

I am submitting these comments in response to the request for public comment on OAC 210:1-10-23.

### **Provisions of the Rules I Want Maintained:**

- I urge the Department to maintain all provisions of the existing emergency rule, subject to the recommendations included herein. The Oklahoma State Board of Education's authority to promulgate rules is broad—and these rules are consistent with H.B. 1775.
- I support subsection (d) of the rule. It is imperative that this section be maintained to ensure that the discriminatory concepts prohibited by H.B. 1775 are eliminated from all aspects of instructional programs and activities.
- I support subsection (e) of the rule. The rights of parents to make all educational decisions should be reinforced by this rule. Schools often ignore the requests of parents—or even retaliate against parents for exercising rights conferred by the Parents' Bill of Rights. This rule should reaffirm those rights.
- I support subsection (f) of the rule. Although H.B. 1775 applies only to Public Schools, we must ensure that resources coming from the State Department of Education do not incentivize schools to violate the law. The Department and the Board must be prohibited from adopting standards or providing resources or any other instructional support to Public Schools that includes the discriminatory concepts outlawed by H.B. 1775. This section is extremely important.
- I support a two-pronged complaint system that allows parents to submit complaints with either the local school district or the State Department of Education. Both options are crucial and necessary to ensure that H.B. 1775 is enforced and that all public schools in the state comply with the law. Other than what is outlined below and the changes I recommend to these sections, no other provision in subsections (g) or (h) should be amended, changed, or weakened.
- I fully support the requirements of subsection (i). Parents and the public have a right to know how H.B. 1775 is being enforced and whether schools are violating the law. This section brings needed accountability and transparency to conduct in public schools. No section of this provision should be eliminated, changed, or weakened. In fact, as I mention below, it should be strengthened.
- I support the provisions of subsection (j). The Board should and must act against any school employee who violates H.B. 1775. The Oklahoma Administrative Procedures Act provides due process rights, including a right to a hearing and the right to present evidence to any employee who may be subject to proceedings under this section. Furthermore, the section does not mandate an automatic suspension or revocation; the Board will hear evidence in each individual case and decide whether administrative action shall be taken.
- I support subsections (k), (l), (m), and (n). Individuals who file false complaints should be penalized and the rule should have robust protections for all individuals who file

complaints. These sections are critical to H.B. 1775's enforcement—and these current protections and penalties should be maintained.

## Substantive Rule Change Recommendations

- **Amend the definition of “Teacher” to specifically include the various positions that are included in the cited statutory definition.** Subsection (b)(1)(C) includes a definition of “Teacher” and refers to a statutory definition that is extremely broad. The actual positions included in the statutory definition referenced in the rule should be included in regulatory definition of “Teacher”—because not all parents know or understand that several different school employee positions are included in the definition. The various school employees covered by the statutory definition of “Teacher” should be articulated and enumerated in the rule—clearly and explicitly—for parents, students, and the public at-large. Parents and members of the public are not versed in how to look up a statutory definition; some parents do not have access to this information. Failing to detail the various positions included in the statutory definition deprives parents and the public of necessary information; parents should know exactly what school employees are included in the definition. And the only way they will know is if it is included in the regulatory definition. **As such, the definition of “Teacher” in the rule should be amended and clarified to enumerate the various school employees that are included in the cited statutory definition of “Teacher.” This will ensure that parents and the public understand that several school employees are included in the definition of “Teacher” and that all individuals employed by the Public School are required to comply with this rule.**
  - **Recommendation:** The definition of “Teacher” in (b)(1)(C) should be amended to specifically enumerate the various school employee positions that are included in the cited, statutory definition of “Teacher.” Specifically, (b)(1)(C) should be amended to state: “(C) “Teacher” means the same as it is defined in 70 O.S. § 1-116. This includes any person who is employed to serve as district superintendent, principal, supervisor, a counselor, librarian, school nurse or classroom teacher or in any other instructional, supervisory or administrative capacity.”
- **Explicitly state that the provisions of the rule apply to Public Schools.** The current “Applicability” section is limited to school employees; it focuses on the application of the rule to individuals. However, provisions of H.B. 1775 apply to Public Schools. The “Applicability” section should be expanded to clarify that provisions of the rule also apply to Public Schools (i.e., Public Schools are required to comply with provisions of the rule). This is especially important because several key provisions in the rule apply only to Public Schools (e.g., Appointing a person to accept complaints; Establishing policies and procedures; Issuing determination letters, to name a few). Additionally, the current clause, “administrator or other employee of a Public School” is unnecessary because “Teacher” is defined in the rule – and defined to include several other Public School

employees. (i.e., any individual employed by a Public School.) **The Applicability section of the existing rule must be clarified to specifically reference the applicability of provisions to Public Schools—and amended to delete unnecessary language regarding other school positions already included in the definition of “Teacher.”**

- **Recommendation:** Subsection (b)(2) should clarify that the rule applies to all Public Schools in this state. Specifically, (b)(2) should be amended to state: “As expressly set forth in 24 O.S. § 24-157(B), this rule shall apply to all Public Schools in this state and any Teacher, ~~administrator or other employee of a Public School.~~”
- **Amend subsection (b)(5) to reiterate that nothing in the Oklahoma Academic Standards requires the teaching of discriminatory concepts prohibited by H.B. 1775 and the rule.** Subsection (b)(5) accurately states that “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.” There is significant confusion regarding whether the Oklahoma Academic Standards requires teaching the eight divisive and discriminatory concepts prohibited by H.B. 1775. The rule reaffirms that nothing will interfere with teaching the state standards; it should likewise reaffirm that nothing in the state standards requires teaching concepts prohibited by H.B. 1775. **Oklahoma’s Academic Standards do not include the eight discriminatory concepts prohibited by H.B. 1775. The rule should be amended to reaffirm and reiterate this important point. Doing so will clear up confusion and provide much needed information to teachers, school administrators, and other school officials.**
  - **Recommendation:** Subsection (d)(5) should be amended to reiterate and reaffirm that Oklahoma’s State Academic Standards **do not** require the teaching of divisive and discriminatory concepts prohibited by H.B. 1775. Specifically, (b)(5) should be amended to state: “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. Furthermore, no provision of the Oklahoma Academic Standards requires teaching discriminatory concepts prohibited by 70 O.S. § 24-157(B).”
- **Delete unnecessary language in (d)(1) that references the definition of “Course” in the rule.** Subsection (d)(1) includes the phrase, “as defined in subsection (b)(1)(B),” as a cross-reference to the regulatory definition of “Course.” However, “Course” is clearly defined in the rule—and referenced several times throughout the rule. Yet, no other reference to “Course” cites back to the definition included in (b)(1)(B). The reference in (d)(1) to the regulatory definition is unnecessary and confusing, and there is no

explanation or reason why the regulatory reference would be included in this section---when it is not referenced anywhere else in the rule. **The citation to the regulatory definition should be deleted to clear up confusion. It is also unnecessary and there is no explanation as to why it is included in this one section --- and omitted elsewhere throughout the rule.**

- **Recommendation:** Delete the reference to (b)(1)(B) that is currently in subsection (d)(1). It is confusing and unnecessary. Specifically, subsection (d)(1) should be amended to state, in relevant part: “Public Schools in this state shall be prohibited from providing, contracting to provide, offering or sponsor any Course(s), ~~as defined in subsection (b)(1)(B)~~, that includes, incorporates, or is based on the discriminatory principles identified in subsection (c).”
- **Amend and update subsection (f) of the rule to require a thorough review of all SDE programs and activities to ensure compliance with H.B. 1775.** Subsection (f) of the current rule sets specific guidelines and prohibitions applicable to both the State Board of Education and the State Department of Education. These prohibitions are intended to ensure compliance with H.B. 1775 by regulating the resources and materials provided to Public Schools in the state through the SBE and SDE. (i.e., The rule prohibits the SBE and SDE from making materials available to Public Schools that violate the provisions of H.B. 1775—*because* sharing such results would cause schools to be in violation of the law.) I applaud the Board for including these prohibitions in the rule; they are necessary to ensure that no state entity provides resources to schools that include, incorporate, or are based on discriminatory concepts prohibited by H.B. 1775. Despite the positive aspects of this provision, it is insufficient because there is no way for the Board to know if any existing programs or resources currently violate H.B. 1775. **A new section should be added to subsection (f) that requires the OSDE to conduct a thorough review of all existing programs to ensure that no resources, materials, programs, or funding opportunities currently made available to Public Schools violate H.B. 1775. This new subsection must include a public reporting of the findings of the audit to the State Board of Education.**
  - **Recommendation:** A new subsection should be added to subsection (f) that requires the OSDE to audit existing programs to ensure compliance with (f)(2) and (f)(3) – and to ensure that no programs, resources or materials currently provided to public schools are in violation of H.B. 1775. Specifically, the new subsection (f)(4) should state: “(4) The State Department of Education shall conduct a thorough review of all resources provided to Public Schools and referenced in subsections (f)(2) and (f)(3) to ensure compliance with this section and that no resources made available to Public Schools through the State Department of Education include, incorporate, or are based on discriminatory concepts identified in subsection (c) of this rule. The audit required by this subsection shall be completed within six (6) months of the effective date of this

rule and the findings shall be submitted to the State Board of Education in a public meeting held pursuant to the Oklahoma Open Meeting Act.

- **Amend the definition of “Course” to encompass all forms of instructional and classroom activities, both academic and non-academic, that often include prohibited forms of race and sex-based discrimination outlawed by H.B. 1775.** The definition of “Course” sufficiently captures (and prohibits) instructional activities that are academic-related. However, the definition must be expanded to include ancillary instructional activities that may fall outside of the current definition in the rule—that are nonetheless prohibited by H.B. 1775. **This clarification is necessary to ensure that no instructional activities, academic or non-academic, regardless of whether they occur in a classroom, a locker room, or a library are prohibited. H.B. 1775 demands this.**
  - **Recommendation:** Subsection (b)(1)(B) should be amended to define a “Course” as “any program or activity where academic or non-academic instruction is provided by or within the Public School.” The definition should also state: “This includes but is not limited to academic and non-academic programs, instructional activities, lessons, training sessions, seminars, professional development, lectures, coaching, tutoring, extra-curricular activities, or classes.”
- **Make appropriate changes to ensure schools understand that H.B. 1775’s Course-related prohibitions protect students, teachers, parents, contractors, and others.** The current rule prohibits Public Schools from offering Courses that include, are based on, or incorporate H.B. 1775’s prohibitions. H.B. 1775’s prohibitions extend to teaching discriminatory concepts in *any course*, not just in courses to students. **The rule should clarify that Public Schools are prohibited from offering such Courses to any individual—including students, teachers, parents, or any other schools staff members.**
  - **Recommendation:** Subsection (d)(1) should specifically state: “This includes providing such Courses to employees, contractors, any other staff member, parents, students, or any other individual or group.”
- **Add provisions to the rule to ensure that the prohibitions in H.B. 1775 are not taught in non-academic instructional activities, classroom assignments, or lessons.** Schools often utilize principles prohibited by H.B. 1775 in non-academic programs that are aimed at teaching certain non-academic lessons or material, such as teaching students about self-awareness, self-management, or social awareness. In fact, H.B. 1775’s prohibited activities are often incorporated into social emotional learning programs, culturally responsive teaching practices, and trauma-informed instruction. To be clear: ALL of these programs are permitted under H.B. 1775 *unless they include the prohibited concepts*. H.B. 1775 does not apply only to academic subject matter areas; it applies to *any* Course material, academic or non-academic. **As such, the rule must be**

**clarified to specifically address the inclusion of these prohibited practices in non-academic instruction.**

- **Recommendation:** A new subsection should be added to subsection (d) that addresses these practices. The following should be added: “(d)(9) Public Schools in this state shall be prohibited from offering non-academic instructional programs that include, incorporate or are based on the discriminatory practices identified in subsection (c). This includes non-academic programs that provide instruction on the development of interpersonal skills or soft skills including but not limited to self-awareness, self-management, decision-making, social awareness, or relationship skills.”
- **Add provisions to the rule to ensure that H.B. 1775’s prohibitions are not included in formal or informal data collections or survey instruments.** Public Schools are increasingly utilizing survey instruments and informal data collections to collect information on students. Students in Edmond were asked, through an informal survey, to identify their preferred pronouns; students in Jenks Public Schools were required to complete a “diversity box” exercise where they identified their race and sex, which ultimately determined whether they were “oppressors” or “the oppressed.” While the answers from such surveys may or may not have been used to teach H.B. 1775’s prohibitions, these types of questions are often used as the basis for teaching H.B. 1775’s prohibited concepts. And the law prohibits this instruction. To be clear: Surveys can certainly be administered. But, surveys cannot be used as a means to bypass the requirements of the law. **As such, the rule should be strengthened to make clear that Public Schools cannot use surveys or any type of data collection instruments to bypass H.B. 1775’s prohibited concepts. The rule should also be clarified so that no survey instrument can be used, whether formal or informal, if the instrument includes, is based on, or incorporates any concepts prohibited by H.B. 1775.**
  - **Recommendation:** A new subsection should be added to subsection (d) that addresses this issue. The following should be added: “(d)(10) Public Schools in this state shall be prohibited from offering voluntary or mandatory data collections that include, incorporate, or are based on discriminatory practices identified in subsection (c). This includes formal data collection instruments, informal surveys, or any other instrument used to collect non-academic information on a student. Public Schools shall not use the result of any survey or data collection instrument, mandatory or voluntary, to teach discriminatory concepts outlined in subsection (c).”
- **Add provisions to the rule to ensure that Public Schools do not join outside membership organizations that require, for membership, the teaching concepts outlawed by H.B. 1775.** Parents have reported that various external membership organizations for which schools frequently and ordinarily join often require schools to provide certain instruction on topics prohibited by H.B. 1775. **The membership**

requirements of an outside organization cannot supersede the requirements of H.B. 1775 or require a school to violate provisions of state law. The rule should specifically state, for Public Schools, that no outside organization's membership requirements can supersede the requirements of state law. The rule should specifically address this issue and prohibit Public School membership in organizations that require Oklahoma schools to violate state law.

- **Recommendation:** A new subsection should be added to subsection (d) that addresses this issue. The following should be added: "(d)(11) Public Schools in this state shall be prohibited from participating in or joining membership associations that require, as a condition of membership, Public Schools to teach, provide instruction, or offer Courses that include, incorporate, or are based on discriminatory practices identified in subsection (c) and violate state law. This includes participating in or joining such organizations to participate in competitions, membership-only activities, or to obtain accreditation or certification."
- **Protect teachers from being forced to participate in external membership organization activities and training—when such training includes discriminatory concepts prohibited by H.B. 1775.** Teachers across Oklahoma are being forced to attend and participate in training sessions on diversity, equity, and inclusion that include discriminatory concepts prohibited by H.B. 1775. I have heard from teachers in Oklahoma, Norman, and Tulsa on this issue. These Courses are not provided by the Public school, so they do not fall under (d)(1)'s prohibitions. Instead, they are provided by educational membership associations, both state and national organizations—and the school district is mandating teacher participation. **Requiring teachers to participate in these courses is contrary to H.B. 1775, which prohibits discriminatory concepts in all Courses.**
  - **Recommendation:** A new subsection should be added to subsection (d) that addresses this issue. The following should be added: "(d)(12) Public Schools in this state shall be prohibited from requiring teachers, administrators, or any other school employee to participate in Courses provided by external membership or education-related associations or organizations that include, incorporate, or are based on discriminatory practices identified in subsection (c). Teachers, administrators, and other school employees shall be permitted to opt-out of Courses provided by external membership or education-related associations or organizations."
- **Ensure investigations conducted by Public Schools are carried out objectively and without conflicts of interest.** Some Public Schools are appointing the school employee responsible for developing and implementing diversity, equity, and inclusion initiatives to be the individual who receives and investigates complaints pursuant to subsection (g)(2) of the rule. This creates a conflict of interest; this employee's full-time job is to review all policies and school programs and to make adjustments to increase

racial diversity, equity, and inclusion. Additionally, the concepts prohibited by H.B. 1775 are often the foundation of DEI programs; it is *through these programs* that critical race theory and H.B. 1775's prohibited concepts often enter the classroom. Allowing the DEI officer to receive and investigate these complaints is like having the fox guard the henhouse. **The rule should be amended to ensure the fair and evenhanded processing of complaints under the rule—and Public Schools should be prohibited from appointing individuals who have a clear conflict of interest in the outcome of the very investigations for which they are responsible.**

- **Recommendation:** A new subsection should be added to (g)(2) that clarifies that the employee designated by the Public School to receive and investigate complaints cannot be the same employee responsible for developing and implementing DEI programs in the school district. The new subsection [(g)(2)(C)] should state: "The employee(s) identified by the Public School pursuant to this subsection cannot be the same employee responsible for developing or implementing school-wide diversity, equity, or inclusion initiatives or plans within the Public School." A second subsection should be added that clarifies a school's obligation to conduct unbiased investigations. The additional new subsection [(g)(2)(D)] should state: "Public Schools shall ensure that employee(s) responsible for receiving and investigating complaints under this subsection are unbiased and free of any conflicts of interest."
- **Shorten the amount of time by which Public Schools must conduct and finalize investigations.** Subsection (g) of the rule requires Public Schools to establish policies and procedures governing the filing and investigation of complaints for alleged violations of H.B. 1775 and provisions of the rule. The rule currently states that Public Schools have ninety (90) days to complete the investigation and notify the complainant of the finding. The amount of time permitted to conclude an investigation is too long. Ninety (90) days is three months in the life of a child; giving school districts ninety days to complete an investigation means that a complainant—and their child—lose an entire semester worth of learning; an entire semester of an ongoing investigation, with a complaint remaining unresolved. Additionally, a shorter investigative timetable benefits teachers involved in complaints as well; a more expedited resolution benefits students and teachers who may be involved in or the subject of a particular complaint. Separately, subsection (g)(3)(A) indicates that, within the mandated time period, the investigation must be concluded, and the complainant must be notified of the determination. However, having subsection (g)(3)(A) as a stand-alone provision is confusing for both schools and parents. **The impact of prolonged and lengthy investigations on children and school employees who have filed complaints is too great, and the rule should be amended to shorten the investigative/determination timeline. The rule should be amended to clarify that the investigation must be completed AND the complainant notified with the specified amount of time of forty-five days of receipt of the complaint.**

- **Recommendation:** The ninety (90) day time-period for Public Schools to conduct and conclude an investigation under subsections (g)(3) and (g)(3)(B) should be shortened to forty-five (45) days. As such, (g)(3) should be amended, in relevant part: “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.”
- **Recommendation:** Subsection (g)(3)(A) should be amended to clarify that the complainant must be notified in writing within the mandated time period. (Currently, within 90 days, but per my recommendation, that should occur within the forty-five (45) day time period.) Subsection (g)(3)(A) should be amended as follows: “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.”
- **Subsection (h)(2) should be clarified to specifically reference 70 O.S. § 24-157(B) and the requirements of the rule.** 70 O.S. § 3-104.4 authorizes the State Department of Education to investigate accreditation findings and report findings to the State Board of Education within (30) days. The emergency rule references this existing state statute to authorize the Department’s investigation of complaints alleging violations of 70 O.S. § 24-157(B) and provisions of the rule. However, the language is unclear to advocates, stakeholders, parents and students who are not intimately familiar with the State Board of Education’s processes and procedures nor the Department’s authority under 70 O.S. § 3-104.4. The current language presumes parents know the “timeline provided in 70 O.S. § 3-104.4. THEY DO NOT. Furthermore, the current rule is completely vague as to the timeline in which the Department will present findings to the Board. The vague reference to “the timeline” in the statute does not provide enough information to complainants. **This provision of the rule should be amended to specifically state that the Department will investigate complaints within thirty (30) days, and will report to the State Board of Education within (90) days.**
  - **Recommendation:** Subsection (h)(2) should be amended as follows: “**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 Public School has failed to comply with the accreditation standards, including failure to comply with 70 O.S. § 24-157(B) or any provision of this rule, the Department shall report the information to the State Board for further action, and within ninety (90) days, as required by ~~the timeline, provided in~~ 70 O.S. § 3-104.4.”
- **Clarify how parents and other impacted individuals can file complaints with the State Department of Education.** The existing rule sets out two different processes by which parents and affected parties may file complaints: with the local Public School and

with the State Department of Education. The Public School complaint process is clearly defined; it includes instructions, minimum requirements, and to whom to address the complaint. **The State Department of Education's process, however, is not detailed in the rule at all. To whom is it addressed? What is included in the complaint? There must be more information for parents, teachers, and students included in the rule. The rule should be amended so that the public has access to information about how to file a complaint and know exactly how to submit a complaint to the OSDE.**

- **Recommendation:** Reorganize the existing (h)(2) to include a new (h)(2)(A) that includes a new provision that clarifies that all complaints shall be filed under this subsection shall be filed with the Accreditation Division of the OSDE. Parents must know how and to whom to submit the complaint. Specifically, the new section (h)(2)(A) should state: "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:"
- **Recommendation:** The new section (h)(2)(A), referenced above, should outline and specify the basic components of what must be included in a complaint filed with the OSDE. For ease, duplicate the five requirements in (g)(1)(A) through (g)(1)(E), that currently apply only to the Public School complaints, into a new section, (h)(2)(A)(i) through (h)(2)(A)(v), so that the same requirements currently applicable to Public School complaints also apply to OSDE complaints. This will ensure that parents understand what must be included in a complaint filed with OSDE. Furthermore, establishing OSDE minimum requirements that mirror the minimum requirements of Public School complaints will make it easier for parents; they will know how to file complaints that include sufficient information to be thoroughly investigated. Specifically, the last line of (h)(2)(A) should state: "In order for a complaint to be accepted for investigation, it must:"—and the following subsections, (h)(2)(A)(i) through (v), will mirror the five components listed in (g)(1)(A)-(E). (i.e., the complaint must be submitted in writing and signed; it must include dates of alleged discriminatory action; it must explain the alleged discriminatory conduct and what provisions of the law have been violated; it must include relevant information that would allow OSDE to investigate; and it must identify witnesses, provided failure to do so will not result in a dismissal of the complaint).
- **Recommendation:** Add a new subsection as (h)(2)(B) that requires the OSDE to post information for parents and the public online. The new subsection, (h)(2)(B), should state: "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."
- **Accreditation actions taken by the State Board of Education Under (h)(1) and (h)(2) should be shared by the OSDE Office of General Counsel and the State Board of**

**Education's Attorney for Appropriate Action under subsection (j) of the Rule.** The rule includes two different mechanisms by which the State Board of Education may take action against a Public School for violating provisions of H.B. 1775 or this rule: Action through Annual Accreditation or by an investigation pursuant to 70 O.S. §3-104.4. I commend the Department for including both of these sections, which may lead to sanctions by the State Board of Education. However, it is unclear, based on the text of the rule, whether the Accreditation actions taken by the Board under subsection (h) may be considered for purposes of educator disciplinary procedures mandated by subsection (j) of the rule—and if so, how they would be considered. **The rule should be amended to clarify that the Accreditation Division will share investigative findings with the Office of General Counsel (OSDE) so that any investigative findings that are the basis for Accreditation actions will be appropriately considered and acted upon under subsection (j) of the rule.**

- **Recommendation:** A new subsection should be added to (h)(2) that clarifies that the Office of Accreditation will report findings and action taken by the Board to the General Counsel of the Department for appropriate action. The new section, (h)(3) should state: “**Accreditation Information.** Information obtained by the Accreditation Division under subsection (h), including violations of Accreditation standards and findings of Teacher misconduct, 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.”
- **Strengthen the “Public Reporting” section in the rule to ensure that the public has access to information about complaints that are being filed with Public Schools and the State Department of Education.** I commend the State Board of Education for adopting emergency rules that include strong protections for parents, and a section solely aimed at creating a reporting mechanism to ensure the public has access to information pertaining to complaints that are being filed. It is necessary that these sections are maintained in the rule. Additionally, under the emergency rule, Public Schools have thirty (30) days to transmit information to the Department. This time period is too long. The amount of time by which a school must report to the Department should be shortened. **Parents and the public need access to more information and the rule should be amended to strengthen the public reporting section. This is about transparency and accountability. Parents and the public have a right to know what complaints are being filed and how complaints are being resolved. Specifically, Public Schools should report on investigatory activity sooner; the Board should receive information more regularly; and reports to the State Board should not only include information on Public School investigations, but also information on complaints filed with the OSDE.**
  - **Recommendation:** Subsection (i) currently allows Public Schools thirty (30) days to report findings and investigative activities to the State Board. This time period should be shortened to ten (10) days. Specifically, subsection (i) should state, in

relevant part: “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) thirty (30)~~ days of resolution of the complaint.”

- **Recommendation:** The rule currently allows for quarterly reporting to the State Board of Education. This is insufficient. Parents and the public need to know what is going on in school districts – and the public deserve access to information about whether H.B. 1775 is being violated. Additionally, in months where there are no new complaints to report, there is no reason to waste Departmental resources or the Board’s time in including it on the agenda. Furthermore, subsection (i) only includes reporting on complaints filed in Public Schools. This is also insufficient. The only way we will have complete transparency is to also know the number and the type of complaints filed with the OSDE as well. As such, subsection (i) should be expanded to include information on both complaints filed with Public Schools under (g)(2) AND complaints filed with the State Department of Education under subsection (h)(2). Subsection (i) should be amended to state, in relevant part: “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.”
- **Recommendation:** With the SBE receiving these reports monthly, the Board should have the option, in public meeting, to provide input to SDE staff on how to proceed in a particular matter. For example, if there is a troubling complaint in a particular district—or if a district ignored a particular allegation—the Board should be able to direct its attorney or SDE staff to follow-up with a school. The Board may also request more information – or direct SDE staff to do more investigation of a particular matter. As such, language should be added in a new section, to (i)(1), that ensures these matters will be placed on the agenda as potential action items. In order to accomplish these changes, subsection (i) must be reorganized to include a new subpart that specifically states: (i)(1) “This report shall be included on the State Board of Education’s meeting agenda as a possible “Action Item” and shall include the following information:”.
- **Recommendation:** Building upon the recommendation above, the existing detailed reporting items currently in the rule should be included in subsections (i)(1)(A) through (i)(1)(E). Specifically, subsection (i)(1)(A)-(i)(1)(E) should be amended, for clarity, to specifically state “filed with Public Schools.” Then, five new subsections should be added as subsection (i)(1)(F) through (i)(1)(J), applying existing Public School reporting requirements to complaints filed with the OSDE, so that the SBE receives reports on complaints filed in Public Schools as well as filed with the Department, on a monthly basis. Specifically, (i)(A) should be amended as follows: “(i)(A) “This report shall be included on the State Board of Education’s meeting agenda as a possible “Action Item” and shall include the following information:

- 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; ~~and~~
- 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 cases filed with the Accreditation Division of the State Department of Education that were dismissed or not investigated;
- H. The number of cases 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 determined 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.

- **Amend subsection (i) of the rule to clarify that Public School employees that fail to abide by Public Reporting requirements of subsection (i) may be subject to proceedings pursuant to subsection (j) of the rule.** The only way to ensure that H.B. 1775 is enforced with fidelity is for the public to have access to information about the complaints. Subsection (i)'s public reporting requirements are key to accessing information and ensuring there is transparency and accountability with regard to the implementation of H.B. 1775 and this rule. In the current rule, there is no penalty for failure to report information on complaints under subsection (i); a Public School employee could ignore these requirements and face no penalty. Yet, successful implementation of the law—and the State Board's enforcement—rely on this information and reporting mechanism. **The rule should be amended to clarify that failure to report under subsection (i) may subject a school employee to disciplinary action by the Board, under subsection (j).**
  - **Recommendation:** A provision should be added to subsection (i) that clarifies the penalty for failure to report. Specifically, a new subsection (i)(2) should be added that states the following: “(i)(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 subsection (j) of this rule.”

- **Bolster provisions of the rule that protect individuals from retaliation.** Parents and teachers have expressed significant concern that they will face retribution for filing complaints alleging violations of H.B. 1775; parents have been banned from school activities for requesting to access and review a school district's curriculum and experienced retaliation for exercising rights reaffirmed by this rule. It is imperative that there be some sort of enforcement mechanism to protect parents, students, and teachers from retaliation. Furthermore, the existing references to Title VI and Title IX are insufficient and not entirely applicable; not every complaint filed pursuant to this rule would be sufficient to trigger an investigation under those federal laws. Incorporating retaliation provisions in laws that arguably may not apply to complaints filed under this rule is not useful and will not protect complainants. [Note: the wording of this recommendation would provide for federal retaliation provisions to apply in certain cases since Title VI and Title IX are both referenced in this rule.]. **Subsection (k), on “retaliation,” should be strengthened to ensure that no individual experiences retribution for exercising rights conferred by H.B. 1775—or for exercising rights conferred by this rule or by any statute referenced in this rule. Strengthening this subsection must include adding new language to ensure that the Department is authorized to and will investigate complaints of retaliation under subsection (h)(2).**
  - **Recommendation:** To accomplish these goals, subsection (k) should be reorganized and the following edits should be made to subsection (k):  
**Retaliation.** ~~Consistent with the provisions of Title VI and Title IX, n~~ No individual shall be retaliated against for: 1) filing a complaint pursuant to subsections (g)(1) or (h)(2) of this rule; ~~or 2) exercising any right or privilege conferred by this rule;~~ or 3) exercising any right or privilege secured by a law referenced in this rule. the purpose of interfering with any right or privilege secured by federal civil rights laws and regulations. Public Schools shall be prohibited from retaliating against any student, parent, teacher, or any other Public School employee for filing a complaint or exercising any right conferred by or referenced this rule.
    - A. Any school employee who retaliates against a complainant shall be subject to disciplinary action pursuant to subsection (j) of this rule.
    - B. The State Department of Education shall be authorized to investigate complaints of retaliation filed under subsection (h)(2) of this rule.
  - **Recommendation:** So that school officials are able to fully understand what constitutes retaliation under this subsection, a new definition defining “retaliation” should be added to subsection (b)(1). Specifically, a new subsection, (b)(1)(D), should state: “Retaliation” means any adverse or punitive action taken against an individual for engaging in a lawful or protected activity.”

## **Non-Substantive Rule Change Recommendations:**

- **Ensure consistency in the capitalization of “Public School” throughout the rule. In some places, it is lower case; in others, the phrase is capitalized.**
  - **Recommendation:** Because it is a term included in the “Definitions” section, the term Public School should be capitalized throughout the rule.
- **Subsections (d)(2), (d)(5), and (f)(3) place various restrictions on the “use of monies.”** Specifically, neither Public Schools nor the State Department of Education can use monies to engage in race or sex-based discrimination prohibited by H.B. 1775. The ordinary and historical interpretation of this phrase, especially by public entities, is that a prohibition of this type applies only to public funds.
  - **Recommendation:** Subsection (d)(2) and (f)(3) should be clarified to prohibit the use of “any monies, public or private.”
  - **Recommendation:** Subsection (d)(5) should be clarified to prohibit “applying to receive any monies including state, federal, or private funds, that require, as a condition of receipt, the adoption of” courses or materials that include discriminatory concepts prohibited by H.B. 1775.
- **Clarify that complaints filed under (h)(2) are complaints with the State Department of Education.**
  - **Recommendation:** The header on (h)(2) should be amended to read: “State Department of Education Investigation and Immediate Action.” This reinforces the two-pronged investigative scheme in the rule and provides clarity for parents.
- **The rule references the applicable state law, 70 O.S. § 24-157, in several sections and subsections. Some citations include the statute’s specific section, and some do not.**
  - **Recommendation:** The rule should be updated to ensure that all statutory references include subsection (B). (All statutory references in the rule should be 70 O.S. § 24-157(B)).
  - **Recommendation:** Address the scrivener’s error in subsection (i): The reference to subsection (f)(2) should be a reference to subsection (g)(2).
  - **Recommendation:** The language in subsection (b)(3) should be clarified and cleaned up. The rule would not interfere with “a court order of desegregation.” Rather, under court orders of desegregation, schools are required to take certain activities and meet certain goals, deadlines and milestones; they are monitored for improvement in areas of violations. The language should be clarified: “Further, nothing in this rule shall interfere with mandated activities required of a Public School pursuant to a court order of desegregation.”
  - **Recommendation:** Language in the preamble to subsection (d) should be modified and cleaned up, particularly with the recommended changes to the

definition of "Course." The language regarding: "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 as a part all aspects of Public School of any Course(s) 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."

- **Recommendation:** There are errors in some statutory citations. For example, (b)(2) incorrectly references **24** O.S. 24-157(B). Please check all statutory references in the rule.