrimination on the basis of race or sex in the form of bias, stereotyping, scapegoating, classification, or the categorical assignment of traits, morals, values, or characteristics based solely on race or sex. Public schools in this state shall be prohibited from engaging in race or sex-based discriminatory acts by utilizing these methods, which result in treating individuals differently on the basis of race or sex or the creation of a hostile environment.

(b) **General.**

(1) **Definitions.**

(A) **"Public School" means the board of education of a school district, charter school, virtual charter school or otherwise accredited school, as defined and provided for in 70 O.S. § 1-108, 70 O.S. § 3-132, 70 O.S. § 3-145.3 and 70 O.S. § 3-104, respectively.**

(B) **"Course" means any forum where instruction or activities tied to the instruction are provided, including courses, training, seminars, professional development, lectures, sessions, coaching, tutoring, or any other class.**

(C) **"Teacher" means the same as it is defined in 70 O.S. § 1-116.**

(2) **Applicability.** As expressly set forth in 24 O.S. § 24-157(B), this rule shall apply to any Teacher, administrator or other employee of a Public School.

(3) **Nondiscrimination.** Nothing in this rule shall be intended to prohibit a Public School from employing lawful methods to address discrimination consistent with the requirements of the Equal Protection Clause of the Fourteenth Amendment, Title VI of the Civil Rights Act of 1964 ("Title VI"), Title IX of the Education Amendments of 1972 ("Title IX"), and 70 O.S. § 24-157. Further, nothing in this rule shall interfere or impair a Public School under a court order of desegregation.

(4) **Severability.** If any specific provision of this rule or its application to any person or Public School is held invalid, the remainder of the rule or the application of its provisions to any school, person, practice or entity shall not be affected.

(5) **Instruction.** Nothing in this rule shall be construed to prevent the teaching of history, social studies, English language arts, biology or any other subject matter area consistent with the Oklahoma Academic Standards as adopted and approved by the State Board of Education and approved by the Oklahoma Legislature.

(6) **Title IX of the Education Amendments of 1972.** Nothing in this rule shall be interpreted to prohibit the lawful consideration of sex, as authorized by Title IX, which permits distinctions and/or classifications based on sex in specific circumstances. This includes but is not limited to the provision of single-sex programs, the establishment of separate sex facilities (bathrooms and locker rooms) or sex-specific athletic teams, consistent with the requirements of Title IX and its implementing regulations at 34 C.F.R. Part 106.

- (c) General Prohibition. No teacher, administrator or other school employee shall require or make part of any Course offered in a public school the following discriminatory principles:
- (1) One race or sex is inherently superior to another race or sex.
 - (2) An individual, by virtue of his or her race or sex, is inherently racist, sexist or oppressive, whether consciously or unconsciously.
 - (3) An individual should be discriminated against or receive adverse treatment solely or partly because of his or her race or sex.
 - (4) Members of one race or sex cannot and should not attempt to treat others without respect to race or sex.
 - (5) An individual's moral character is necessarily determined by his or her race or sex.
 - (6) An individual, by virtue of his or her race or sex, bears responsibility for actions committed in the past by other members of the same race or sex.
 - (7) Any individual should feel discomfort, guilt, anguish or any other form of psychological distress on account of his or her race or sex, or
 - (8) Meritocracy or traits such as a hard work ethic are racist or sexist or were created by members of a particular race to oppress members of another race.
- (d) Specific Prohibitions Ensuring Compliance. To ensure compliance with 70 O.S. § 24-157(B) and to not discriminate on the basis of race or sex, as a part of any Course or activities, the following requirements shall apply to Public Schools, any Teacher, administrator, other employee, or other individual, group or representative of a Public School:
- (1) Public schools in this state shall be prohibited from providing, contracting to provide, offering or sponsoring any Course(s), as defined in subsection (b)(1)(B), that includes, incorporates, or is based on discriminatory practices identified in section (c).
 - (2) Public schools in this state shall be prohibited from using any monies, property, or any other assets or resources to engage in race or sex-based discrimination, including discriminatory practices identified in section (c).
 - (3) Public schools in this state shall be prohibited from adopting programs or utilizing textbooks, instructional materials, curriculum, classroom assignments, orientation, interventions, or counseling that include, incorporate or are based on the discriminatory concepts identified in subsection (c).
 - (4) Public schools in this state shall be prohibited from executing contracts or agreements with internal or external entities, persons, companies or businesses to provide services, training, professional development, or any other assistance that includes, incorporates or is based on discriminatory practices identified in section (c). Within sixty (60) days of the approval of this rule, existing contracts or agreements executed by public schools that conflict with this requirement shall be amended to come into compliance with this section. Contracts or agreements executed solely to provide services prohibited by 70 O.S. § 24-157(B) or sections (c) or (d) of this rule shall be cancelled or terminated, consistent with the terms of the contract and applicable law.
 - (5) Public schools in this state shall be prohibited from receiving or applying to receive any monies that require, as a condition of receipt, the adoption of a Course(s), policies, curriculum, or any other instructional material that includes, incorporates or is based on discriminatory practices identified in subsection (c).
 - (6) Public schools in this state shall be prohibited from adopting diversity, equity, or inclusion plans that incorporate the concepts identified in subsection (b) subsection (c). Diversity officers in public schools shall be prohibited from providing any service or performing duties that include, incorporate, or are based on discriminatory practices

identified in subsection (c).

(7) Public schools shall be prohibited from mandating diversity training that includes, incorporates or is based on discriminatory practices identified in subsection (c). This includes providing such training to employees, contractors, staff members, parents, students, or any other individual or group.

(8) Public schools in this state shall be prohibited from adopting policies, including grading or admissions policies, or providing any other benefit or service that applies to students or any school employee differently on the basis of race or sex, unless specifically permitted by Title IX. (See (b)(6)). This prohibition includes segregated classes, programs, training sessions, extracurricular activities, or affinity groups unless otherwise permitted by Title IX. (See (b)(6)).

(e) Parents Rights. Parents and legal guardians of students enrolled in Public Schools in this state shall have the right to inspect curriculum, instructional materials, classroom assignments, and lesson plans to ensure compliance with 70 O.S. § 24-157(B). Consistent with 20 O.S. § 2001-2002 25 O.S. § 2002, no public school shall interfere with or infringe upon the fundamental rights of parents to determine their child's education.

(f) State Department of Education and State Board of Education. To ensure the compliance with the requirements of 70 O.S. § 24-157(B), as a part of any Course, the following requirements shall apply to the State Board of Education and the State Department of Education, respectively:

(1) The State Board of Education shall be prohibited from mandating state standards or promulgating any rule that is based on, includes or incorporates discriminatory concepts of race or sex-based discrimination, including concepts identified in section (c).

(2) The State Department of Education shall be prohibited from providing resources, instructional support, courses, training, seminars, professional development, or any other class to public schools that is based on, includes or incorporates discriminatory concepts identified in section (c). This prohibition includes executing contracts or agreements with external entities, persons, companies or businesses to provide services, training, professional development, or any other assistance that includes, incorporates or is based on discriminatory practices identified in section (c) to public schools under the supervision of the Oklahoma State Board of Education and State Department of Education.

(3) The State Department of Education shall be prohibited from receiving or applying to receive any monies that require, as a condition of receipt, the adoption of programs, policies, curriculum, or any other instructional material that includes, incorporates or is based on discriminatory practices identified in subsection (c).

(g) Public School Policies and Investigations. To ensure compliance, public schools shall be required to adopt policies and procedures, including incorporating into employee and student handbooks, the requirements of 70 O.S. § 24-157(B) and this rule. A public school's policy developed pursuant to this section must specifically notify individuals of the right to file complaints under subsections (g) of this rule. Public schools shall ensure that the parent or legal guardian of all students enrolled in the school are annually notified of the non-discrimination requirements in 70 O.S. § 24-157(B) and this rule.

(1) Public schools shall be required to develop a process for students, parents, teachers, school staff, and members of the public to file a complaint alleging a violation of the provisions of 70 O.S. § 24-157 or this rule. In order for a complaint to be accepted for investigation, it must:

(A) Be submitted in writing, signed and dated by the complainant, including complaints submitted through electronic mail that include electronic signatures;

- (B) Identify the dates the alleged discriminatory act occurred;
 - (C) Explain the alleged violation and/or discriminatory conduct and how 70 O.S. § 24-157 or the provisions of this rule have been violated;
 - (D) Include relevant information that would enable a public school to investigate the alleged violation; and
 - (E) Identify witnesses the school may interview, if applicable, provided the school will not dismiss a complaint for failure to identify witnesses.
- (2) Public schools shall be required to designate at least one employee to receive reports of violations filed by students, parents, teachers, school staff, or members of the public. Public schools shall identify the employee(s) responsible for receiving complaints in policies and materials published pursuant to section (g).
- (A) The contact information of employee(s) responsible for receiving complaints, including telephone and e-mail, shall be included in the policies and materials adopted pursuant to section (g) and shall be made publicly available on the public school's website.
 - (B) The employee(s) responsible for receiving complaints pursuant to this section shall notify the complainant that the complaint has been received and whether it will be investigated within ten (10) days of receipt.
- (3) Public schools shall be required to investigate all legally sufficient complaints that meet the requirements of subsection (g)(1) and make a determination as to whether a violation occurred. A public school must conclude the investigation of a complaint filed pursuant to subsection (g)(1) within ninety (90) days of receipt.
- (A) A complainant shall be notified in writing of a final determination, including the public school's findings of whether a violation occurred.
 - (B) It is permissible for a public school to receive, process, and investigate complaints filed under this subsection in the same manner in which the public school processes and investigates all other complaints of discrimination, provided the public school notifies a complainant pursuant to subsection (g)(2)(i) subsection (g)(2)(B), reaches a final determination in the investigation within ninety (90) days of receipt of the complaint pursuant to subsection (g)(3) of this rule and complies with subsection (g)(3)(i) subsection (g)(3)(A).
- (4) A complainant may file a complaint alleging a violation of 70 O.S. § 24-157 or this rule directly with a public school pursuant to subsection (g)(1) of this rule or may file a complaint directly with the State Department of Education pursuant to subsection (h)(2) of this rule provided:
- (A) A complainant may not file complaints simultaneously with a public school and the State Department of Education;
 - (B) The State Department of Education may not require a complainant to first file with a public school prior to seeking relief pursuant to (h)(2); and
 - (C) Any complainant who believes that a public school has incorrectly refused to investigate a complaint or has evidence that a public school has reached an incorrect determination may subsequently file a complaint with the State Department of Education pursuant to subsection (h)(2) of this rule.
- (h) Accreditation. Consistent with State Board of Education's authority under 70 O.S. § 3-104.4 (1)(5), public schools in this state shall be evaluated annually to ensure compliance with 70 O.S. § 24-157(B) and the requirements of this rule.
- (1) Public School Application for Annual Accreditation. Consistent with the provisions and requirements of OAC 210:35-3-201, a school's failure to comply with 70

O.S. § 24-157(B) or any requirement in this rule shall, at a minimum, result in the accreditation status of the public school being classified "Accredited With Deficiency." The public school shall have one school year to correct deficiencies.

(A) A public school that fails to correct deficiencies after being classified as "Accredited With Deficiency" for violations of 70 O.S. § 24-157(B) or any requirement in this rule shall be classified, at a minimum, "Accredited With Probation" in the second year of noncompliance for "deliberately and unnecessarily violating one or more regulations." (See OAC 210: 35-3-201(b)(4)C). The public school shall have one school year to correct deficiencies.

(B) A public school that fails to correct deficiencies after being classified as "Accredited With Probation" for violations of 70 O.S. § 24-157(B) or any requirement in this rule shall be classified "Nonaccredited" in the third year of noncompliance consistent with Oklahoma statutes and the State Board of Education's administrative rules, processes and procedures. (See OAC 210: 35-3-201).

(2) Investigation and Immediate Action. Consistent with the requirements of 70 O.S. § 3-104.4, the Department shall investigate any complaint of any failure to comply with accreditation standards, including compliance with 70 O.S. § 24-157(B) or any requirement in this rule. If the Department determines that a public school has failed to comply with the accreditation standards, including this rule, the Department shall report the information to the State Board for further action, and within the timeline, provided in 70 O.S. § 3-104.4.

(i) Public Reporting. Public School employee(s) designated pursuant to subsection (g)(2) shall be required to report for each complaint filed pursuant to subsection (g)(1) to the State Department of Education within thirty (30) days of resolution of the complaint. The State Department of Education shall report quarterly to the State Board of Education on complaints filed pursuant to subsection (f), including:

(1) The number of complaints filed with Public Schools;

(2) The number of complaints dismissed or not investigated;

(3) The number of complaints opened for investigation;

(4) The number of cases where, following a full investigation, the Public School determined that a violation occurred; and

(5) The number of cases where, following a full investigation, the Public School determined no violation occurred.

(6) The number of cases where, following a full investigation, the State Department of Education has determined that a violation occurred or did not occur.

(j) Suspension or Revocation. Consistent with OAC 210:1-5-6 and subsection (b)(1)(iii) subsection (b)(1)(C), the provisions of this rule shall apply to superintendents of schools, principals, supervisors, librarians, school, classroom teachers or other personnel performing instructional, administrative and supervisory services in the public schools.

(1) Suspension. As a part of its investigation of a legally sufficient complaint filed pursuant to subsection (g), the State Department of Education shall make a determination of whether to initiate proceedings to suspend the license or certificate of any school employee who is found to have violated 70 O.S. § 24-157(B) or any provision of this rule, consistent with the State Board's processes and procedures for suspension of certificates.

(2) Grounds for Revocation. Consistent with OAC 210:1-5-6, subsection (b), the State Board of Education shall initiate proceedings to revoke the license or certificate of any school employee for "willful violation" of 70 O.S. § 24-157(B) or any requirement in this rule. (See OAC 210: 1-5-6(b)(1) - (b)(2)). The requirements and processes outlined in OAC

210:1-5-6, including the rights afforded to certificate holders, shall apply to all revocation proceedings.

- (k) Retaliation. Consistent with the provisions of Title VI and Title IX, no individual shall be retaliated against for: 1) filing a complaint pursuant to subsections (g)(1) or (h)(2) of this rule; or 2) the purpose of interfering with any right or privilege secured by federal civil rights laws and regulations. Any school employee who retaliates against a complainant shall be subject to disciplinary action pursuant to subsection (j) of this rule.
- (l) Whistleblower Protection. Any Teacher who files a complaint pursuant to subsection (g)(1) or (h)(2) of this rule or otherwise discloses information the teacher reasonably believes evidences a violation of 70 O.S. § 24-157(B) or this rule shall be entitled to the Whistleblower Protections in applicable laws, including those at 70 O.S. § 6-101.6b.
- (m) False Reporting. Any Teacher or other school employee who, willfully, knowingly and without probable cause make makes a false report pursuant to subsection (g)(1) or (h)(2) of this rule may be subject to proceedings pursuant to subsection (j) of this rule.
- (n) Complaints by School Staff. Any school employee who is discriminated against by a public school in the form of race or sex based harassment, bias, stereotyping, scapegoating, classification, or the categorical assignment of traits, morals, values, or characteristics based solely on race or sex in violation 70 O.S. § 24-157(B), may file an employment discrimination complaint with the Oklahoma Attorney General's Office of Civil Rights Enforcement pursuant to 25 O.S. § 1101, et seq.
- (o) Relief. Title VI and Title IX may be enforced by private right of action, whereby aggrieved parties may seek relief, including monetary damages, for violations of federal antidiscrimination laws. Victims of discrimination may file a lawsuit directly against the Public School. In addition to any private rights of action, aggrieved parties may seek applicable remedies through the U.S. Department of Education's Office for Civil Rights or the U.S. Department of Justice's Civil Rights Division.