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

(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 program or activity where instruction or activities tied to the instruction are provided by or within a Public School, including courses, programs, instructional activities, lessons, training sessions, seminars, professional development, lectures, coaching, tutoring, or any classes.

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

   (2) **Applicability.** This rule shall apply to all Public Schools in this state and 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(B). Further, nothing in this rule shall interfere with mandated activities required of a Public School pursuant to 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 Public 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, the following requirements shall apply to all aspects of Public School Course(s) or activities, and to any Public School, 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 public or private 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 including state, federal or private funds, 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 (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)).

(9) Public Schools in this state shall be prohibited from requiring students to complete surveys, or using the results from surveys, to teach discriminatory concepts identified in subsection (c).

(10) Public Schools in this state shall be prohibited from joining any group or association that require, as a condition of membership, Teachers, administrators or other employees of a school district, charter school or virtual charter school to teach, provide instruction, or offer any Course that includes, incorporates, or is based on discriminatory practices identified in subsection (c) and violate state law.

(e) **Parents Rights.** Parents and legal guardians of students enrolled in Public Schools in this state shall have the right to inspect curriculum, all instructional materials used by a Public School as a part of the educational curriculum, classroom assignments, and lesson plans to ensure compliance with 70 O.S. § 24-157(B). Consistent with 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 federal, state or private 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(B) 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 Public School may interview, if applicable, provided the Public 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.
(C) Public Schools shall ensure that employees(s) responsible for receiving and investigating complaints under this subsection are unbiased and free of any conflicts of interest.

(3) Public Schools shall be required to investigate all 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 forty-five (45) days of receipt of the complaint.

(A) A complainant shall be notified in writing of a final determination, including the Public School’s findings of whether a violation occurred, within the forty-five (45) days of receipt of the complaint.
(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)(B), reaches a final determination in the investigation within forty-five (45) days of receipt of the complaint pursuant to subsection (g)(3) of this rule and complies with (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 Public 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) **State Department of Education 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, within thirty (30) days. 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 ninety (90) days, as required by 70 O.S. § 3-104.4.

(A) Complaints of alleged violations of 70 O.S. § 24-157(B) or any requirement in this rule shall be filed with the Accreditation Division of the State Department of Education. In order for a complaint to be accepted for investigation, it must

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

(ii) Identify dates that alleged discriminatory act occurred;

(iii) Explain the alleged violation and/or discriminatory conduct and how 70 O.S. § 24-157 of the provisions of this rule have been violated;

(iv) Include relevant information that would enable a Public School to investigate the alleged violation; and

(v) Identify witnesses the Public School may interview, if applicable, provided the Public School will not dismiss a complaint for failure to identify witnesses.
(B) The State Department of Education shall post information on its website that provides instructions to students, parents, teachers, or other school employees on how to file a complaint pursuant to this subsection.

(3) Information obtained by the Accreditation Division under subsection (h), including violations of accreditation standards, shall be shared with the State Department of Education’s Office of General Counsel and the State Board of Education’s attorney for appropriate action or proceedings under subsection (j) of this rule. Findings of Teacher misconduct shall be reported to the Office of General Counsel for appropriate action or proceedings under subsection (j) of this rule.

(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 ten (10) days of resolution of the complaint.

(1) The State Department of Education shall report monthly to the State Board of Education on complaints reported and filed pursuant to subsections (g)(2) and (h)(2), unless no complaints have been reported or filed or unless otherwise directed by the Board, including:

(A) The number of complaints filed with Public Schools;
(B) The number of complaints filed with Public Schools that were dismissed or not investigated;
(C) The number of complaints filed with Public Schools that were opened for investigation;
(D) The number of cases filed with Public Schools where, following a full investigation, the Public School determined that a violation occurred;
(E) The number of cases filed with Public Schools where, following a full investigation, the Public School determined no violation occurred;
(F) The number of cases filed with the Accreditation Division of the State Department of Education;
(G) The number of complaints filed with the Accreditation Division of the State Department of Education that were dismissed or not investigated;
(H) The number of complaints filed with the Accreditation Division of the State Department of Education that were opened for investigation;
(I) The number of cases filed with the Accreditation Division of the State Department of Education where, following a full investigation, the Department has determined that a violation occurred; and
(J) The number of cases filed with the Accreditation Division of the State Department of Education where, following a full investigation, the Department determined no violation occurred.

(2) Any Public School employee(s) who fails to timely file reports with the State Board of Education, as required by this subsection may be subject to proceedings pursuant to (j) of this rule.

(j) Suspension or Revocation. Consistent with OAC 210:1-5-6 and subsection (b)(1)(C), the provisions of this rule shall apply to superintendents of schools, principals, supervisors, librarians, school nurses, 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.** No individual shall be retaliated against for: 1) filing a complaint pursuant to subsections (g)(1) or (h)(2) of this rule; 2) exercising any right or privilege conferred by or referenced within this rule; or 3) exercising any right or privilege secured by a law referenced in this rule. Public Schools shall be prohibited from retaliating against any student, parent, Public School employee or any other individual for filing a complaint of exercising any right conferred by or referenced in this rule.

(1) Any school employee who retaliates against a complainant shall be subject to disciplinary action pursuant to subsection (j) of this rule.

(2) The State Department of Education shall be authorized to investigate complaints or retaliation filed under subsection (h)(2) 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.