

**DIVISION 1**

**BOARD PROCEDURES**

- 580-001-0000** Appearances Before the Board  
**580-001-0005** Procedural Rule for Changes and Additions to Administrative Rules  
**580-001-0020** Availability of Public Records  
**580-001-0030** Confidentiality and Inadmissibility of Mediation Communications

**DIVISION 10**

**ADMISSIONS REQUIREMENTS, RESIDENCE CLASSIFICATION, AND PAYMENT OF STUDENT FEES**

**Admission Requirements**

- 580-010-0001** Standards for Admission  
**580-010-0003** Affirmative Action Goals: Enrollment  
**580-010-0005** Compulsory Pre-Entrance Physical Examination and Immunizations

**Residence Classification**

- 580-010-0029** Definitions  
**580-010-0030** Determination of Residence  
**580-010-0031** Residency Consideration Factors  
**580-010-0033** Evidence of Financial Dependency  
**580-010-0035** Residence Classification of Armed Forces Personnel  
**580-010-0037** Residence Classification of Members of Oregon Tribes  
**580-010-0040** Residence Classification of Aliens  
**580-010-0041** Changes in Residence Classification  
**580-010-0045** Review of Residence Classification Decisions by IRC  
**580-010-0047** Residents Under WICHE

**Payment of Student Fees**

- 580-010-0080** Payment of Nonresident Instruction Fee  
**580-010-0081** Waiver of Nonresident Instruction Fee  
**580-010-0083** Scholarships Funded by Sports Lottery Revenue  
**580-010-0085** Student Exchanges  
**580-010-0086** Enrollment of Spouse and Dependent Children  
**580-010-0090** Incidental Fee Guidelines and Procedures

**Building Fee Project Process**

- 580-010-0100** Student Planning and Construction Committee  
**580-010-0110** Incidental Fee Committee Review and Recommendation  
**580-010-0120** Recommendations of Appropriate Student Government Official(s)  
**580-010-0130** Agreement between Student Government and Institution President  
**580-010-0140** Capital Construction Budget Recommendations of Vice Chancellor for Finance and Administration

**DIVISION 11**

**STUDENT CENTERS, HEALTH SERVICES, HOUSING, FOOD SERVICE, AND RECREATIONAL AND INTERCOLLEGIATE ATHLETIC FACILITIES**

**Student Health Services**

- 580-011-0005** Student Health Services

**Housing**

- 580-011-0015** Purposes of Student Housing

- 580-011-0020** Self-Supporting Concept for Student Housing  
**580-011-0021** Campus Housing Advisory Committees  
**580-011-0030** Rates of Charge for Student Housing  
**580-011-0035** Institutionally Controlled Cooperative Housing  
**580-011-0040** Fraternities, Sororities, and Cooperatives  
**580-011-0045** Charging of Administrative and Physical Plant Costs to Auxiliary Enterprises

**DIVISION 12**

**PROHIBITED CONDUCT RELATING TO STUDENTS**

- 580-012-0010** Proscribed Conduct

**DIVISION 13**

**STUDENT RECORDS**

- 580-013-0005** Institutional Regulations  
**580-013-0010** Definitions  
**580-013-0015** Purpose of Student Records  
**580-013-0020** Certain Information Not Required to Be Provided by Students  
**580-013-0025** Locations and Custody of Student Records  
**580-013-0030** Release of and Access to Student Records  
**580-013-0035** Confidential Records — Restrictions on Release  
**580-013-0036** Transfer of Education Records  
**580-013-0040** Petition by Student for Change in Personal Record  
**580-013-0045** Availability of Student Records for Research Purposes  
**580-013-0050** Permanence, Duplication, and Disposal of Student Records

**DIVISION 15**

**DISCRIMINATION**

- 580-015-0005** Assistance to Organizations  
**580-015-0010** Definition of Discrimination  
**580-015-0015** Discrimination Prohibited in All Higher Education Programs, Services and Interschool Activities  
**580-015-0020** Appointment of Compliance Officer  
**580-015-0025** Admissions  
**580-015-0030** Recruitment  
**580-015-0035** Educational Programs and Activities  
**580-015-0040** Access to Course Offerings  
**580-015-0045** Counseling and Use of Appraisal and Counseling Materials  
**580-015-0050** Housing  
**580-015-0055** Comparable Facilities  
**580-015-0060** Financial Assistance  
**580-015-0065** Employment Assistance to Students  
**580-015-0070** Health and Insurance Benefits and Services  
**580-015-0075** Marital or Parental Status  
**580-015-0080** Athletics  
**580-015-0085** Textbooks and Curricular Materials  
**580-015-0090** Procedure for Reporting Discrimination  
**580-015-0095** Exemption from Reprimand or Retaliatory Action  
**580-015-0100** Investigation of Complaints  
**580-015-0105** Appeal to the Chancellor  
**580-015-0110** Appointment of Hearing Officer  
**580-015-0115** Notice of Hearing: Time and Place  
**580-015-0120** Written Statement of Case  
**580-015-0125** Open Hearings  
**580-015-0130** Conduct of Hearing  
**580-015-0135** Presentation of Evidence  
**580-015-0140** Position Summaries  
**580-015-0145** Findings and Recommendations  
**580-015-0150** Order by Chancellor  
**580-015-0155** Sanctions Against Institution or Other Division

## Chapter 580 Oregon University System

- 580-015-0160** Requirement of Prompt Attention to Complaints  
**580-015-0165** Students Unable Because of Religious Beliefs to Attend Classes on Certain Days

### DIVISION 19

#### STANDARDS FOR STUDENT AND EMPLOYEE PROGRAMS

- 580-019-0001** Minimum Standards for Institutional Drug and Alcohol Treatment Programs

### DIVISION 20

#### ACADEMIC CLASSIFICATION AND COMPENSATION

##### Classification

- 580-020-0005** Academic Rank  
**580-020-0006** Definition of Unclassified Service

##### Compensation

- 580-020-0010** Compensation Plan for Academic Staff  
**580-020-0015** Compensation Plan for Classified Staff  
**580-020-0020** Payment of Academic Staff Compensation  
**580-020-0025** Additional Pay to Full-Time Staff  
**580-020-0030** Perquisites  
**580-020-0040** Contribution to Pension Plan  
**580-020-0050** OSSHE Tax Deferred Investment Program Participation Fee  
**580-020-0100** Human Resources System

### DIVISION 21

#### CONDITIONS OF SERVICE

- 580-021-0005** Appointment Procedures  
**580-021-0006** Affirmative Action Goals: Employment  
**580-021-0010** Consultative Procedures  
**580-021-0015** Terms of Service of Faculty  
**580-021-0020** Working Hours  
**580-021-0025** Outside Employment and Activities; Conflict of Interest  
**580-021-0028** Fellowship Leave  
**580-021-0030** Vacations  
**580-021-0035** Absence Due to Illness  
**580-021-0040** Sick Leave Plan for Academic Personnel  
**580-021-0041** Transfer of Accumulated, Unused Sick Leave  
**580-021-0044** Use of Employees' Social Security Numbers  
**580-021-0045** Conditions of Employment on Gift, Grant and Contract Funds  
**580-021-0050** Grievance Procedures  
**580-021-0055** Appeal of Grievance Decisions

##### Tenure and Promotion

- 580-021-0100** Kinds of Appointments  
**580-021-0105** Eligibility for Indefinite Tenure  
**580-021-0110** Initial Appointment and Probationary Service for Faculty on Tenure-Related Appointments  
**580-021-0115** Consecutive Annual Appointments  
**580-021-0120** Seventh Annual Appointment  
**580-021-0125** Appointment of Regular Part-Time Faculty Beyond the FTE Equivalent of the Sixth Consecutive Year  
**580-021-0130** Exceptions  
**580-021-0135** Criteria for Faculty Evaluation  
**580-021-0140** Post-Tenure Review

##### Sabbatical Leave

- 580-021-0200** Purposes of Sabbatical Leave

- 580-021-0205** Eligibility for Sabbatical Leave  
**580-021-0210** Approval and Revisions of Sabbatical Leave Agreements  
**580-021-0215** Sabbatical Leave Reports  
**580-021-0220** Obligation to Return  
**580-021-0225** Length of Leave for Academic-Year Staff  
**580-021-0230** Length of Leave for Fiscal-Year Staff  
**580-021-0235** Cost of Sabbatical Leaves  
**580-021-0240** Supplementing of Sabbatical Incomes  
**580-021-0245** Policy Regarding Sabbatical Leave

#### Resignations and Terminations

- 580-021-0300** Resignations  
**580-021-0305** Timely Notice  
**580-021-0310** Terminations  
**580-021-0315** Termination Not for Cause  
**580-021-0318** Other Personnel Actions Not for Cause  
**580-021-0320** Termination and Other Sanctions for Cause  
**580-021-0325** Definition of Cause  
**580-021-0330** Initiation of Formal Proceedings  
**580-021-0335** Temporary Suspension of Academic Staff Member  
**580-021-0340** Academic Staff Member's Request for a Formal Hearing  
**580-021-0345** Hearing Committee  
**580-021-0350** Conduct of Hearing  
**580-021-0355** Committee's Report  
**580-021-0360** Action by the President  
**580-021-0365** Date of Termination  
**580-021-0370** Review by the Board  
**580-021-0375** Board's Initiative in Bringing Investigation or Charges  
**580-021-0380** No Reprisals  
**580-021-0385** Personnel Record  
**580-021-0400** Construction  
**580-021-0405** Notice of Hearing  
**580-021-0410** Subpoenas  
**580-021-0415** Assignment to Hear Proceeding  
**580-021-0420** Disqualification  
**580-021-0425** Powers of Hearing Officers  
**580-021-0430** Who May Appear  
**580-021-0435** Standard of Conduct  
**580-021-0440** Hearing Recorder  
**580-021-0445** Transcript of Testimony  
**580-021-0450** Continuances and Postponements  
**580-021-0455** Evidence  
**580-021-0460** Informal Disposition  
**580-021-0465** Record  
**580-021-0470** Decision

### DIVISION 22

#### ACADEMIC FREEDOM

- 580-022-0005** Academic Freedom

##### Political Activities

- 580-022-0010** Public Activities  
**580-022-0015** Candidates for Public Office  
**580-022-0020** Relationships with State Government

##### Holidays and Miscellaneous Privileges

- 580-022-0025** Academic Staff Holidays  
**580-022-0030** Staff Fee Privileges  
**580-022-0031** Transfer of Staff Fee Privileges  
**580-022-0035** Physical Education Privileges  
**580-022-0040** Student Health Services

<b>Proscribed Conduct</b>		<b>580-040-0205</b>	Code of Ethics
<b>580-022-0045</b>	Proscribed Conduct	<b>580-040-0210</b>	Delegation of Authority
<b>580-022-0047</b>	Confidentiality and Inadmissibility of Workplace Interpersonal Dispute Mediation Communications	<b>580-040-0215</b>	Definitions
		<b>580-040-0220</b>	Designation of Purchasing Agents and Contract Officers
		<b>580-040-0223</b>	Applicable Model Public Contract Rules
		<b>580-040-0225</b>	Processes for Procurement of Goods and Services
<b>Employment Discrimination</b>		<b>580-040-0230</b>	Exemptions
<b>580-022-0050</b>	Discrimination Based on Race, Color, Religion, National Origin, Disability, Age, Marital Status, Sex, or Sexual Orientation	<b>580-040-0235</b>	Basis for Awarding of Contracts
		<b>580-040-0240</b>	Determination of Contractual Terms and Conditions
<b>Employment of More than One Member of a Household</b>		<b>580-040-0245</b>	Contract Amendments (Including Change Orders and Extra Work)
<b>580-022-0055</b>	Employment of More Than One Member of a Household	<b>580-040-0255</b>	Pre-Bid and Pre-Proposal Conferences
		<b>580-040-0260</b>	Acceptance of Bids and Proposals by Facsimile or Electronic Data Interchange
<b>Board Rules Governing Institutional Rules Relating to Faculty Records</b>		<b>580-040-0275</b>	Responsible Bidders; Responsibility Investigation
<b>580-022-0060</b>	Institutional Rules	<b>580-040-0277</b>	Responsive and Nonresponsive Bids or Proposals; Acceptance and Rejection
<b>580-022-0065</b>	Definitions	<b>580-040-0280</b>	Rejection of Individual Bids or Proposals
<b>580-022-0070</b>	Limitation on Records to Be Maintained	<b>580-040-0285</b>	Bidder or Proposer Disqualification
<b>580-022-0075</b>	Confidential Information Relating to Employed Faculty Not to Be Sought Nor Accepted	<b>580-040-0290</b>	Purchasing Policies Governing the Acquisition of Goods and Services From Qualified Rehabilitation Facilities
<b>580-022-0080</b>	Certain Information Not Required to Be Given by Faculty Members	<b>580-040-0292</b>	Affirmative Action; General Policy
<b>580-022-0085</b>	Locations and Custody of Faculty Records	<b>580-040-0295</b>	Record Keeping Requirements
<b>580-022-0090</b>	Release of and Access to Faculty Records	<b>SURPLUS PROPERTY DISPOSAL</b>	
<b>580-022-0095</b>	Confidential Records — Restrictions on Release	<b>580-040-0300</b>	Purpose
<b>580-022-0100</b>	Access to Files by Faculty Members	<b>580-040-0301</b>	Definitions
<b>580-022-0105</b>	Entry into File of Comments, Explanations, and Rebuttals	<b>580-040-0302</b>	General
<b>580-022-0110</b>	Retention of Evaluative Materials Concerning Candidates for Possible Employment	<b>580-040-0303</b>	Delegations
<b>580-022-0115</b>	Availability to Faculty Members of Objective Information Concerning Categories of Staff	<b>580-040-0304</b>	Environmental Standards
<b>580-022-0120</b>	Availability of Faculty Records for Research Purposes	<b>580-040-0305</b>	Maintenance of Proper Inventory Records and Justification of Sale or Disposal
<b>580-022-0125</b>	Permanence, Duplication, and Disposal of Faculty Records	<b>580-040-0306</b>	Disposition of Federally Funded Surplus Property
<b>DIVISION 31</b>		<b>580-040-0307</b>	Disposition of Property Acquired by Gift
<b>LIBRARIES</b>		<b>580-040-0308</b>	Exchange or Trade-in Option
<b>580-031-0005</b>	Coordinated System of Libraries	<b>580-040-0309</b>	Transfer of Property to a Collaborating Government or Non-Profit Institution
<b>DIVISION 40</b>		<b>580-040-0310</b>	Method of Disposal; Eligibility to Acquire
<b>BOARD'S FINANCIAL POWERS</b>		<b>580-040-0311</b>	Disposal of Computer and Other Electronic Storage Devices and Media
<b>580-040-0005</b>	Delegation and Assignment of Responsibility	<b>DIVISION 41</b>	
<b>580-040-0007</b>	Retainage Processing Charges	<b>ACCOUNTING POLICIES</b>	
<b>580-040-0010</b>	Institutional Authority to Establish Fees and Charges	<b>580-041-0010</b>	Receivables
<b>580-040-0012</b>	Delegation of Authority for Census Functions	<b>DIVISION 42</b>	
<b>580-040-0025</b>	Traffic Regulations, Parking Fees, and Enforcement Fines	<b>GIFT, GRANT, AND CONTRACT MANAGEMENT</b>	
<b>580-040-0030</b>	Vehicle Safety Rule	<b>580-042-0005</b>	General Authority
<b>580-040-0035</b>	Summer Session Fee Book	<b>580-042-0010</b>	Delegation
<b>580-040-0040</b>	Academic Year Fee Book	<b>580-042-0015</b>	Institutional Responsibility
<b>580-040-0041</b>	Revolving Charge Accounts Policy	<b>580-042-0020</b>	Board Acceptance of Scholarship Gifts
<b>Personal Services Contracts</b>		<b>DIVISION 43</b>	
<b>580-040-0100</b>	Screening and Selection for Personal Services Contracts	<b>POLICIES RELATING TO INVENTIONS, LICENSE AGREEMENTS, EDUCATIONAL AND PROFESSIONAL MATERIALS DEVELOPMENT, PATENTS, AND COPYRIGHTS</b>	
<b>Competitive Procedures for the Purchasing, Procurement and Contracting of Goods and Services</b>		<b>580-043-0006</b>	Policy
<b>580-040-0200</b>	Purpose	<b>580-043-0007</b>	Objectives of Policies
		<b>580-043-0011</b>	Employee Responsibilities and Rights

580-043-0016	Institutional Responsibilities
580-043-0026	Office of Finance and Administration Responsibilities

**DIVISION 46**

**INSTITUTION FOUNDATIONS**

580-046-0005	Recognition of a Foundation
580-046-0010	Privileges and Responsibilities of Recognition
580-046-0020	Institution Foundation Organization, Affiliates, Relationships
580-046-0025	Foundation Independence from Institution
580-046-0030	President's Responsibilities, Additional Rules
580-046-0035	Foundation and Institution Operational Procedures, Gifts, Accounts, Institution Support, Contracts
580-046-0040	Foundation Activities
580-046-0045	Revocation of Recognition

**DIVISION 50**

**REAL PROPERTY, FACILITY, AND CAMPUS PLANNING**

580-050-0000	Definitions
580-050-0001	Comprehensive Plan Coordination
580-050-0005	Conveyances
580-050-0010	Easements
580-050-0015	Purchases and Leases of Real Property

**Capital Construction**

580-050-0020	Appointment of Professional Consultants
580-050-0025	Naming Buildings
580-050-0032	Contracts for Repairs and Public Improvements
580-050-0033	Change Orders and Amendments

**Use of Property**

580-050-0040	General Purpose
580-050-0041	Emerging Small Businesses
580-050-0042	Minority Business Enterprises and Women Business Enterprises
580-050-0100	Board of Higher Education-Provided Housing
580-050-0105	Properties Subject to Flood Hazards
580-050-0110	Retainage
580-050-0120	Negotiation When Offers Exceed Cost Estimate
580-050-0130	Bids or Proposals Are Offers
580-050-0140	Facsimile and Electronic Offers
580-050-0150	Offeror Submissions
580-050-0160	Pre-Offer Conferences
580-050-0170	Solicitation Protest; Request for Change; Request for Clarification
580-050-0180	Addenda to a Solicitation Document
580-050-0190	Pre-Closing Modification or Withdrawal of Offers
580-050-0200	Receipt, Opening, and Recording of Offers
580-050-0210	Late Offers, Late Withdrawals, and Late Modifications
580-050-0220	Mistakes
580-050-0230	Time for Institution Acceptance
580-050-0240	Extension of Time for Acceptance of Offer
580-050-0250	Low Tie Offers
580-050-0260	Rejection of an Offer
580-050-0270	Rejection of All Offers
580-050-0280	Protest of Contractor Selection, Contract Award
580-050-0290	Disqualification of an Entity
580-050-0300	Cancellation of Solicitation
580-050-0310	Disposition of Offers if Solicitation Canceled
580-050-0320	Foreign Contractor
580-050-0330	Contract Suspension; Termination Procedures

580-050-0340	Institution Payment for Unpaid Labor or Supplies
--------------	--

**DIVISION 1**

**BOARD PROCEDURES**

**580-001-0000**

**Appearances Before the Board**

Individuals and representatives of organizations desiring to appear before the Board to present any matter concerning higher education may do so, consistent with procedures established by the Board in its Bylaws.

Stat. Auth.: ORS 351

Stats. Implemented: ORS 351.070

Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 13-1981, f. & ef. 11-20-81; OSSHE 6-1998(Temp), f. & cert. ef. 10-21-98 thru 2-28-99; OSSHE 8-1998, f. & cert. ef. 12-23-98

**580-001-0005**

**Procedural Rule for Changes and Additions to Administrative Rules**

(1) Prior to adoption, amendment or repeal of any rule, except a temporary rule, when the Board does not plan to hold a public hearing, it shall give notice as specified in section (4) of this rule. The notice shall designate the person to whom a request for public hearing must be submitted. The notice shall be published:

(a) In the Oregon Bulletin referred to in ORS 183.360 at least 21 days prior to the effective date;

(b) By mailing a copy of the notice to persons on the Board mailing list established pursuant to ORS 183.335(7) at least 28 days before the effective date; and

(c) By mailing a copy of the notice to the presidents of the institutions within OSSHE, Interinstitutional Faculty Senate, State System student newspapers, members of the media who requested in writing such notice and other interested parties who requested in writing such notice.

(2) If the Board receives a request for a public hearing under ORS 183.335(3)(a), the Board shall publish a notice of hearing at least 14 days before the hearing in the Oregon Bulletin and give at least 21 days' notice of the hearing by mailing a copy of the notice to the requester and to the persons set forth in subsections (1)(b) and (c) of this rule.

(3) When the Board intends to hold a public hearing on the proposed adoption, amendment or repeal, it shall give notice as specified in section (4) of this rule, along with a statement that the Board will conduct the hearing. The notice shall be published:

(a) In the Oregon Bulletin 21 days prior to the effective date;

(b) By mailing a copy of the notice to the persons set forth in subsection (1)(b) of this rule at least 28 days before the effective date; and

(c) By mailing a copy of the notice to the presidents of the institutions within OSSHE, Interinstitutional Faculty Senate, State System student newspapers, members of the media who requested in writing such notice and other interested parties who requested in writing such notice.

(4)(a) The notice required by sections (1), (2) and (3) of this rule shall state the subject matter and purpose of the intended action in sufficient detail to inform a person that the person's interests may be affected, and the time, place and manner in which interested persons may present their views on the intended action.

(b) The Board shall include with the notice of intended action given under sections (1), (2), and (3) of this rule:

(A) A citation to the authority relied upon and bearing upon the promulgation of the rule;

(B) A citation of the statute or other law the rule is intended to implement;

(C) A statement of the need for the rule and a statement of how the rule is intended to meet the need;

(D) A list of the principal documents, reports or studies, if any, prepared by or relied upon by the Board in considering the need for



and in preparing the rule and a statement of the location at which those documents are available for public inspection;

(E) A statement of fiscal impact identifying state agencies, units of local government and the public that may be economically affected by the adoption, amendment or repeal of the rule and an estimate of that economic impact on state agencies, units of local government and the public. In considering the economic effect of the proposed action on the public, the Department shall utilize available information to project any significant economic effect of that action on businesses, which shall include a cost of compliance effect on small businesses affected.

(F) If an advisory committee is not appointed under the provisions of ORS 183.025(2), an explanation as to why no advisory committee was used to assist the Board in drafting the rule; and

(G) A designation of the person who may be contacted to:

(i) Obtain a copy of the proposed rule, which shall show all changes by bracketing materials to be deleted and showing all new material in boldface type;

(ii) Obtain further information; or

(iii) Make submissions or requests.

Stat. Auth.: ORS 183.025(2), 183.330(1), 183.341(4), 183.335 & 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 7-1985, f. & ef. 10-28-85; HEB 1-1993, f. & cert. ef. 2-5-93; HEB 8-1994, f. & cert. ef. 10-12-94; HEB 5-1996, f. & cert. ef. 12-18-96

### 580-001-0020

#### Availability of Public Records

Members of the public may review all Board documents that are public records other than those records that need not be disclosed under law. These documents are on file in the Board's office during regular working hours. Copies of public records are available to the public upon request. Charges will be made, payable in advance or when the materials are received.

(1) Copies of documents: \$.25 per page.

(2) Documents and other materials such as computer tapes, microfilm and microfiche copies, audio tape cassettes, computer services, etc., shall be provided at a fee reasonably calculated to reimburse the Board for actual costs incurred in making records available to the public.

(3) This rule shall apply also to Board institutions or other divisions or parts of OSSHE and the Department of Higher Education where there are no other rules establishing fees for providing public records.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 3-1980, f. & ef. 4-18-80; HEB 7-1985, f. & ef. 10-28-85; HEB 1-1993, f. & cert. ef. 2-5-93; HEB 7-1993, f. & cert. ef. 10-29-93; HEB 5-1996, f. & cert. ef. 12-18-96

### 580-001-0030

#### Confidentiality and Inadmissibility of Mediation Communications

(1) The words and phrases used in this rule have the same meaning as given to them in ORS 36.110 and 36.234.

(2) Nothing in this rule affects any confidentiality created by other law. Nothing in this rule relieves a public body from complying with the Public Meetings Law, ORS 192.610 to 192.690. Whether or not they are confidential under this or other rules of the agency, mediation communications are exempt from the disclosure under the Public Records Law to the extent provided in ORS 192.410 to 192.505.

(3) This rule applies only to mediations in which the agency is a party or is mediating a dispute as to which the agency has regulatory authority. This rule does not apply when the agency is acting as the "mediator" in a matter in which the agency also is a party as defined in ORS 36.234.

(4) To the extent mediation communications would otherwise compromise negotiations under ORS 40.190 (OEC Rule 408), those mediation communications are not admissible as provided in ORS 40.190 (OEC Rule 408), notwithstanding any provisions to the contrary in section (9) of this rule.

(5) Mediations Excluded. Sections (6)–(10) of this rule do not apply to:

(a) Mediation of workplace interpersonal disputes involving the interpersonal relationships between this agency's employees, officials or employees and officials, unless a formal grievance under a labor contract, a tort claim notice or a lawsuit has been filed; or

(b) Mediation in which the person acting as the mediator will also act as the hearings officer in a contested case involving some or all of the same matters;

(c) Mediation in which the only parties are public bodies;

(d) Mediation involving two or more public bodies and a private party if the laws, rule or policies governing mediation confidentiality for at least one of the public bodies provide that mediation communications in the mediation are not confidential;

(e) Mediation involving 15 or more parties if the agency has designated that another mediation confidentiality rule adopted by the agency may apply to that mediation.

(6) Disclosures by Mediator. A mediator may not disclose or be compelled to disclose mediation communications in a mediation and, if disclosed, such communications may not be introduced into evidence in any subsequent administrative, judicial or arbitration proceeding unless:

(a) All parties to the mediation and the mediator agree in writing to the disclosure; or

(b) The mediation communication may be disclosed or introduced into evidence in a subsequent proceeding as provided in subsections (c)–(d), (j)–(l) or (o)–(p) of section (9) of this rule.

(7) Confidentiality and Inadmissibility of Mediation Communications. Except as provided in sections (8)–(9) of this rule, mediation communications are confidential and may not be disclosed to any other person, are not admissible in any subsequent administrative, judicial or arbitration proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent proceeding, or introduced as evidence by the parties or the mediator in any subsequent proceeding.

(8) Written Agreement. Section (7) of this rule does not apply to a mediation unless the parties to the mediation agree in writing, as provided in this section, that the mediation communications in the mediation will be confidential and/or nondisclosable and inadmissible. If the mediator is the employee of and acting on behalf of a state agency, the mediator or an unauthorized agency representative must also sign the agreement. The parties' agreement to participate in a confidential mediation must be in substantially the following form. This form may be used separately or incorporated into an "agreement to mediate." [Form not included. See ED. NOTE.]

(9) Exceptions to confidentiality and inadmissibility.

(a) Any statements, memoranda, work products, documents and other materials, otherwise subject to discovery that were not prepared specifically for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding.

(b) Any mediation communications that are public records, as defined in ORS 192.410(4) and were not specifically prepared for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential or privileged under state or federal law.

(c) A mediation communication is not confidential and may be disclosed by any person receiving the communication to the extent that person reasonably believes that disclosing the communication is necessary to prevent the commission of a crime that is likely to result in death or bodily injury to any person. A mediation communication is not confidential and may be disclosed in a subsequent proceeding to the extent its disclosure may further the investigation or prosecution of a felony crime involving physical violence to a person.

(d) Any mediation communication related to the conduct of a licensed professional that is made to or in the presence of a person who, as a condition of his or her professional license, is obligated to report such communication by law or court rule is not confidential and may be disclosed to the extent necessary to make such a report.

(e) The parties to the mediation may agree in writing that all or part of the mediation communications are not confidential or that all or part of the mediation communications may be disclosed and may

be introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential, privileged or otherwise prohibited from disclosure under state or federal law.

(f) A party to the mediation may disclose confidential mediation communications to a person if the party's communication with that person is privileged under ORS Chapter 40 or other provision of law. A party to the mediation may disclose confidential mediation communications to a person for the purpose of obtaining advice concerning the subject matter of the mediation, if all the parties agree.

(g) An employee of the agency may disclose confidential mediation communications to another agency employee so long as the disclosure is necessary to conduct authorized activities of the agency. An employee receiving a confidential mediation communication under this subsection is bound by the same confidentiality requirements as apply to the parties to the mediation.

(h) A written mediation communication may be disclosed or introduced as evidence in a subsequent proceeding at the discretion of the party who prepared the communication so long as the communication is not otherwise confidential under state or federal law and does not contain confidential information from the mediator or another party who does not agree to the disclosure.

(i) In any proceeding to enforce, modify or set aside a mediation agreement, a party to the mediation may disclose mediation communications and such communications may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of mediation communications or agreements to persons other than the parties to the agreement.

(j) In an action for damages or other relief between a party to the mediation and a mediator or mediation program, mediation communications are not confidential and may be disclosed and may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of the mediation communications or agreements.

(k) When a mediation is conducted as part of the negotiation of a collective bargaining agreement, the following mediation communications are not confidential and such communications may be introduced into evidence in a subsequent administrative, judicial or arbitration proceeding:

(A) A request for mediation; or

(B) A communication from the Employment Relations Board Conciliation Service establishing the time and place of the mediation; or

(C) A final offer submitted by the parties to the mediator pursuant to ORS 243.712; or

(D) A strike notice submitted to the Employment Relations Board.

(l) To the extent a mediation communication contains information on the substance of which is required to be disclosed by Oregon statute, other than ORS 192.410 to 192.505, that portion of the communication may be disclosed as required by statute.

(m) Written mediation communications prepared by or for the agency or its attorney are not confidential and may be disclosed and may be introduced as evidence in any subsequent administrative, judicial or arbitration proceeding to the extent the communication does not contain confidential information from the mediator or another party, except for those written mediation communications that are:

(A) Attorney-client privileged communications so long as they have been disclosed to no one other than the mediator in the course of the mediation or to persons as to whom disclosure of the communication would not waive the privilege; or

(B) Attorney work product prepared in anticipation of litigation or for trial; or

(C) Prepared exclusively for the mediator or in a caucus session and not given to another party in the mediation other than a state agency; or

(D) Prepared in response to the written request of the mediator for specific documents or information and given to another party in the mediation; or

(E) Settlement concepts or proposals, shared with the mediator or other parties.

(n) A mediation communication made to the agency may be disclosed and may be admitted into evidence to the extent the Chancellor, University President or their designees determines that disclosure of the communication is necessary to prevent or mitigate a serious danger to the public's health or safety, and the communication is not otherwise confidential or privileged under state or federal law.

(o) The terms of any mediation agreement are not confidential and may be introduced as evidence in a subsequent proceeding, except to the extent the terms of the agreement are exempt from disclosure under ORS 192.410 to 192.505, a court has ordered the terms to be confidential under ORS 30.402 or state or federal law requires the terms to be confidential.

(p) The mediator may report the disposition of a mediation to the agency at the conclusion of the mediation so long as the report does not disclose specific confidential mediation communications. The agency or the mediator may use or disclose confidential mediation communications for research, training or educational purposes, subject to the provisions of ORS 36.232(4).

(10) When a mediation is subject to section (7) of this rule, the agency will provide to all parties to the mediation and the mediator a copy of this rule or a citation to the rule and an explanation of where a copy of the rule may be obtained. Violation of this provision does not waive confidentiality or inadmissibility.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 36.224

Stats. Implemented: ORS 36.224, 36.228, 36.230 & 36.232

Hist.: OSSHE 4-2000(Temp), f. & cert. ef. 12-21-00 thru 6-15-01; OSSHE 1-2001, f. & cert. ef. 4-27-01

## DIVISION 10

### ADMISSION REQUIREMENTS, RESIDENCE CLASSIFICATION, AND PAYMENT OF STUDENT FEES

#### Admission Requirements

#### 580-010-0001

##### Standards for Admission

(1) The Board sets standards for admission to freshman and advanced undergraduate standing at the institutions. Standards may include but need not be limited to high school graduation, subject requirements, prior college-level coursework, standardized test scores and grades.

(2) Standards may vary by institution and residency classification.

(3) The Board may establish alternatives and exceptions to the standards.

(4) The Board may delegate authority to the institutions to establish enrollment limitations and to set higher and additional standards for admission to academic courses and programs.

(5) The Board shall periodically review admission standards and provide at least one year's notice of any change in standards used in determining admissibility.

Stat. Auth.: ORS 351

Stats. Implemented: ORS 351.070

Hist.: HEB 4-1985, f. & ef. 7-30-85; HEB 5-1996, f. & cert. ef. 12-18-96

#### 580-010-0003

##### Affirmative Action Goals: Enrollment

(1) Each institution president shall establish affirmative action goals and procedures for the purpose of increasing the proportion of minorities and women enrolled in programs where minorities or women are underrepresented. Institutions shall be sensitive to the need for effective support for such students.

(2) For purposes of this rule, "minority" refers to Black African Americans, Hispanic Americans, Asian/Pacific-Island Americans and American Indians/Alaskan Natives.

(3) The goals and procedures established under this rule shall be reviewed by the institution president for adequacy and effective-

tiveness at the end of each biennium and modified accordingly. A report of this biennial review shall be submitted to the Chancellor.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 7-1986, f. & ef. 3-19-86; HEB 1-1993, f. & cert. ef. 2-5-93; HEB 5-1996, f. & cert. ef. 12-18-96

#### 580-010-0005

#### Compulsory Pre-Entrance Physical Examination and Immunizations

(1) For the protection of the public health and benefit of the student, the Board requires a physical examination of all students or, at the discretion of the institution, a completed health history questionnaire on a form supplied by the institution, as a condition of enrollment in institutions under Board control.

(2) A report from a private physician may be required in certain instances by institutions using the health history questionnaire. Cases justifying use of a private physician's report include students participating in varsity athletics and students requiring clearance for participation in physical education.

(3) All students must present appropriate proof of immunizations and tests required by policies established by institutional presidents. These requirements shall be set forth in institution catalogs. Institutions shall notify the Board whenever these requirements change.

(4) Students declining immunization on medical grounds may be enrolled, but students declining immunization on the basis of religious conviction may be enrolled only if:

(a) They provide a statement from their church or religious organization attesting to their membership and to the fact that immunization is contrary to the religious beliefs of the church or religious organization to which they belong;

(b) They, and in the case of minor or dependent students, their parents or guardians with them, agree in writing to assume all expenses in connection with their care and isolation should they acquire, while students at the institution, a disease for which immunization is required of other students.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 4-1985, f. & ef. 7-30-85; HEB 5-1990, f. & cert. ef. 6-4-90; HEB 5-1996, f. & cert. ef. 12-18-96

#### Residence Classification

#### 580-010-0029

#### Definitions

For the purpose of OAR 580-010-0030 through 580-010-0045, the following words and phrases mean:

(1) "Domicile" is a person's true, fixed, and permanent home and place of habitation. It is the place where a person intends to remain and to which the person expects to return when the person leaves without intending to establish a new domicile elsewhere. In order to establish a domicile in Oregon, a person must maintain a predominant physical presence in Oregon for 12 consecutive months after moving to the state.

(2) A "financially independent person" is a person who, at the time of application for residency status: (a) declares himself or herself to be financially independent; (b) has not been claimed as a dependent during the immediately preceding tax year, and will not be claimed as a dependent during the current tax year, on the federal or state income tax returns of any other person; and (c) has not received in the immediately preceding calendar year, and will not receive during the current calendar year, one-half or more of his or her support, in cash or in kind, from another person or persons, except for support received from his or her spouse.

(3) A "financially dependent person" is a person who, at the time of application for residency status: (a) declares himself or herself to be financially dependent; and (b) has been claimed as a dependent on the federal and state income tax returns of another person during the immediately preceding tax year.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 9-1992, f. & cert. ef. 12-2-92; HEB 10-1992, f. & cert. ef. 12-23-92; HEB 5-1995, f. & cert. ef. 11-2-95; HEB 5-1996, f. & cert. ef. 12-18-96; OSSHE 5-2003, f. & cert. ef. 12-3-03

#### 580-010-0030

#### Determination of Residence

(1) For purposes of admission and instruction fee assessment, OUS institutions shall classify a student as Oregon resident or non-resident. In determining resident or nonresident classification, the primary issue is a person's intent in coming to Oregon. Intent is inferred from a person's conduct and history as they relate to the requirements of these residency rules. If a person is in Oregon primarily for the purpose of obtaining an education, that person will be considered a nonresident. It is possible for an individual to qualify as a resident of Oregon for purposes of voting or obtaining an Oregon driver's license and not meet the residency requirements established by these rules.

(2) An Oregon resident is a financially independent person who, prior to the term for which Oregon resident classification is requested, has both: (a) established and maintained a domicile in Oregon as provided under OAR 580-010-0029(1) 12 consecutive months; and (b) during that period, has been primarily engaged in activities other than those of being a college student.

(3) A student may be considered primarily engaged in educational activities regardless of the number of hours for which the student is enrolled. However, a student who is enrolled for more than 8 hours in any semester or quarter during the 12-month period referred to in section (2) of this rule shall be presumed to be in Oregon for primarily educational purposes. Such period of enrollment shall not be counted toward the establishment of a bona fide domicile of 12 consecutive months in this state unless the student proves, in fact, establishment of a bona fide domicile in this state primarily for purposes other than educational.

(4) An Oregon resident is also a financially dependent person who is claimed as a dependent by another person who has both: (a) established and maintained an Oregon domicile as provided under OAR 580-010-0029(1) for 12 consecutive months; and (b) during that period, has been primarily engaged in activities other than those of being a college student.

(5) A financially dependent person who is claimed as a dependent by another person who has not established and maintained an Oregon domicile shall be presumed to be a non-resident. This presumption may be overcome by evidence of the student's long-standing presence in Oregon and demonstration of other factors under OAR 580-010-0031.

(6) The criteria for determining Oregon resident classification shall also be used to determine whether a person who has moved from Oregon has established a non-Oregon residence.

(7) If institution records show that the residence of a student or the person upon whom the student is dependent is outside of Oregon, the student shall continue to be classified as a nonresident until entitlement to resident classification is shown. The burden of showing that the residence classification should be changed is on the student requesting the change.

(8) Notwithstanding section (4) of this rule, a student who is financially dependent on a non-Oregon resident may nonetheless be considered an Oregon resident if the student resides in Oregon for at least 12 consecutive months with a parent or legal guardian who has both: (a) established and maintained an Oregon domicile under OAR 580-010-0029(1) for 12 consecutive months; and (b) during that period, has been primarily engaged in activities other than those of being a college student.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 8-1981, f. & ef. 9-30-81; HEB 4-1985, f. & ef. 7-30-85; HEB 14-1986, f. & ef. 10-27-86; HEB 1-1987, f. & ef. 1-12-87; HEB 4-1988, f. & cert. ef. 5-13-88; HEB 1-1990, f. 2-13-90, cert. ef. 7-1-90; HEB 9-1992, f. & cert. ef. 12-2-92; HEB 10-1992, f. & cert. ef. 12-23-92; HEB 5-1995, f. & cert. ef. 11-2-95; HEB 5-1996, f. & cert. ef. 12-18-96; OSSHE 5-2003, f. & cert. ef. 12-3-03

#### 580-010-0031



### Residency Consideration Factors

(1) The following factors, although not necessarily conclusive or exclusive, have probative value in support of a claim for Oregon resident classification:

(a) Reside in Oregon for 12 consecutive months prior to the beginning of the term for which resident classification is sought and during that period be primarily engaged in activities other than those of a college student;

(b) Reliance upon Oregon resources for financial support;

(c) Domicile in Oregon of persons legally responsible for the student;

(d) Acceptance of an offer of permanent employment in Oregon; and

(e) Ownership by the person of his or her living quarters in Oregon.

(2) The following factors, standing alone, do not constitute sufficient evidence to effect classification as an Oregon resident:

(a) Voting or registration to vote;

(b) Employment in any position normally filled by a student;

(c) The lease of living quarters;

(d) Admission to a licensed practicing profession in Oregon;

(e) Automobile registration;

(f) Public records, for example, birth and marriage records, Oregon driver's license;

(g) Continuous presence in Oregon during periods when not enrolled in school;

(h) Ownership of property in Oregon or the payment of Oregon income or other Oregon taxes; or

(i) Domicile in Oregon of the student's spouse.

(3) Reliance upon non-Oregon resources for financial support is an inference of residency in another state.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 9-1992, f. & cert. ef. 12-2-92; HEB 10-1992, f. & cert. ef. 12-23-92; HEB 5-1995, f. & cert. ef. 11-2-95; HEB 5-1996, f. & cert. ef. 12-18-96; OSSHE 5-2003, f. & cert. ef. 12-3-03

### 580-010-0033

#### Evidence of Financial Dependency

(1) In determining whether a student is financially dependent, a student must provide:

(a) Evidence of established domicile as provided under OAR 580-010-0029(1) of the person claiming the student as a dependent; and

(b) The identification of the student as a dependent on the federal and state income tax returns of the person claiming the student as a dependent. Additional documentation to substantiate dependency during the current calendar year may be required at a later time if deemed necessary by the institution.

(2) A student who provides evidence that he or she is a financially dependent person under these rules shall not be required to establish a 12-month domicile prior to classification of resident status, provided such a student may not be classified as a resident while receiving financial assistance from another state or state agency for educational purposes.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 9-1992, f. & cert. ef. 12-2-92; HEB 10-1992, f. & cert. ef. 12-23-92; HEB 5-1995, f. & cert. ef. 11-2-95; HEB 5-1996, f. & cert. ef. 12-18-96; OSSHE 5-2003, f. & cert. ef. 12-3-03

### 580-010-0035

#### Residence Classification of Armed Forces Personnel

(1) For purposes of this rule, members of the armed forces means officers and enlisted personnel of:

(a) The Army, Navy, Air Force, Marine Corps, and Coast Guard of the United States;

(b) Reserve components of the Army, Navy, Air Force, Marine Corps, and Coast Guard of the United States;

(c) The National Guard of the United States and the Oregon National Guard.

(2) Notwithstanding OAR 580-010-0030, active members of the armed forces and their spouses and dependent children shall be

considered residents for purposes of the instructional fee if the members:

(a) Reside in this state while assigned to duty at any base, station, shore establishment, or other facility in this state;

(b) Reside in this state while serving as members of the crew of a ship that has an Oregon port of shore establishment as its home port or permanent station; or

(c) Reside in another state or a foreign country and file Oregon state income taxes no later than 12 months before leaving active duty.

(3) An Oregon resident entering the armed forces retains Oregon residence classification until it is voluntarily relinquished.

(4) An Oregon resident who has been in the armed forces and assigned on duty outside of Oregon, including a person who establishes residency under section (2)(c) of this rule, must, within a reasonable time, demonstrate an intent to retain classification as an Oregon resident. Such intent may be shown by returning to Oregon within six months after completing service in the armed forces.

(5) A person who continues to reside in Oregon after separation from the armed forces may count the time spent in the state while in the armed forces to support a claim for classification as an Oregon resident.

(6) The dependent child and spouse of a person who is a resident under section (2) of this rule shall be considered an Oregon resident. "Dependent child" includes any child of a member of the armed forces who:

(a) Is under 18 years of age and not married, otherwise emancipated or self-supporting; or

(b) Is under 23 years of age, unmarried, enrolled in a full-time course of study in an institution of higher learning, and dependent on the member for over one-half of his/her support.

Stat. Auth.: ORS 351.070 & 351.642

Stats. Implemented: ORS 174.070 & 351.070

Hist.: HEB-3-1978, f. & ef. 6-5-78; HEB 10-1979, f. & ef. 8-22-79; HEB 8-1981, f. & ef. 9-30-81; HEB 4-1985, f. & ef. 7-30-85; HEB 4-1988, f. & cert. ef. 5-13-88; HEB 1-1990, f. 2-13-90, cert. ef. 7-1-90; HEB 1-1993, f. & cert. ef. 2-5-93; HEB 5-1995, f. & cert. ef. 11-2-95; HEB 5-1996, f. & cert. ef. 12-18-96; OSSHE 3-2001(Temp), f. 6-15-01, cert. ef. 7-1-01 thru 12-27-01; OSSHE 5-2001, f. & cert. ef. 11-7-01; OSSHE 1-2003(Temp), f. & cert. ef. 7-25-03 thru 1-18-04; OSSHE 5-2003, f. & cert. ef. 12-3-03

### 580-010-0037

#### Residence Classification of Members of Oregon Tribes

(1) Students who are enrolled members of federally recognized tribes of Oregon or who are enrolled members of a Native American tribe which had traditional and customary tribal boundaries that included parts of the state of Oregon or which had ceded or reserved lands within the state of Oregon shall be assessed resident tuition regardless of their state of residence.

(2) For purposes of this rule, the federally recognized tribes of Oregon are:

(a) Burns Paiute Tribe;

(b) Confederated Tribes of Coos, Lower Umpqua and Siuslaw;

(c) Confederated Tribes of Grand Ronde Community of Oregon;

(d) Confederated Tribes of Siletz Indians of Oregon;

(e) Confederated Tribes of the Umatilla Indian Reservation;

(f) Confederated Tribes of the Warm Springs Indian Reservation;

(g) Coquille Indian Tribe;

(h) Cow Creek Band of Umpqua Indians;

(i) Klamath Tribes.

(3) For purposes of this rule, the Native American tribes which had traditional and customary tribal boundaries that included parts of the state of Oregon or which had ceded or reserved lands within the state of Oregon are:

(a) CALIFORNIA:

(A) Benton Paiute Tribe;

(B) Big Bend Rancheria;

(C) Big Lagoon Rancheria;

(D) Blue Lake Rancheria;

(E) Bridgeport Indian Colony;

(F) Cedarville Rancheria;

(G) Fort Bidwell Indian Tribe;

(H) Hoopa Valley Tribe;



- (I) Karuk Tribe of California;
- (J) Likely Rancheria;
- (K) Lookout Rancheria;
- (L) Lytton Rancheria;
- (M) Melochundum Band of Tolowa Indians;
- (N) Montgomery Creek Rancheria;
- (O) Pit River Tribe;
- (P) Quartz Valley Indian Community;
- (Q) Redding Rancheria;
- (R) Roaring Creek Rancheria;
- (S) Smith River Rancheria;
- (T) Susanville Rancheria;
- (U) Tolowa-Tututni Tribe;
- (V) Winnemucca Colony;
- (W) XL Ranch;
- (X) Yurok Tribe.

## (b) IDAHO:

- (A) Nez Perce Tribe of Idaho;
- (B) Shoshoni-Bannock Tribes.

## (c) NEVADA:

- (A) Duck Valley Shoshone-Paiute Tribes;
- (B) Fallon Paiute-Shoshone Tribe;
- (C) Fort McDermitt Paiute-Shoshone Tribe;
- (D) Lovelock Paiute Tribe;
- (E) Pyramid Lake Paiute Tribe;
- (F) Reno-Sparks Indian Colony;
- (G) Summit Lake Paiute Tribe;
- (H) Walker River Paiute Tribe;
- (I) Winnemucca Indian Colony;
- (J) Yerington Paiute Tribe.

## (d) OKLAHOMA: Modoc Tribe of Oklahoma.

## (e) WASHINGTON:

- (A) Chehalis Community Council;
- (B) Colville Confederated Tribes;
- (C) Quinault Indian Nation;
- (D) Shoalwater Bay Tribe;
- (E) Yakama Indian Nation.

(4) A student seeking to be assessed resident tuition under the provisions of this rule shall submit, following procedures prescribed by the OUS institution where the student seeks to enroll, a photocopy of tribal enrollment which documents tribal membership.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: OSSHE 3-1998, f. &amp; cert. ef. 7-22-98; OSSHE 5-2003, f. &amp; cert. ef. 12-3-03

**580-010-0040****Residence Classification of Non-Citizens**

A person who is not a citizen of the United States may be considered an Oregon resident if the person qualifies as a resident under OAR 580-010-0030 and is one of the following:

(1) A lawful permanent resident. The date of approval of lawful permanent residency shall be the earliest date upon which the 12-month residency requirements under OAR 580-010-0030 may begin to accrue.

(2) An immigrant granted refugee or political asylum in the United States. The date of approval of political asylum or refugee status shall be the earliest date upon which the 12-month residency requirements under OAR 580-010-0030 may begin to accrue.

(3) A person holding one of the following non-immigrant visa classifications: A, E, G, H-1B, H-1C, the spouse or child of a person holding an H-1B or H-1C visa, I, K, L, NATO, O, R, S, T, TN, U, or V. The date of the issuance of a visa for one of these classifications shall be the earliest date upon which the 12-month residency requirements under OAR 580-010-0030 may begin to accrue. A person possessing a non-immigrant or temporary visa that is not identified under this rule shall not be considered an Oregon resident.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 3-1978, f. &amp; ef. 6-5-78; HEB 4-1985, f. &amp; ef. 7-30-85; HEB 14-1986, f. &amp; ef. 10-27-86; HEB 4-1988, f. &amp; cert. ef. 5-13-88; HEB 1-1990, f. 2-13-90, cert. ef. 7-1-90; HEB 9-1992, f. &amp; cert. ef. 12-2-92; HEB 1-1994, f. 2-9-94, cert.

ef. 2-15-94; HEB 5-1996, f. &amp; cert. ef. 12-18-96; OSSHE 5-2003, f. &amp; cert. ef. 12-3-03

**580-010-0041****Changes in Residence Classification**

(1) If an Oregon resident student enrolls in an institution outside of Oregon and later seeks to re-enroll in an OUS institution, the residence classification of that student shall be re-examined and determined on the same basis as for any other person.

(2) A financially dependent student who is dependent on a person who establishes a permanent Oregon residence as defined in OAR 580-010-0030(2) during a term when the dependent student is enrolled at an OUS institution may register as a resident at the beginning of the next term.

(3) Once established, classification as a resident continues so long as the student remains in continuous academic year enrollment in the classifying institution.

(4) A person who seeks classification as a resident under these rules shall complete and submit a notarized Residence Information Affidavit. The affidavit and all required supportive documents and materials must be submitted by the last day to register for the term in which resident status is sought.

(5) No OUS institution is bound by any determination of residency except by duly authorized officials under procedures prescribed by these rules including timely submittal of the notarized affidavit.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 3-1978, f. &amp; ef. 6-5-78; HEB 8-1981, f. &amp; ef. 9-30-81; Renumbered from 580-10-025; HEB 4-1985, f. &amp; ef. 7-30-85; HEB 14-1986, f. &amp; ef. 10-27-86; HEB 2-1987, f. &amp; ef. 1-12-87; HEB 4-1988, f. &amp; cert. ef. 5-13-88; HEB 1-1990, f. 2-13-90, cert. ef. 7-1-90; HEB 9-1992, f. &amp; cert. ef. 12-2-92; HEB 5-1996, f. &amp; cert. ef. 12-18-96; OSSHE 5-2003, f. &amp; cert. ef. 12-3-03

**580-010-0045****Review of Residence Classification Decisions by IRC**

(1) An interinstitutional residency committee (IRC) is established consisting of the officers determining student residence classification at OUS institutions and a member of the Chancellor's staff appointed by the Chancellor. The member of the Chancellor's staff shall serve as chairperson. A majority of the members of the Committee shall constitute a quorum. A majority of a quorum may make decisions.

(2) Residence cases of unusual complexity, especially where there may be conflict of rules, may be referred by an institution residence classification officer to the IRC for decision.

(3) Any person who is aggrieved by the institution residence classification may, within ten days of the date of mailing or other service of classification decision, appeal the classification to the IRC. The appeal must be in writing and shall be filed with the institution. An aggrieved person may supply written statements to the IRC for consideration in reviewing the case and may also make an oral presentation to the IRC on a date to be scheduled by the IRC. The decision of the IRC shall be final unless appealed.

(4) A person dissatisfied with the IRC decision may, within ten days of the date of the mailing or other service of the IRC decision, appeal the IRC decision to Vice Chancellor for Academic Affairs or designee. An appeal to the vice chancellor shall be in writing only. The vice chancellor's decision shall be final.

(5) A person granted a meritorious hardship exception to residency under this rule prior to July 1, 1990, shall not lose the exception solely because of the repeal of the exception authorization.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 3-1978, f. &amp; ef. 6-5-78; HEB 4-1985, f. &amp; ef. 7-30-85; HEB 4-1988, f. &amp; cert. ef. 5-13-88; Section (2) Renumbered to 580-010-0046 and section (3) Renumbered to 580-010-0047; HEB 1-1990, f. 2-13-90, cert. ef. 7-1-90; HEB 1-1993, f. &amp; cert. ef. 2-5-93; HEB 5-1995, f. &amp; cert. ef. 11-2-95; OSSHE 5-2003, f. &amp; cert. ef. 12-3-03

**580-010-0047****Residents Under WICHE**

A certification officer, designated by the Board, shall determine the residence classification of any person seeking certification as an Oregon resident, pursuant to the terms of the WICHE Compact. Any

person dissatisfied with the decision of the certification officer may appeal to the IRC. The decision of the IRC shall be final unless further appeal is made to the Vice Chancellor for Academic Affairs pursuant to OAR 580-010-0045(4).

Stat. Auth.: ORS 351.070

Stats. Implemented:

Hist.: HEB 4-1988, f. & cert. ef. 5-13-88; Renumbered from 580-010-0045; HEB 1-1990, f. 2-13-90, cert. ef. 7-1-90; HEB 1-1993, f. & cert. ef. 2-5-93

### Payment of Student Fees

#### 580-010-0080

##### Payment of Nonresident Instruction Fee

(1) All students who are classified as nonresidents shall pay a nonresident fee.

(2) Refunds of the nonresident fee may be granted if the student shows that the classification previously assigned was in error, but no such refund shall be made unless the student applies and submits all supporting information for residency status prior to the last day to register for the term in which the student seeks change of status.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 8-1981, f. & ef. 9-30-81; Renumbered from 580-010-0020; HEB 4-1985, f. & ef. 7-30-85

#### 580-010-0081

##### Waiver of Nonresident Instruction Fee

(1) Notwithstanding the provisions of OAR 580-010-0080, the following nonresident students shall be permitted to pay instruction fees at the same rates as Oregon resident students:

(a) Students who are residents of the State of Washington attending an Oregon institution and who are granted a tuition waiver under the terms of reciprocity agreement;

(b) All undergraduates attending Eastern Oregon State College;

(c) Graduate students who are residents of a participating WICHE state enrolled in a WICHE Regional Graduate Program or a WICHE northwest doctoral student exchange program at a Department institution; and

(d) Students attending Oregon graduate or professional schools under terms of the WICHE Compact.

(2) When provisions of this rule are limited to residents of specific states or counties, determination of residence in those states or counties shall be made in the same manner as for students claiming Oregon residence.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: HEB 7-1979, f. & ef. 8-22-79; HEB 6-1981(Temp), f. & ef. 8-20-81; HEB 10-1981, f. & ef. 9-30-81; HEB 7-1984(Temp), f. & ef. 8-21-84; HEB 8-1984, f. & ef. 8-21-84; HEB 10-1984, f. & ef. 10-12-84; Renumbered from 580-010-0021; HEB 4-1985, f. & ef. 7-30-85; HEB 10-1985, f. & ef. 12-19-85; HEB 11-1986, f. & ef. 7-30-86

#### 580-010-0083

##### Scholarships Funded by Sports Lottery Revenue

(1) The Office of Academic Affairs will allocate scholarship funds as authorized by ORS 461.543 (5)(b) and funded from the Sports Lottery Account. Scholarship funds will be awarded for post-baccalaureate professional and graduate students and will be divided equally between scholarships awarded on the basis of need and scholarships awarded on the basis of academic merit.

(2) For purposes of this rule:

(a) "Academic Merit" will be determined by acceptance into an OSSHE graduate program, by a record of scholarly achievement as demonstrated by grade point average, test scores on nationally recognized admissions tests or other evidence of scholarly or creative ability.

(b) "Need" will be determined in accordance with the federal guidelines established pursuant to the Higher Education Act of 1965, as amended, together with consideration of the costs associated with an applicant's academic program.

(3) The Vice Chancellor for Academic Affairs shall establish additional criteria and procedures consistent with this rule for selecting among applicants eligible for scholarships under this rule.

Stat. Auth.: ORS 351.070 & 461.543(5)(b)

Stats. Implemented: ORS 351.070

Hist.: HEB 4-1992, f. & cert. ef. 4-10-92; HEB 5-1996, f. & cert. ef. 12-18-96

#### 580-010-0085

##### Student Exchanges

(1)(a) Under the WICHE student exchange program, certification of students as Oregon residents for purposes of attending institutions not under Board control or in other states shall be guided by rules set forth in this division;

(b) Applications for support through the WICHE Professional Student Exchange Program (PSEP) must be received by the Oregon WICHE Certifying Officer on or before October 15 of the year preceding the year for which support is sought. An application received after that date in an envelope postmarked not later than October 15 will be deemed to have been received on the 15th. PSEP applicants must be Oregon residents. Residency shall be determined as of the date of the application for PSEP support, not as of the date of expected admission or registration to a participating program. When PSEP funding is insufficient to support all certified applicants within a field, the Oregon WICHE Certifying Officer will work with the participating PSEP programs to which the applicants have applied to determine the ranked order of the applicants. Support will be offered within the available funding according to the rankings so established.

(2)(a) The Department and separate institutions may enter into agreements with individual institutions in other states or other countries whereby resident students specified by name in the Oregon institutions may transfer to the other institution, and an equal number of students specified by name from the other institution may transfer to the Oregon institution with a reciprocal waiving of additional fees ordinarily assessed to nonresident students in both institutions;

(b) The recommendation for a student exchange program, together with a copy of the proposed agreement between the institutions, shall be approved by the Chancellor or designee before the exchange program is undertaken. Further, the program recommendation and the proposed agreement between institutions shall set forth the reasons the exchange would be of particular benefit to the students in their chosen study programs and specify: fees to be paid by incoming and outgoing students; student responsibility for costs of transportation, housing, books, board and room and other incidentals; responsibility of institutions to assist students in obtaining housing, counseling and interpreters; procedures to be followed in state entitlement funding and counting credit hours; action to be taken if students do not regularly participate in the academic program being pursued; and procedures for providing transcripts;

(c) If an approved agreement provides for exchange of equal numbers of students, then unforeseen circumstances that later might cause a student to withdraw from the program shall not void the arrangements agreed upon by the two institutions.

(3) Attendance at a Department institution as an exchange student from another state or country cannot be used in establishing residence.

(4) Notwithstanding any other rule, and effective fall term of the 1989-90 academic year, a Department institution may provide that a vacant WICHE opening may be occupied by a nonresident, non-WICHE student who agrees not to seek residency status for the duration of the student's degree program and who agrees to pay a fee equal to the nonresident tuition fee for the duration of that program.

Stat. Auth.: ORS 351

Stats. Implemented: ORS 351.070

Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 8-1981, f. & ef. 9-30-81; Renumbered from 580-010-0050; HEB 4-1985, f. & ef. 7-30-85; HEB 2-1990, f. & cert. ef. 2-13-90; HEB 1-1993, f. & cert. ef. 2-5-93; HEB 3-1994, f. & cert. ef. 3-9-94; HEB 5-1996, f. & cert. ef. 12-18-96

#### 580-010-0086

##### Enrollment of Spouse and Dependent Children

(1) The spouse and dependent children of regular Department staff members with a full-time equivalent of at least .50 may enroll as students at resident fee rates in Department institutions. Effective January 1, 1999, for purposes of this rule, "spouse" includes the same sex domestic partner of an employee. The Chancellor or designee shall establish criteria to determine domestic partner eligibility.

(2) The spouse and dependent children of Department visiting instructors from other countries or other states with a full-time equivalent

alent of at least .50 may enroll in Department institutions at resident fee rates during the terms that the parent, guardian, or spouse is serving a Department institution as a visiting instructor.

Stat. Auth.: ORS 351

Stats. Implemented: ORS 351.070

Hist.: HEB 3-1978, f. & ef. 6-5-78; Renumbered from 580-020-0035; HEB 4-1985, f. & ef. 7-30-85; HEB 5-1996, f. & cert. ef. 12-18-96; OSSHE 2-1999(Temp), f. & cert. ef. 6-25-99 thru 12-8-99; OSSHE 6-1999, f. & cert. ef. 10-27-99

## 580-010-0090

### Incidental Fee Guidelines and Procedures

(1) The Board shall establish the incidental fee to be assessed at each institution in accordance with applicable statutes and upon the recommendation of the institution president and the Chancellor. This section shall not impair the entities of student government or the Board under ORS 351.070(1)(d).

(2) The duly recognized student government shall designate student representatives to meet with the institution president (or designee) for the purpose of formulating or modifying guidelines and procedures to be followed at that institution in budgeting, allocating, and recommending the amount of incidental fee income. Such guidelines and procedures (and modifications thereof) shall be subject to approval by the Board. If the student government and the institution president fail to agree, the Board shall formulate the guidelines and procedures.

(3) Guidelines and procedures formulated pursuant to section (2) of this rule shall provide at least for the following:

(a) Designation of either the recognized student government or other entity designated in the established guidelines and procedures (hereinafter cited as other designated entity) with which the institution president communicates;

(b) All student members of incidental fee committees and subcommittees thereof shall be students maintaining at least half-time status;

(c) All meetings of incidental fee committees and subcommittees thereof shall be open to the public and appropriate notice (to be specified in the guidelines and procedures) shall be given;

(d) Budget and allocation recommendations to the president shall be aggregated by three major categories: student union activities; educational, cultural and student government activities; and athletic activities; and shall be submitted in writing;

(e) The institution president shall within a reasonable time (to be specified in the guidelines and procedures) acknowledge and accept in writing the recommendations of the student government or other designated entity or notify the student government or other designated entity in writing of any modifications under consideration by the president, including reasons for the proposed modification;

(f) The student government or other designated entity shall have a reasonable time (to be specified in the guidelines and procedures) to consider and respond in writing to modifications proposed by the president. If the student government or other designated entity concurs with the president's proposed modifications, such shall be communicated in writing to the president within the specified time. If no response is received within the specified time, the student government or other designated entity shall be deemed to have concurred in the modifications;

(g) If the student government or other designated entity does not concur, such shall be communicated in writing to the president within the specified time. The president (or designee) shall (within the time specified in the guidelines and procedures) then meet with the representatives of the student government or other designated entity to attempt to reconcile the difference;

(h) If the institution president and the student government or other designated entity do not reach agreement within ten working days, either party may request a hearing before the Hearings Board. Within five working days of the request for hearing, the Hearings Board shall conduct a hearing and within five working days thereafter shall make written findings of fact and recommendations for resolution of the disagreement and shall provide such findings and recommendations to both parties. Both parties shall notify the Hearings Board and each other promptly (to be specified in the guidelines

and procedures) and in writing whether they accept or reject the recommendations of the Hearings Board:

(A) The Hearings Board shall consist of five members, two appointed by the institution president, two appointed by the student government or other designated entity and one mutually agreed upon. The members shall be selected promptly upon receipt of a request for a hearing. Prior to November 1 of each year, both parties will compile a list of persons mutually acceptable to sit on the Hearings Board. In the event a hearing is requested, the parties shall select the fifth Hearings Board member from this list;

(B) The institution president and the student government or other designated entity shall be given notice of the time and place of the hearing at least 24 hours before the hearing. All meetings of the Hearings Board shall be open to the public and appropriate notice shall be given;

(C) A representative of the student government or other designated entity and the institution president (or designee) shall present to members of the Hearings Board relevant information that may include, but is not limited to, memoranda, budget requests, minutes and correspondence.

(4) The recommended amount of the incidental fee for the campus shall be made by the president of the institution to the Chancellor. A representative of student government or other designated entity may appeal to the Chancellor the recommendations of an institution president regarding the amount of the incidental fee or the allocation among the three major categories listed in subsection (3)(c) of this rule. Allocations among programs and activities within a major category are not subject to appeal. The Chancellor shall order a timely review of the appeal and shall communicate to the parties involved a decision in writing within a reasonable time.

(5) The Chancellor shall recommend to the Board an incidental fee for each institution. Representatives of student government as well as other members of the public may appear in support of, opposition to, or to request modification of the recommended incidental fee in accordance with the provisions of OAR 580-001-0005. The Board will concurrently consider appeals of the substantial unresolved differences in the allocation of incidental fees among the three major categories. Except in extraordinary circumstances or upon its own motion, the Board will not consider allocations within a major category.

(6) Within a reasonable time (to be specified in the guidelines and procedures) after final action by the Board, the president shall confer with the student government or other designated entity in making any necessary adjustments in the allocations and shall communicate the final action of the Board and the president in writing to the student government or other designated entity.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 5-1984, f. & ef. 7-16-84; HEB 1-1993, f. & cert. ef. 2-5-93; HEB 5-1996, f. & cert. ef. 12-18-96

## Building Fee Project Process

## 580-010-0100

### Student Planning and Construction Committee

(1) Each student government shall establish a student campus planning and construction committee. Each institution shall incorporate the campus planning and construction committee into the established campus planning process for projects proposed to be funded, in whole or in part, from income from the student building fee.

(2) For projects proposed to be funded, in whole or in part, from income from the student building fee, the student planning and construction committee shall recommend to the appropriate official(s) of the student government, as described in OAR 580-010-0120, whether each such project should be approved and the relative priority of each such project. The committee may also request consideration of additional projects or project modifications that the committee or student member(s) identifies independently.

(3) If a project affects a facility in which operations are or will be funded, in whole or in part, from student incidental fee income, the committee will seek the recommendation of the institution's incidental fee committee before making its recommendation to the appropriate student government official(s).



Stat. Auth.: ORS 351.070  
 Stats. Implemented: ORS 351.070  
 Hist.: HEB 2-1997, f. & ef. 8-1-97

**580-010-0110****Incidental Fee Committee Review and Recommendation**

Each institution's Incidental Fee Committee will be given reasonable opportunity, to be specified in the guidelines and procedures of the student government, to review any project that affects a facility whose operations are or are intended to be funded, in whole or in part, from student incidental fee income. The Incidental Fee Committee shall recommend to the student planning and construction committee whether it believes the project should be approved and estimate, based upon the project's scope and schedule, the anticipated effect that the operation of the completed project will have on incidental fee amounts charged to students.

Stat. Auth.: ORS 351.070  
 Stats. Implemented: ORS 351.070  
 Hist.: HEB 2-1997, f. & ef. 8-1-97

**580-010-0120****Recommendations of Appropriate Student Government Official(s)**

The student government of each institution shall determine which of its elected officials will be charged with making recommendations to the institution's president regarding capital construction projects proposed to be funded, in whole or in part, from student building fee income and shall so notify the institution president. Such appropriate student government official(s) shall review the recommendations of the incidental fee and student planning and construction committees. Efforts shall be made by both the appropriate student government official(s) and the representatives of the college and university administration to reach common understanding and consensus on such recommendations. However, the appropriate student government official(s) may make recommendations to the institution president even if such consensus has not been reached.

Stat. Auth.: ORS 351.070  
 Stats. Implemented: ORS 351.070  
 Hist.: HEB 2-1997, f. & ef. 8-1-97

**580-010-0130****Agreement between Student Government and Institution President**

(1) The institution president shall review the recommendation of the appropriate student government official(s) prior to approving the institution's capital construction budget request for the upcoming biennium. If the institution president does not agree with a recommendation or priority ranking of the appropriate student government official(s), the president and the appropriate student government official(s) shall make good faith efforts to reach agreement.

(2) If agreement is not reached, the institution president and the appropriate student government official(s) shall submit the matter to a Hearings Board in the manner described in OAR 580-010-0090(3)(h). The hearing must be completed prior to the deadline for the president to submit the institution's request to the Chancellor's Office.

(3) If agreement has not been reached even after a hearing, the institution's president shall submit the institution's capital construction budget request to the Chancellor's Office and disclose that agreement has not been reached with the appropriate student government official(s).

Stat. Auth.: ORS 351.070  
 Stats. Implemented: ORS 351.070  
 Hist.: HEB 2-1997, f. & ef. 8-1-97

**580-010-0140****Capital Construction Budget Recommendations of Vice Chancellor for Finance and Administration**

(1) The Vice Chancellor for Finance and Administration or designee shall discuss with the parties any matters of disagreement between the institution president and the appropriate student government official(s) and shall take the information provided into account in making the Chancellor's capital construction budget recommendations regarding projects to be financed from the building fee to the Board of Higher Education. If the Chancellor's recommendation includes projects on which the institution and appropriate student government official(s) have not reached agreement, the Chancellor's Office shall disclose that a disagreement exists to the Board of Higher Education at the time of its capital construction budget recommendation.

(2) The Vice Chancellor for Finance and Administration shall base these recommendations on the following criteria:

- (a) Demonstrated project need and beneficial use to students;
- (b) Campus student support for the project;
- (c) Protection of asset investment and compliance with code requirements;
- (d) Co-funding availability; and
- (e) The historical share of building fee projects at a given campus compared to the System as a whole.

(3) The Vice Chancellor, within a reasonable time of receiving a request, shall provide a written report that specifies how criteria listed in subsection (2) of this rule were considered in the evaluation of a project.

Stat. Auth.: ORS 351.070  
 Stats. Implemented: ORS 351.070  
 Hist.: HEB 2-1997, f. & ef. 8-1-97

**DIVISION 11****STUDENT CENTERS, HEALTH SERVICES, HOUSING, FOOD SERVICE, AND RECREATIONAL AND INTER-COLLEGIATE ATHLETIC FACILITIES****Student Health Services****580-011-0005****Student Health Services**

(1) The institutions shall operate or provide student health services to safeguard the health of students through health education, medical treatment of injuries and diseases and limited counseling services.

(2) Student health services supported by student fees shall be made available to full-time and part-time students who are enrolled in courses taught by institution faculty and who have paid the health service fee adopted by the Board.

(3) An institution may also provide health services to:

- (a) Participants in on-campus, noncredit workshops and programs sponsored by the institution;
- (b) Participants in on-campus, noncredit workshops and programs sponsored by the institution under contract with an off-campus organization;
- (c) Participants in on-campus workshops and programs sponsored and taught by off-campus organizations under a lease or contract with the institution;
- (d) Other persons on an emergency basis;
- (e) Persons, during the summer, who: were registered and paid the health fee the previous spring term, intend to register for the upcoming fall term and pay a fee equal to the fee charged to regularly enrolled summer term students. Sign-ups shall be during a period in spring term designated by the director of health services.
- (f) Health service fees charged to these categories of users shall not be less than the current fees charged full-time and part-time students prorated according to the period of use.

(4) Charges may be made for prescriptions, laboratory services, immunizations and other special services in accordance with regulations adopted by the institutions.

(5) The student health services will neither pay nor be responsible for bills from private physicians or private hospitals, except in cases of advance contractual arrangements made by the institutions.

(6) Except as permitted by this section, faculty and staff (other than residents, interns and graduate assistants) are not eligible to use student health services operated or provided by the institutions. Institution executives may authorize that limited services, such as immunizations, injections and emergency services, be provided faculty and staff on a full-cost-reimbursement basis.

Stat. Auth.: ORS 351.070  
 Stats. Implemented: ORS 351.070  
 Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 14-1981, f. & ef. 12-18-81; HEB 6-1992, f. & cert. ef. 4-30-92; HEB 1-1993, f. & cert. ef. 2-5-93; HEB 5-1996, f. & cert. ef. 12-18-96

## Housing

### 580-011-0015

#### Purposes of Student Housing

(1) Student housing shall be planned to extend educational opportunity to students.

(2) Institutions providing housing shall maintain services and establish rules permitting residence hall living and the operation of family housing facilities to contribute to the institution's educational objectives.

Stat. Auth.: ORS 351.070  
 Stats. Implemented: ORS 351.070  
 Hist.: HEB 3-1978, f. & ef. 6-5-78

### 580-011-0020

#### Self-Supporting Concept for Student Housing

The self-supporting concept, as applied to student housing, anticipates that there shall be sufficient total income from charges to pay all direct costs, including debt service, designated apportioned physical plant, utility and insurance costs, and institutional and a proportional share of Board's Office accounting, overhead and administrative costs.

Stat. Auth.: ORS 351.070  
 Stats. Implemented: ORS 351.070  
 Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 4-1979, f. & ef. 7-20-79; HEB 1-1993, f. & cert. ef. 2-5-93; HEB 5-1996, f. & cert. ef. 12-18-96

### 580-011-0021

#### Campus Housing Advisory Committees

(1) Each institution providing housing for more than 2,000 students shall maintain a campus housing advisory committee to be composed of representatives of the faculty, undergraduate and graduate student body, administration and, if available, a local community housing agency. The president shall appoint the members of the committee. The president or designee shall consult with the institution's student government in the selection of student members. At least one member shall be a student who is eligible for student family housing if the institution provides such housing.

(a) The campus housing advisory committee will meet regularly during the academic year in scheduled public meetings to advise the president or designee of the adequacy of the housing provided by the institution in terms of the number, type, quality and affordability of units. The committee also shall consider the institution's campus master plan and long-range housing plans and advise about the adequacy of the plans in addressing needs for housing construction. The committee shall report its findings and recommendations, if any, to the president at least once during each biennium. At the discretion of the president, the committee may be assigned additional advisory responsibilities regarding campus housing.

(b) The president of each institution may assign the responsibilities of the campus housing advisory committee to any existing committee if that committee already includes representatives from the faculty, undergraduate and graduate student body, administration and local community housing agencies. Such a committee may be renamed accordingly.

(2) Whenever an institution proposes to construct or otherwise provide additional housing, or at least once during each biennium for institutions providing housing for more than 2,000 students, it shall report to the Chancellor about the housing conditions and needs of the institution. This report shall include information about the number of students housed in both residence halls and family housing facilities, the rates charged, the vacancy rates in institution-provided housing, the numbers of students on waiting lists for institution-provided housing in residence halls and in family housing facilities and the vacancy rates or other relevant information available from local public agencies concerning low and moderate income housing needs and conditions in the community in which the institution is located. The institution shall estimate the number of students eligi-

ble to be housed in family and married student housing if the institution provides such housing.

(a) In reports to the Chancellor, universities with more than 12,000 three-term average full-time equivalent regular students shall provide information about the number and percentage of enrolled students housed in institution-provided housing (both residence halls and family housing facilities) at comparable institutions in the PAC-10 Conference or at least three other comparable institutions elsewhere in the United States, preferably in the West.

(b) To the extent practicable, the institution shall report on undergraduate and graduate students as separate groups. In addition, if an institution is proposing to construct or otherwise provide additional housing, it shall estimate the costs of providing such housing and present a financial plan demonstrating that such additional housing will meet the self-supporting requirements of OAR 580-011-0020. That plan must calculate the effect the provision of the additional housing will have on the costs of and the housing rates charged by all institutions in the System. The report required in this subsection shall be reviewed by the appropriate campus housing advisory committee at least 60 days prior to its submission to the Chancellor. Any comments adopted by that committee, either as majority or minority reports, shall be provided in writing by the institution to the Chancellor along with its report.

Stat. Auth.: ORS 351.060 & 351.070  
 Stats. Implemented: ORS 351.070  
 Hist.: HEB 3-1991, f. 5-6-91, cert. ef. 7-1-91; HEB 1-1993, f. & cert. ef. 2-5-93; HEB 5-1996, f. & cert. ef. 12-18-96

### 580-011-0030

#### Rates of Charge for Student Housing

(1) Student housing charges shall provide sufficient income to make each category of housing--family housing, residence halls and cooperative housing--self-supporting and self-liquidating. Under exceptional circumstances, the Chancellor may authorize the use of income from one category to support the operation of another and the use of commingled student building fees to assist with financing of student housing.

(2) Rates of charge in the residence halls within the Department and within an institution shall be comparable.

Stat. Auth.: ORS 351.070  
 Stats. Implemented: ORS 351.070  
 Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 1-1993, f. & cert. ef. 2-5-93; HEB 5-1996, f. & cert. ef. 12-18-96

### 580-011-0035

#### Institutionally Controlled Cooperative Housing

Institutionally controlled cooperative housing projects shall be limited to those meeting the following conditions:

(1) The institutions select students occupying the units.

(2) Rental contracts are made between individual student occupants and the institutions.

(3) The units are wholly self-supporting and self-liquidating.

Stat. Auth.: ORS 351  
 Stats. Implemented: ORS 351.070  
 Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 5-1996, f. & cert. ef. 12-18-96

### 580-011-0040

#### Fraternities, Sororities, and Cooperatives

(1) Guidelines for fraternity, sorority and cooperative living are as follows:

(a) Fraternities, sororities and cooperatives shall comply fully with Board anti-discrimination rules and policies;

(b) The existence of fraternities, sororities and cooperatives shall be compatible with the educational objectives of the institution;

(c) Fraternities, sororities and privately owned cooperatives shall be housed in privately owned facilities constructed on privately owned land;

(d) The institution shall be responsible for judging the adequacy of the fraternity, sorority and cooperative houses for off-campus living for its students.

(2) In carrying out its responsibilities under subsection (1)(d) of this rule, the institution shall require proof of compliance with minimum health and safety standards under applicable public regulations.

Stat. Auth.: ORS 351

Stats. Implemented: ORS 351.070  
Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 7-1978, f. & ef. 12-5-78; HEB 5-1996, f. & cert. ef. 12-18-96

**580-011-0045**

**Charging of Administrative and Physical Plant Costs to Auxiliary Enterprises**

(1) A proportionate share of the Board's Office and institutional accounting, overhead and administrative costs are apportioned among the auxiliary enterprises in accordance with Executive Department and Board's Office policy directives. The basis for apportioning institutional accounting and administrative costs is determined by the institution with report to the Vice Chancellor for Finance and Administration.

(2) In recognition of use of student centers, housing, food service buildings, recreational buildings and intercollegiate athletic facilities for instructional and public service programs, institutions may fund from education and general services resources a proportionate share of the physical plant costs of operating and maintaining these auxiliary enterprises. Such funding is generally apportioned according to use and space except that education and general services resources normally shall not be used to support such revenue-producing areas as food service, bookstore, barber shop, game room, housing and other similar areas that should be self-supporting. The basis for apportioning institutional physical plant operation and maintenance costs shall be determined by the institution.

Stat. Auth.: ORS 351.070  
Stats. Implemented: ORS 351.070  
Hist.: HEB 6-1979, f. & ef. 7-20-79; HEB 4-1986, f. & ef. 1-17-86; HEB 10-1990, f. & cert. ef. 7-26-90; HEB 1-1993, f. & cert. ef. 2-5-93; HEB 5-1996, f. & cert. ef. 12-18-96

**DIVISION 12**

**PROHIBITED CONDUCT RELATING TO STUDENTS**

**580-012-0010**

**Proscribed Conduct**

The Board has proscribed certain conduct as listed in OAR 580-022-0045. Students engaging in proscribed conduct will be subject to sanctions according to institutional procedures.

Stat. Auth.: ORS 351  
Stats. Implemented:  
Hist.: HEB 3-1978, f. & ef. 6-5-78

**DIVISION 13**

**STUDENT RECORDS**

**580-013-0005**

**Institutional Regulations**

(1) The Board delegates to the president of each institution responsibility for developing institutional rules governing the form and variety of student records to be maintained in the institution, the nature of the information to be collected and the way in which such student information is to be recorded, maintained, used and eventually disposed of. Such institutional rules shall be consistent with Oregon laws and Board rules and with federal statutes and regulations.

(2) In the development of these rules, the president will give faculty and students an important voice, consistent with the nature of the academic community.

Stat. Auth.: ORS 351.070  
Stats. Implemented: ORS 351.070  
Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 1-1993, f. & cert. ef. 2-5-93; HEB 5-1996, f. & cert. ef. 12-18-96

**580-013-0010**

**Definitions**

(1) "Personal Records" means records containing information kept by the institution, division or department concerning a student and furnished by the student or by others at the student's or the institution's, division's or department's request, including, but not limited to, record of grades attained, information concerning discipline,

counseling, membership activity, employment performance and other individual student behavioral records.

(2) For purposes of compliance with ORS 351.065, "records of academic achievement" shall mean the record of credits earned toward a degree and/or degree(s) received.

Stat. Auth.: ORS 351  
Stats. Implemented: ORS 351.070  
Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 5-1996, f. & cert. ef. 12-18-96

**580-013-0015**

**Purpose of Student Records**

Only personal records demonstrably and substantially relevant to the educational and related purposes of the institution, division or department shall be generated or maintained.

Stat. Auth.: ORS 351  
Stats. Implemented: ORS 351.070  
Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 5-1996, f. & cert. ef. 12-18-96

**580-013-0020**

**Certain Information Not Required to Be Provided by Students**

No student shall be required to provide, except voluntarily, information as to race, religion, political affiliation or preferences, or personal values, except as required by state statute, federal law or valid federal rules, regulations or orders.

Stat. Auth.: ORS 351  
Stats. Implemented: ORS 351.070  
Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 5-1996, f. & cert. ef. 12-18-96

**580-013-0025**

**Locations and Custody of Student Records**

Official student personal records shall be maintained in locations central to the institution, division or department by which they are maintained, with the custody thereof assigned to designated personnel specifically charged with preserving the confidentiality of records in accordance with institutional rules.

Stat. Auth.: ORS 351  
Stats. Implemented: ORS 351.070  
Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 5-1996, f. & cert. ef. 12-18-96

**580-013-0030**

**Release of and Access to Student Records**

(1) Appropriate information about the student may be released without the student's consent. Such unrestricted access shall be limited to the following information:

- (a) Directory information, that is, information generally needed in identifying or locating a named student.
- (b) Objective evidence of a student's academic achievement, which is interpreted to be limited to information as to the degree(s) earned.

(2) Each institution shall each year give public notice of the categories of personally identifiable information that the institution has designated as directory information. Students shall have the right to refuse to permit the designation of any or all of the categories of personally identifiable information with respect to that student as directory information.

(3) All other information in the student records, apart from directory information as defined in section (1) above, shall be considered personal and confidential and subject to the restrictions hereinafter set forth in OAR 580-013-0035 through 580-013-0050.

Stat. Auth.: ORS 351.070  
Stats. Implemented: ORS 351.070  
Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 1-1993, f. & cert. ef. 2-5-93; HEB 5-1996, f. & cert. ef. 12-18-96

**580-013-0035**

**Confidential Records — Restrictions on Release**

(1) Personal records designated as confidential pursuant to ORS 351.070 or pursuant to the Federal Family Educational Rights and Privacy Act may be disclosed to institutional, state or statutorily authorized federal officials or employees who need the information in order to fulfill their official, professional responsibilities as required by law, institutional rules or internal management directives. Disclosure of personally identifiable information may also be made in connection with financial aid for which a student has applied or that a student has received or to accrediting organizations when nec-



essary to their accrediting functions. These records may not be released to any other person or agency without the student's written consent, unless on receipt of a subpoena or other court order or process. Institutional rules may provide for designated institutional officials to appear in court to test the validity of a subpoena or court order or process relating to release of student records.

(2) The president, or a designee, may make exception to the foregoing rule and may disclose personally identifiable information from the educational records of a student to appropriate parties in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individual. The factors to be taken into account in determining whether personally identifiable information from the educational records of a student may be disclosed under this rule shall include the following:

- (a) The seriousness of the threat to the health or safety of the student or other individual;
- (b) The need for the information to meet the emergency;
- (c) Whether the individuals to whom the information is disclosed are in a position to deal with the emergency;
- (d) The extent to which time is of the essence in dealing with the emergency.

(3) The health and safety exception to confidentiality shall be strictly construed.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 5-1980, f. & ef. 6-18-80; HEB 1-1993, f. & cert. ef. 2-5-93; HEB 5-1996, f. & cert. ef. 12-18-96

#### 580-013-0036

##### Transfer of Education Records

Each institution may, by rule, notify students that it will forward education records on request to any school in which a student seeks or intends to enroll. If an institution so provides, no further notice need be given of transfer of records to such other school.

Stat. Auth.: ORS 351

Stats. Implemented: ORS 351.070

Hist.: HEB 6-1980, f. & ef. 6-18-80; HEB 5-1996, f. & cert. ef. 12-18-96

#### 580-013-0040

##### Petition by Student for Change in Personal Record

The student shall have the right to review with appropriate institutional personnel any information contained in the student's records and to petition appropriate institutional officials as defined in institutional rules for additions or deletions to the record where the accuracy of the information in the file is in question, except in the following instances:

(1) Records created or maintained by a physician, psychiatrist, psychologist or other recognized professional or paraprofessional acting in a professional or paraprofessional capacity or assisting in that capacity.

(2) Records created, maintained or used only in connection with the provision of treatment to the student and not disclosed to anyone other than individuals providing the treatment; provided, that the records can be personally reviewed by a physician or other appropriate professional of the student's choice.

(3) Records relating exclusively to an individual in that individual's capacity as an employee.

(4) Financial records and statements of the parents of students or any information contained therein.

(5) Confidential letters and confidential statements of recommendation that were placed in the educational records of a student prior to January 1, 1975, provided that the letters and statements were solicited with the written assurance of confidentiality or sent and retained with a documented understanding of confidentiality and were used only for the purposes for which they were specifically intended.

(6) Confidential letters of recommendation and confidential statements of recommendation that were placed in the educational records of the student after January 1, 1975, respecting admission to an educational institution, respecting an application for employment or respecting the receipt of an honor or honorary recognition, pro-

vided that the student has waived rights to inspect and review letters and statements of recommendation.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 1-1993, f. & cert. ef. 2-5-93; HEB 5-1996, f. & cert. ef. 12-18-96

#### 580-013-0045

##### Availability of Student Records for Research Purposes

(1) The need for institutions to make information regarding the student available for research purposes shall be acknowledged and provided for in institutional rules on student records. The institutional rules shall provide adequate provisions to conceal the identity of students whose personal data or information is included in research.

(2) If the confidentiality of student records seems to be jeopardized in any way by release of information for research purposes, institutional rules shall provide that the institution is to obtain the student's written consent prior to releasing information for research purposes.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: HEB 3-1978, f. & ef. 6-5-78

#### 580-013-0050

##### Permanence, Duplication, and Disposal of Student Records

(1) Individual student records shall be maintained only for the minimum period of time required to serve the official functions of the office generating and maintaining them. The records shall then be disposed of in a manner designed to assure confidentiality.

(2) The permanent retention of student records shall be limited to records that the president or the State Archivist determine to be of long-range value to the student or the institution.

(3) Duplication of permanent student records shall be minimized. Duplicate permanent records shall be destroyed in accordance with section (4) of this rule.

(4) All duplicate copies of permanent records and all temporary student records shall be destroyed at a time to be determined and set forth in institutional rules and in a manner designed to assure confidentiality.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 1-1993, f. & cert. ef. 2-5-93; HEB 5-1996, f. & cert. ef. 12-18-96

## DIVISION 15

### DISCRIMINATION

#### 580-015-0005

##### Assistance to Organizations

No institution or division shall recognize, register or otherwise provide assistance to any organization that discriminates in its membership on the basis of age, disability, national origin, race, marital status, religion, sex or sexual orientation, except that institutions or divisions may provide assistance to organizations exempted under Title IX of the Educational Amendments of 1972 from discriminating on the basis of sex in their membership policies.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 2-1988, f. & cert. ef. 3-16-88; HEB 1-1993, f. & cert. ef. 2-5-93; HEB 5-1996, f. & cert. ef. 12-18-96

#### 580-015-0010

##### Definition of Discrimination

For the purposes of OAR 580-015-0010 to 580-015-0160, the terms:

(1) "Discrimination" means any act that either in form or operation, and whether intended or unintended, unreasonably differentiates among persons on the basis of age, disability, national origin, race, marital status, religion, sex or sexual orientation.

(2) "Sexual harassment" means any sexual advance, any request for sexual favors or other verbal or physical conduct of a sexual nature by an OSSHE employee when:

(a) Submission to such advances, requests or conduct is made either explicitly or implicitly a term or condition of a student's employment or academic experience; or

(b) Submission to or rejection of such advances, requests or conduct by a student is used as a basis or condition for employment and/or academic decisions affecting the student; or

(c) Such conduct interferes with the work or academic performance of a student because it has created an intimidating, hostile or offensive working or academic environment for the student who is the object of the conduct and a reasonable person of that student's gender would have been affected similarly to the student.

(3) "Other prohibited harassment" means verbal or physical conduct by an OSSHE employee based on a student's age, disability, national origin, race, marital status, religion or sexual orientation when such conduct interferes with the work or academic performance of the student who is the object of the conduct because it has created an intimidating, hostile or offensive working or academic environment for the student and a reasonable person of the student's age, disability, national origin, race, marital status, religion or sexual orientation would have been affected similarly to the student.

Stat. Auth.: ORS 351

Stats. Implemented: ORS 351.070

Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 2-1988, f. & cert. ef. 3-16-88; HEB 11-1990(Temp), f. & cert. ef. 10-3-90; HEB 15-1990, f. & cert. ef. 11-7-90; HEB 16-1990, f. & cert. ef. 12-18-90; HEB 4-1991, f. & cert. ef. 8-15-91; HEB 1-1993, f. & cert. ef. 2-5-93; HEB 4-1994, f. & cert. ef. 4-28-94; HEB 5-1996, f. & cert. ef. 12-18-96

#### 580-015-0015

##### **Discrimination Prohibited in All Higher Education Programs, Services and Interschool Activities**

No person in Oregon shall be subjected to discrimination in any Department program or service, school or interschool activity where the program, service, school or activity is financed in whole or in part by monies appropriated by the Legislative Assembly of the State of Oregon. Each institution and division shall promptly adopt and publicize, and shall maintain, a procedure for redressing the grievances of persons who are subject to discrimination. OAR 580-015-0010 to 580-015-0160 do not apply to claims of discrimination in employment, promotion, tenure or termination of employment except student employment as provided in OAR 580-015-0065(1).

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 9-1985, f. & ef. 12-19-85; HEB 1-1993, f. & cert. ef. 2-5-93; HEB 5-1996, f. & cert. ef. 12-18-96

#### 580-015-0020

##### **Appointment of Compliance Officer**

The Chancellor shall appoint a compliance officer who shall be responsible directly to the Chancellor for:

(1) General oversight of Department efforts to comply with ORS 659.150 and 659.155, and for bringing to the attention of the Chancellor any needed changes in Board rules or policies relating to compliance with such statutes.

(2) Working with presidents or division heads, or their designees, as requested, in assisting institutions and divisions in the development and maintenance of effective policies and rules relating to compliance with ORS 659.150 and 659.155, and in evaluating the effectiveness of their application.

(3) Evaluating periodically the evidence as to compliance with ORS 659.150 and 659.155, and reporting such evaluations to the Chancellor, presidents and division heads concerned.

(4) Carrying other responsibilities relating to assuring compliance with ORS 659.150 and 659.155 as may be assigned by the Chancellor.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 1-1993, f. & cert. ef. 2-5-93; HEB 5-1996, f. & cert. ef. 12-18-96

#### 580-015-0025

##### **Admissions**

(1) No person shall, on a prohibited basis, be denied admission or be subject to discrimination in admission.

(2) Each school, department or college in any institution, that has an independent admissions process, or one supplementary to the institution admissions process, is considered an administratively separate unit for admission purposes and may not discriminate unreasonably on any of the prohibited bases (i.e., age, sex, sexual orientation, marital status, disability, national origin, race, religion).

(3) No test or other criterion for admission that unreasonably differentiates among individuals on a prohibited basis shall be used, unless the use of the test or criterion is shown to be a valid means of predicting success in the educational program, and other suitable tests or criteria not having such an adverse effect are shown to be unavailable.

(4) No preference in admission shall be given one person over another on a prohibited basis, such as by ranking individuals on a prohibited basis.

(5) Numerical limitations on the number or proportion of persons to be admitted may not be established on a prohibited basis.

(6) In making admissions decisions, an institution:

(a) Shall not apply any rule concerning marital, parental or family status of an applicant or student that treats individuals differently on a prohibited basis;

(b) Shall not consider pregnancy, childbirth, termination of pregnancy or recovery therefrom to determine eligibility for admission, unless on a case-by-case basis the health of an individual relates directly to the capacity to participate effectively in activities necessary to the program. Such determinations shall be treated no differently than other health conditions;

(c) Shall not make pre-admission inquiry as to marital status of an applicant for admission, including whether such applicant is "Miss" or "Mrs."

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 2-1988, f. & cert. ef. 3-16-88; HEB 1-1993, f. & cert. ef. 2-5-93; HEB 5-1996, f. & cert. ef. 12-18-96

#### 580-015-0030

##### **Recruitment**

(1) In recruiting students, institutions shall not unreasonably differentiate among individuals on a prohibited basis.

(2) An institution shall not recruit primarily or exclusively from schools or other educational institutions that admit students predominantly on a prohibited basis, if such actions result in discriminatory enrollment.

Stat. Auth.: ORS 351.070

Stats. Implemented:

Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 1-1993, f. & cert. ef. 2-5-93

#### 580-015-0035

##### **Educational Programs and Activities**

(1) No individual shall, on a prohibited basis, be excluded from participating in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, or other educational program or activity operated by the institution, or, although not operated by the institution, is required of students by the institution.

(2) In providing aid, benefit, or service to students, institutions shall not discriminate on a prohibited basis, except where differential treatment is not unreasonable within the meaning of ORS 659.150 and 659.155.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: HEB 3-1978, f. & ef. 6-5-78

#### 580-015-0040

##### **Access to Course Offerings**

There shall be no unreasonable differentiation among individuals on a prohibited basis in access to classes, courses of study or other educational programs or activities offered by the institutions, provided, however, that:

(1) Students may be grouped within physical education classes and activities by objectively measured ability. They may also be separated by sex within classes during participation in bodily contact sports. Curricula serving the particular activity needs of males

or those of females may be offered, but enrollment may not be restricted on a prohibited basis.

(2) Physical education classes may use different standards for measuring skills and progress if use of a single standard would, on a prohibited basis, have an adverse effect on persons, or on the likelihood of their participation.

(3) Theater, dance, choral music and other artistic activities may differentiate participants in roles on the basis of sex if necessary to achieve specific artistic objectives.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 1-1993, f. & cert. ef. 2-5-93; HEB 5-1996, f. & cert. ef. 12-18-96

#### 580-015-0045

##### Counseling and Use of Appraisal and Counseling Materials

(1) Institutions shall neither discriminate among students on a prohibited basis in assistance rendered in making educational or career choices, or in the counseling and guidance services offered, nor among applicants for admission if such services are offered.

(2) Students or applicants for admission involved in the appraisal or counseling process shall not be differentiated on a prohibited basis by the nature of tests and materials used, except or unless differentiated materials covering the same occupations and interest areas are shown to be essential to the elimination of bias with respect to age, sex, sexual orientation, marital status, disability, national origin, race and religion.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 2-1988, f. & cert. ef. 3-16-88; HEB 1-1993, f. & cert. ef. 2-5-93; HEB 5-1996, f. & cert. ef. 12-18-96

#### 580-015-0050

##### Housing

Institutions offering housing facilities shall not, on a prohibited basis, unreasonably differentiate among applicants or students in housing fees charged or services or benefits offered in housing, except as provided below:

(1) Separate housing may be provided for the separate sexes.

(2) Available housing may be divided between men and women on the basis of the number of applicants for housing of each sex, provided the housing is comparable in quality and cost.

(3) Qualifications for occupancy of family housing shall be the same for married women students as for married men students, and shall be the same for single parents of either sex.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: HEB 3-1978, f. & ef. 6-5-78

#### 580-015-0055

##### Comparable Facilities

(1) Separate rest rooms, change and locker rooms, showers, baths and toilet facilities, provided on the basis of sex, must be reasonably comparable in convenience and quality.

(2) Institutions and divisions should ensure reasonable access by persons with disabilities to facilities including classrooms, locker rooms, showers and rest rooms.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 1-1993, f. & cert. ef. 2-5-93; HEB 5-1996, f. & cert. ef. 12-18-96

#### 580-015-0060

##### Financial Assistance

(1) In providing financial assistance to applicants or students, institutions shall not unreasonably differentiate on a prohibited basis, except as provided below:

(a) In determining the amount or types of assistance to be granted;

(b) In limiting eligibility for assistance that is of any particular type or source;

(c) In the application of criteria.

(2) Institutions may not assist any person, organization or group in the administration of financial aid on a prohibited basis.

(3) Institutions shall comply with implementing regulations of Title IX, Educational Amendments of 1972, with respect to administration of sex-restricted scholarships and fellowships.

(4) Institutions that award athletic scholarships or grants-in-aid must ensure that reasonable opportunity exists for members of each sex to participate in intercollegiate athletics. Athletic scholarships, unlike nonathletic scholarships, may be awarded on the basis of sex, inasmuch as separate teams are permitted.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 1-1993, f. & cert. ef. 2-5-93; HEB 5-1996, f. & cert. ef. 12-18-96

#### 580-015-0065

##### Employment Assistance to Students

(1) Institutions and divisions shall assure that nondiscriminatory policies are followed in student employment. Discrimination grievances arising out of student employment shall be addressed using the procedures required by or described in OAR 580-015-0015 and 580-015-0090 through 580-015-0155.

(2) Institutions and divisions shall not assist prospective employers or agencies known by them to discriminate on a prohibited basis in their recruitment, hiring or employment practices. Placement officers and other Department personnel who assist in the recruiting and hiring of students shall take steps to inform prospective employers of the requirements of nondiscrimination under the law.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 9-1985, f. & ef. 12-19-85; HEB 11-1990(Temp), f. & cert. ef. 10-3-90; HEB 15-1990, f. & cert. ef. 11-7-90; HEB 16-1990, f. & cert. ef. 12-18-90; HEB 4-1991, f. & cert. ef. 8-15-91; HEB 5-1996, f. & cert. ef. 12-18-96

#### 580-015-0070

##### Health and Insurance Benefits and Services

(1) An institution or any constituents, including student groups, may not offer to students a medical, hospital or accident policy, plan, benefit or service that unreasonably discriminates on a prohibited basis.

(2) Institutions may offer a benefit or service even though it is not used by the same proportion of students of one group as of another. When full-coverage health services are provided, basic gynecological care shall be provided.

(3) Whatever limits a health service establishes as to services offered shall not differentiate unreasonably among individuals on a prohibited basis.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 1-1993, f. & cert. ef. 2-5-93; HEB 5-1996, f. & cert. ef. 12-18-96

#### 580-015-0075

##### Marital or Parental Status

(1) Any rule dealing with marital, parental or family status must be applied equally to men and women students.

(2)(a) Institutions and divisions shall not discriminate against any student, or exclude any student from an educational program or activity, including any class or extracurricular activity on the basis of such student's pregnancy, childbirth, false pregnancy, termination of pregnancy or recovery therefrom, unless the student requests voluntarily to participate in a separate portion of the program or activity;

(b) Institutions and divisions may require the student to obtain the certification of a physician that the student is physically and emotionally able to continue participation in the normal educational program or activity so long as certification is required of all students for other physical or emotional conditions requiring the attention of a physician. In such cases, the institution may require reasonable efforts by the affected individual to secure appropriate health insurance coverage or to hold the institution harmless from consequences flowing from error or misdiagnosis on the part of the student's physician.

(3) Pregnancy, termination of pregnancy or related conditions must be treated the same as other temporary disabilities. Whatever



benefits and services are available to students who are temporarily disabled, including medical services and leaves of absence, shall apply equally to pregnancy-related disabilities.

(4) Institutions and divisions may maintain, on an elective basis only, educational programs or activities specifically for pregnant students. When such programs and activities are maintained, institutions and divisions shall assure that they are comparable in quality to those offered nonpregnant students.

(5) Institutions and divisions shall consider pregnancy and pregnancy-related conditions a justification for a leave of absence for so long a period of time as is deemed medically necessary by the student's physician, at the conclusion of which the student shall be reinstated to the status that she held when the leave began.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 1-1993, f. & cert. ef. 2-5-93; HEB 5-1996, f. & cert. ef. 12-18-96

#### 580-015-0080

##### Athletics

(1) No person shall, on a prohibited basis, be excluded from participation in or be treated differently from another person, or otherwise be discriminated against in any intercollegiate, club, recreational or intramural athletics offered by the institution, except as provided below:

(a) Intercollegiate and club sports, where team selection is based on competitive skills, may have separate teams based on sex or physical disability;

(b) If only one team is offered in a noncontact sport, students may not, on a prohibited basis, be excluded from trying out;

(c) If only one team is offered in a bodily contact sport, members of the excluded sex need not be allowed to try out;

(d) Noncontact intramural and recreational sports, where team selection is not competitive, must be offered on a coeducational basis. Separate teams may be offered for contact intramural and recreational sports.

(2) Institutions shall not, in the provision of athletic opportunities, unreasonably differentiate among individuals on a prohibited basis.

(3) In assessing the total athletic opportunity provided, institutions shall be guided by regulations implementing Title IX of the Educational Amendments of 1972 and shall assess at least the following:

- (a) Appropriateness of equipment and supplies;
- (b) Games and practice schedules;
- (c) Travel and per diem allowances;
- (d) Opportunity for coaching and academic tutoring;
- (e) Coaches and tutors;
- (f) Locker rooms, practice and competitive facilities;
- (g) Medical and training services;
- (h) Housing and dining facilities and services;
- (i) Publicity.

(4) Athletic expenditures need not be equal but the pattern of expenditures must not result in a disparate effect on opportunity. Institutions may not discriminate in the provision of necessary equipment, supplies, facilities, and publicity for sports programs.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 1-1993, f. & cert. ef. 2-5-93; HEB 5-1996, f. & cert. ef. 12-18-96

#### 580-015-0085

##### Textbooks and Curricular Materials

Nothing herein either prohibits or requires the use of any particular textbook or curricular materials. If, however, materials are found upon investigation to exert a discriminatory impact on the basis of age, sex, sexual orientation, marital status, disability, national origin, race or religion, the institutions and divisions shall make a reasonable effort to make available supplemental alternative nondiscriminatory materials.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 2-1988, f. & cert. ef. 3-16-88; HEB 1-1993, f. & cert. ef. 2-5-93; HEB 5-1996, f. & cert. ef. 12-18-96

#### 580-015-0090

##### Procedure for Reporting Discrimination

(1) Each institution and division shall make available a person to serve as a grievance counselor to assist students and others in formulating and following up complaints of alleged prohibited discrimination.

(2) Each Department institution or division shall designate a compliance officer to receive complaints of alleged noncompliance with OAR 580-015-0015. Reasonable efforts shall be made to give notice of the name, office address and telephone number of the grievance counselor and compliance officer to all applicants for and recipients of the services of each Department institution or division.

(3) All complaints shall be made to the compliance officer at the respective institution or division and shall be put into writing by the compliance officer if not submitted in writing, and signed by the complainant. The complaint shall set forth the factual basis of the alleged noncompliance within 180 days, or 365 days if the complaint alleges sexual harassment or other prohibited harassment as defined by OAR 580-015-0010(2) and (3), from the date of the alleged noncompliance.

(4) Upon receipt of the complaint, the compliance officer shall promptly deliver copies of the complaint to the president of the institution or head of the division involved and to any individual respondents, and to the Chancellor. The compliance officer shall retain a copy of the complaint in files established at the institution or division for that purpose.

Stat. Auth.: ORS 351 & 659.150

Stats. Implemented: ORS 351.070

Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 1-1993, f. & cert. ef. 2-5-93; HEB 4-1994, f. & cert. ef. 4-28-94; HEB 5-1996, f. & cert. ef. 12-18-96

#### 580-015-0095

##### Exemption from Reprimand or Retaliatory Action

No individual filing a complaint or otherwise participating in any of the actions authorized under OAR 580-015-0010 through 580-015-0160 shall be subject to reprimand or retaliatory action by any institution, division or employee of the Department for having participated in activities provided for under the Administrative Rules.

Stat. Auth.: ORS 351

Stats. Implemented: ORS 351.070

Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 5-1996, f. & cert. ef. 12-18-96

#### 580-015-0100

##### Investigation of Complaints

(1) Within 30 days after receipt of the complaint, the institution or division shall complete such investigation of the matter as it deems necessary, order the correction of any noncompliance found to exist or to have occurred and transmit a report of the findings of its investigation and corrective action to the Chancellor, to the complainant and to the compliance officer with whom the complaint was filed.

(2) The 30-day period allowed under section (1) of this rule may be extended for not more than 30 days upon application by the institution or division and approval of the Chancellor.

Stat. Auth.: ORS 351.070

Stats. Implemented:

Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 1-1993, f. & cert. ef. 2-5-93

#### 580-015-0105

##### Appeal to the Chancellor

(1) In the judgment of the Chancellor, whenever an institution or division fails to conduct a satisfactory investigation, fails to take appropriate corrective action or fails to make reports on complaints within the 30-day period where no extension has been granted or within the period allowed under the extension, the Chancellor shall initiate an investigation of the complaint.

(2) Whenever the complainant is not satisfied with the report, or if no report is made within the time allotted, the complainant may request in writing that a hearing be held on the complaint. The request shall state the reasons for dissatisfaction. The request shall be filed with the compliance officer who shall forward a copy promptly to the Chancellor. On receipt of the request, the Chancellor may order the hearing; provided, however, that the Chancellor may review the report and other information presented and then may

order that no hearing be held and declare that the action of the institution is satisfactory. The Chancellor's order shall be final.

Stat. Auth.: ORS 351  
Stats. Implemented:  
Hist.: HEB 3-1978, f. & ef. 6-5-78

#### 580-015-0110

##### Appointment of Hearing Officer

The hearing shall be conducted by a hearing officer appointed by the Chancellor.

Stat. Auth.: ORS 351  
Stats. Implemented:  
Hist.: HEB 3-1978, f. & ef. 6-5-78

#### 580-015-0115

##### Notice of Hearing: Time and Place

The hearing officer conducting the hearing shall set a hearing date not more than ten days after receipt of the request for a hearing. The hearing shall be conducted at the institution or division at which the complaint was made. Written notice of the time and place of the hearing shall be given to the complainant and the respondent institution or division at least ten days prior to the date set for the hearing. The hearing officer may postpone the hearing for valid and sufficient cause, with notice to all parties. The hearing officer shall not permit unnecessary delay.

Stat. Auth.: ORS 351  
Stats. Implemented: ORS 351.070  
Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 5-1996, f. & cert. ef. 12-18-96

#### 580-015-0120

##### Written Statement of Case

Not less than five days before the date set for the hearing, the respondent institution or division may file with the hearing officer such written statement of its case as it elects to file and shall file a copy of the report of its investigation and action. A copy of any written statement and report of the investigation and action shall be provided the complainant at the same time they are provided to the hearing officer.

Stat. Auth.: ORS 351  
Stats. Implemented: ORS 351.070  
Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 5-1996, f. & cert. ef. 12-18-96

#### 580-015-0125

##### Open Hearings

The hearing shall be open to the public, except when materials are considered that are not public records.

Stat. Auth.: ORS 351.070  
Stats. Implemented:  
Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 1-1993, f. & cert. ef. 2-5-93

#### 580-015-0130

##### Conduct of Hearing

(1) A tape recording or other verbatim record of the hearing shall be taken and maintained.

(2) The testimony of witnesses, on oath or affirmation, and other evidence concerning any disputed facts shall be received by the hearing officer. The hearing officer shall exclude irrelevant, immaterial or unduly repetitious evidence, but shall accept all other evidence of a type commonly relied on by reasonably prudent persons in conduct of their serious affairs.

(3) The hearing officer shall encourage stipulations of undisputed facts, and may seek to conciliate the dispute either before or after the hearing.

(4) The hearing officer shall make findings of fact according to the preponderance of evidence.

Stat. Auth.: ORS 351.070  
Stats. Implemented: ORS 351.070  
Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 1-1993, f. & cert. ef. 2-5-93; HEB 5-1996, f. & cert. ef. 12-18-96

#### 580-015-0135

##### Presentation of Evidence

The complainant shall have the responsibility of producing satisfactory evidence of respondent's noncompliance with OAR 580-015-0015. Both the complainant and the respondent shall have the right to appear and to participate in the hearing, to present relevant

evidence to the hearing officer, to cross-examine witnesses and to submit rebuttal evidence.

Stat. Auth.: ORS 351.070  
Stats. Implemented: ORS 351.070  
Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 1-1993, f. & cert. ef. 2-5-93; HEB 5-1996, f. & cert. ef. 12-18-96

#### 580-015-0140

##### Position Summaries

At the conclusion of the testimony, the hearing officer may permit each party to make a summation; if this privilege is extended to one side, it must be extended to the other side. The hearing officer may request the timely submission of written summations.

Stat. Auth.: ORS 351  
Stats. Implemented:  
Hist.: HEB 3-1978, f. & ef. 6-5-78

#### 580-015-0145

##### Findings and Recommendations

(1) The hearing officer shall make explicit findings of fact respecting the alleged noncompliance of the respondent institution or division. The findings shall be based on the hearing record.

(2) If the hearing officer finds that noncompliance has occurred, the hearing officer shall formulate a curative recommendation for compliance.

(3) In formulating the curative recommendation, the hearing officer shall consider the willingness and ability of the respondent to eliminate the noncompliance and any other factors relevant to the particular case.

(4) The hearing officer shall submit findings of fact, conclusions and curative recommendation to the Chancellor, the complainant, the respondent institution or division and the Director of Affirmative Action for the State of Oregon.

Stat. Auth.: ORS 351.070  
Stats. Implemented: ORS 351.070  
Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 1-1993, f. & cert. ef. 2-5-93; HEB 5-1996, f. & cert. ef. 12-18-96

#### 580-015-0150

##### Order by Chancellor

(1) The Chancellor may accept, modify or reject the findings of the hearing officer, and shall issue an order containing any findings of fact based on the hearing or on investigation by the Chancellor under OAR 580-015-0105 and the action necessary for compliance, if the institution or division is found in noncompliance. The order shall be issued no more than 15 days after completion of the hearing and copies shall be given promptly to the respondent, to the complainant, and to the compliance officer of the affected institution or division.

(2) If the Chancellor believes sanctions should be imposed against any individual in addition to action necessary for compliance, the Chancellor shall notify the head of the institution or division, stating the reasons. Any proceedings thereafter taken against any individual pursuant to this paragraph shall be according to *Administrative Rules* of the Board or rules of the institution or division, as appropriate.

(3) If requested, the hearing record shall be put into writing and shall be made available to the complainant and the respondent institution or division for copying, or copies thereof shall be made for them. The cost of reducing the record to writing, and of the making of copies thereof, shall be borne by the party so requesting.

Stat. Auth.: ORS 351.070  
Stats. Implemented: ORS 351.070  
Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 1-1993, f. & cert. ef. 2-5-93; HEB 5-1996, f. & cert. ef. 12-18-96

#### 580-015-0155

##### Sanctions Against Institution or Other Division

(1) If, based on the Chancellor's own investigation of alleged noncompliance or as a result of the Chancellor's examination of the findings of fact of the hearing officer, the Chancellor concludes that any institution or division has violated OAR 580-015-0005, that the institution or division has a record of noncompliance, that the magnitude and effect of the institution or division's noncompliance is sufficient to warrant monetary sanctions or that there is an unwilling-

ness of the institution or division to comply with OAR 580-015-0015, or any combination of these conclusions, the Chancellor may impose a monetary sanction against the institution or division.

(2) A monetary sanction imposed under this rule shall not exceed the amount of legislatively appropriated funds received by the institution or division against which it is assessed. No monetary sanction in excess of \$10,000 shall be assessed without approval of the Board.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 1-1993, f. & cert. ef. 2-5-93; HEB 5-1996, f. & cert. ef. 12-18-96

#### 580-015-0160

##### Requirement of Prompt Attention to Complaints

It is the desire and direction of the Board that, in carrying out the duties imposed on them by OAR 580-015-0010 to 580-015-0155, the Chancellor, presidents, division heads, compliance officers, hearing officers and other personnel shall give high priority to the performance of such duties and shall proceed as expeditiously as possible to ascertain whether discrimination exists and to take curative measures.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 1-1993, f. & cert. ef. 2-5-93; HEB 5-1996, f. & cert. ef. 12-18-96

#### 580-015-0165

##### Students Unable Because of Religious Beliefs to Attend Classes on Certain Days

Any student who, because of religious beliefs, is unable to attend classes on a particular day shall be excused from attendance requirements and from any examination or other assignment on that day. The student shall make up the examination or other assignment missed because of the absence.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: HEB 3-1978, f. & ef. 6-5-78

### DIVISION 19

#### STANDARDS FOR STUDENT AND EMPLOYEE PROGRAMS

#### 580-019-0001

##### Minimum Standards for Institutional Drug and Alcohol Treatment Programs

(1) Each institution shall have in place a comprehensive drug and alcohol abuse policy and implementation plan that shall contain:

(a) A statement of institutional philosophy regarding illegal use and abuse of alcohol and drugs;

(b) All policies related to on-campus use of alcohol and illegal drugs by employees and students and their interrelation;

(c) A list of curricular offerings related to drug and alcohol abuse;

(d) A description of programs designed to deal with student alcohol and drug abuse including implementation plans for any programs not currently in place, specifically identifying:

(A) Education and prevention programs;

(B) Treatment or referral programs.

(e) A description of programs designed to deal with employee alcohol and drug abuse including implementation plans for any programs not currently in place, specifically identifying:

(A) Education and prevention programs;

(B) Treatment or referral programs.

(f) A strategy for dissemination of the institution's philosophy statement, policies and information regarding the institution's programs related to drug and alcohol abuse education, prevention, and treatment or referral.

(2) Institutions shall review the plans required in section (1) of this rule biennially and update them to reflect changing needs.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 6-1990, f. & cert. ef. 6-4-90; HEB 1-1993, f. & cert. ef. 2-5-93; HEB 5-1996, f. & cert. ef. 12-18-96

### DIVISION 20

#### ACADEMIC CLASSIFICATION AND COMPENSATION

##### Classification

#### 580-020-0005

##### Academic Rank

(1) Academic ranks shall consist of graduate and faculty rank. Graduate ranks are graduate teaching assistant, graduate research assistant and fellow. Faculty ranks are instructor, senior instructor, research assistant, research associate, lecturer, assistant professor, associate professor and professor. Faculty rank will not be given to graduate students.

(2) The following definitions of the graduate rank of fellow and of the less common nonprofessional faculty ranks shall govern their use:

(a) "Fellow" may be used in a variety of cases where individuals are associated with the institution for limited periods of time for further training or experience; they may or may not be required to provide services to the institution. The rank may be used for both pre- and post-doctoral fellowships.

(b) "Research Associate" and "Senior Research Associate" may be used for staff appointees in the conduct and direction of independent research. Such appointees will normally hold the doctoral degree or the highest degree appropriate to the field in which the research is being conducted.

(c) "Senior Instructor" may be used for the appointment or promotion of staff members who have special skills or experience needed in the instructional program of the institution, but who would not normally be appointed or promoted to professorial ranks. Promotion to the rank of senior instructor will not be made effective before the end of the third year of service. Appointment or promotion to the rank of senior instructor may be made with or without indefinite tenure. Appointment to this rank does not preclude subsequent advancement in rank under appropriate conditions.

(d) "Research Assistant" and "Senior Research Assistant" may be used for staff appointees engaged in the conduct of research under supervision. Such appointees will hold a degree appropriate to the field in which the research is being conducted.

(e) "Lecturer" may be used for appointments of faculty members for part-time service who have limited formal academic preparation but whose professional achievements are such that expected salary would equal that paid to persons with professorial rank.

(3) The adjectives "adjunct" or "visiting" may be joined to academic ranks in those cases in which the institution wishes to draw upon the skills of certain persons in the community or in other educational, industrial or governmental institutions for help in carrying forward teaching, research or service commitments (e.g., doctors, dentists, lawyers, psychiatrists, professors or administrators at other academic or governmental institutions, public school teachers or administrators).

(4) Academic rank is assigned to staff members in the unclassified academic service, whether the type of service is teaching, research, extension, administration or other service. Deans, vice presidents, presidents, Chancellor and vice chancellors shall have the academic rank of professor.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 9-1979, f. & ef. 8-22-79; HEB 1-1993, f. & cert. ef. 2-5-93; HEB 5-1996, f. & cert. ef. 12-18-96

#### 580-020-0006

##### Definition of Unclassified Service

Unclassified service includes positions that do not meet the criteria for academic faculty but which, based on professional job requirements and responsibilities:

(1) Are exempt from the provisions of the Public Employee Collective Bargaining Act (PECBA), ORS 243.650–243.782; how-



ever, not all positions in unclassified service are exempt from PECBA; or

- (2) Share a community of interest with academic faculty; and
- (a) Include academic research, public service, or instruction; or
- (b) Exercise discretion in establishing policy; or
- (c) Require education and training comparable to academic faculty; or
- (d) Have administrative decision-making responsibilities beyond office clerical duties. Examples of positions that may meet the criteria listed above include, but are not limited to:
  - (A) Chancellor, Chancellor's cabinet;
  - (B) Presidents, president's cabinet;
  - (C) Provosts, vice provosts, associate vice provosts, and assistant vice provosts;
  - (D) Vice presidents and associate vice presidents;
  - (E) Deans and associate deans;
  - (F) Directors and associate directors of academic, administrative, and service units;
  - (G) Controllers and budget officers;
  - (H) Registrars and associate registrars;
  - (I) Legal counsel and attorneys;
  - (J) Athletic directors and associate athletic directors;
  - (K) Executive and other special assistants to each of the positions listed in numbers one through ten (above), providing that the executive or other special assistant positions otherwise meet the criteria for unclassified service (stated above);
  - (L) Assistant vice presidents, assistant deans, department heads/chairs, assistant directors, managers, and assistant registrars where positions require specialized/degree education and training;
  - (M) Librarians, archivists, and museum or collection curators where positions require specialized/degree education and training or where responsibilities include academic research or instruction but does not include positions having primarily clerical responsibilities;
  - (N) Advisors and counselors, including academic, financial aid, admissions, career, residential life, and athletic, where positions require specialized/degree education and training;
  - (O) Assistant athletic directors, athletic coaches, assistant athletic coaches, athletic trainers, assistant athletic trainers, and athletic eligibility and compliance officers where positions require specialized/degree education and training;
  - (P) Interpreters;
  - (Q) Development and advancement officers where positions require specialized/degree education and training;
  - (R) Physicians, psychologists, and clinical counselors where positions require specialized/degree education and training;
  - (S) General managers, directors, producers, and announcers of state radio and television service;
  - (T) Managers, directors and administrators of student affairs functions, where positions require specialized/degree education and training.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: OSSHE 3-2003(Temp), f. & cert. ef. 12-1-03 thru 5-21-04; OSSHE 2-2004, f. & cert. ef. 4-8-04

## Compensation

### 580-020-0010

#### Compensation Plan for Academic Staff

(1) Pursuant to state law, the principles of a compensation plan are established for the academic staff as set out below. Pay ranges shall be established for the various academic ranks with due consideration given to relative responsibilities of each rank, prevailing rates of pay in other universities, colleges, and elsewhere for similar responsibilities, availability of a competent professional staff, living costs and other pertinent information.

(2) Minimum and maximum rates and such intermediate rates considered necessary and equitable shall be established for the various academic ranks and positions, provided, however, that exceptions may be allowed as circumstances require. Normally the established minimum pay rate for a rank shall be paid upon appointment. It is permissible in the interest of the state to make an appointment above or below the minimum rate for the academic rank. Similarly,

the salary of an individual may be above or below the prescribed normal maximum for the academic rank. Normally, academic staff members shall be paid at one of the rates set forth in the pay ranges, subject to availability of funds and the exception noted above.

(3) Salary increases are not automatic. Increases shall be recommended only for staff members demonstrating high standards of work performance. Increases shall normally be effective beginning with the fiscal year following completion of one year's service.

(4) Implementation and amendments to the plan shall be based on recommendation of the Chancellor after consultation with the presidents and division heads.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 1-1993, f. & cert. ef. 2-5-93; HEB 5-1996, f. & cert. ef. 12-18-96

### 580-020-0015

#### Compensation Plan for Classified Staff

Compensation of classified employees including fringe benefits and other conditions and terms of employment shall be according to the rates and regulations in the state compensation plan, or by collective bargaining agreement, as appropriate.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: HEB 3-1978, f. & ef. 6-5-78

### 580-020-0020

#### Payment of Academic Staff Compensation

Salaries of all Board academic staff with the rank of instructor or above, employed on an academic year basis, unless authorized otherwise by the Chancellor, shall be paid as follows: One-eighteenth of the annual salary shall be paid at the end of September of each year, one-ninth at the end of each succeeding month to and including May, and one-eighteenth at the close of the fiscal year.

Stat. Auth.: ORS 351

Stats. Implemented: ORS 351.070

Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 5-1996, f. & cert. ef. 12-18-96

### 580-020-0025

#### Additional Pay to Full-Time Staff

Institutions and divisions are authorized to provide payment in addition to regular salaries when, at the request of the home institution or division or another Department institution or division, a staff member provides substantial service over and above the regular services expected.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: HEB 3-1978, f. & ef. 6-5-78

### 580-020-0030

#### Perquisites

When employees receive perquisites, such as living quarters or meals, in addition to cash salary, proper notation thereof shall be made on the salary budget together with an explanation showing items allowed and the value thereof. Granting of perquisites to employees on a wage or salary basis requires the approval of the president of the institution or head of the division concerned at the beginning of each fiscal year.

Stat. Auth.: ORS 351.070

Stats. Implemented:

Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 1-1993, f. & cert. ef. 2-5-93

### 580-020-0040

#### Contribution to Pension Plan

The Board of Higher Education designates the contribution required of employees to a retirement plan to be an "employer contribution" as defined by 26 USC §414(h)(2). Employees may not receive this amount to make the contribution directly. Employees' gross salary will be reduced by the contributed amount prior to reporting for tax purposes.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 351.070

Stats. Implemented:

Hist.: HEB 2-1995, f. 5-3-95, cert. ef. 7-1-95

**580-020-0050**

**OSSHE Tax Deferred Investment Program Participation Fee**

The Chancellor, or designee, may enter into written agreements with faculty and staff employed by the State Board of Higher Education, and with one or more insurance companies and mutual funds, to provide tax deferred investment opportunities to faculty and staff as provided by ORS 243.810–243.830. The Chancellor, or designee, may, as a condition to entering into such agreements or continuing such agreements, require faculty and staff participants to pay annually an administrative fee for the costs of administering the program. The administrative fee shall be based on an amount not to exceed the amount needed to administer the program.

Stat. Auth.: ORS 351.070

Stats. Implemented:

Hist.: HEB 3-1992, f. & cert. ef. 2-19-92

**580-020-0100**

**Human Resources System**

(1) The Vice Chancellor for Finance and Administration, or designee, shall develop, implement and maintain a human resources system for nonacademic employees to include:

(a) A job evaluation system for positions within the State System of Higher Education;

(b) A plan for compensating employees consistent with the job evaluation system; and

(c) Policies for employees not covered by collective bargaining agreements relating to leave, lay-offs, terminations, grievances and other terms of employment.

(2) Each institution is responsible for evaluating jobs and allocating them according to the job evaluation system and assuring that employee compensation is in accordance with the compensation plan.

(3) The Vice Chancellor for Finance and Administration, or designee, shall engage in collective bargaining with any certified or recognized exclusive employee representative.

(4) Each institution shall develop, implement and maintain recruitment and selection methods designed to achieve a qualified and diverse workforce.

(5) Until the Vice Chancellor for Finance and Administration, or designee, and the institutions implement internal management directives or policies for job evaluation, compensation, recruitment, terms of employment and position management, the rules and procedures established by the Department of Administrative Services, under ORS Chapter 240 as they existed on the effective date of 1995 Oregon Laws, Chapter 612 (July 1, 1995), shall apply to the Oregon State System of Higher Education.

Stat. Auth.: ORS 351

Stats. Implemented: ORS 351.070

Hist.: HEB 2-1996, f. & cert. ef. 2-22-96; HEB 5-1996, f. & cert. ef. 12-18-96

**DIVISION 21**

**CONDITIONS OF SERVICE**

**580-021-0005**

**Appointment Procedures**

(1) Each person to be appointed or reappointed as a member of the faculty shall be sent written notification of appointment and conditions and terms thereof for each period of employment. The notification shall be signed by the president or, for noninstitutional personnel, by the Chancellor or a designee. All appointments for a period in excess of one year must be authorized by the Chancellor.

(2) The notice of appointment shall include, but not be limited to, the following:

(a) Effective date of appointment;

(b) Description of position offered (including references to any unusual duties);

(c) Academic rank and title offered;

(d) Duration of appointment;

(e) Tenure status, including the nature of any restrictions on eligibility for tenure (e.g., limited term or temporary appointments or appointments funded by grant funds beyond institutional control);

(f) Compensation;

(g) Other conditions of employment.

(3) The faculty member shall be provided written information concerning duties, responsibilities and institutional expectations. Such written information shall be provided with the initial notice of appointment and whenever significant changes occur. The written information shall include:

(a) Specific expectations relating to the particular position;

(b) General institutional expectations as to professional standards, obligations and responsibilities to be met by faculty members, including but not limited to the following:

(A) Criteria to be used in evaluating the faculty member in connection with renewal of appointment, promotion, tenure (if faculty member does not have indefinite tenure) and post-tenure review (if the faculty member has indefinite tenure);

(B) Procedures to be used in application of the evaluative criteria, including identification of officers responsible for accumulating the information and data necessary to the evaluation, making the evaluation, counseling with the faculty member concerning performance and areas of desirable improvement and such additional information as is necessary to outline clearly the procedures to be used;

(C) Kinds of information that will be gathered by the institution as the basis for evaluating the faculty member;

(D) A reference to Board and institutional rules relating to faculty records;

(E) The nature of the institutional staff career support program, with specific reference to institutional assistance available to assist the faculty member in improving teaching and other scholarly activities;

(F) A reference to the agreement required by OAR 580-021-0110 concerning the extent to which prior experience will be credited as a part of the probationary period of employment;

(G) A reference to any exceptions agreed to as provided in OAR 580-021-0130.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 1-1993, f. & cert. ef. 2-5-93; HEB 5-1996, f. & cert. ef. 12-18-96

**580-021-0006**

**Affirmative Action Goals: Employment**

(1) Each institution president shall establish affirmative action goals and procedures for the purpose of increasing the proportion and effective utilization of minorities and women employed in administrative, technical and faculty positions in programs and departments where minorities or women are underrepresented.

(2) For purposes of this rule, “minorities” refers to Black African Americans, Hispanic Americans, Asian/Pacific-Island Americans and American Indians/Alaskan Natives.

(3) The goals and procedures established under this rule shall be reviewed by the institution president for adequacy and effectiveness at the end of each biennium and modified accordingly. A report of this biennial review shall be submitted to the Chancellor.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 8-1986, f. & ef. 3-19-86; HEB 1-1993, f. & cert. ef. 2-5-93; HEB 5-1996, f. & cert. ef. 12-18-96

**580-021-0010**

**Consultative Procedures**

The president shall establish written procedures through which faculty, department heads and deans shall have the opportunity for effective participation in deliberations leading to recommendations for appointment, reappointment, tenure or promotion of faculty. The procedures established shall also provide for consideration of information from other appropriate sources, including, but not limited to, student evaluations of faculty.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 1-1993, f. & cert. ef. 2-5-93; HEB 5-1996, f. & cert. ef. 12-18-96

**580-021-0015**

**Terms of Service of Faculty**

(1) Academic staff may be appointed on the academic-year basis, the fiscal-year basis or on such other basis as may be arranged in individual cases.

(2) An academic year is normally the three-term period of service extending from September 16 of one calendar year through June 15 of the next calendar year, or for a comparable period of service within the fiscal year, whichever best serves the particular type of work involved, as may be required by the president. Nothing in this regulation shall be construed to prevent a staff member employed on an academic-year basis from being employed during the remainder of the fiscal year, in the summer sessions or in other service for any of the institutions, provided responsibilities for the regular academic year have been fulfilled to the satisfaction of the department head and the dean or director of the division.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 1-1993, f. & cert. ef. 2-5-93; HEB 5-1996, f. & cert. ef. 12-18-96

**580-021-0020****Working Hours**

The varied nature of the work of faculty members whose duties are administrative, instructional, research or extension makes it impractical to define the exact number of working hours. All such faculty members are required to give the institution their undivided efforts. Determination of time of service is the responsibility of the president. However, this provision shall not apply to Department employees who are subject to state or federal overtime compensation requirements.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 1-1993, f. & cert. ef. 2-5-93; HEB 5-1996, f. & cert. ef. 12-18-96

**580-021-0025****Outside Employment and Activities; Conflict of Interest**

(1) No full-time employee of the Department or of any of the institutions or divisions shall engage in any outside employment that substantially interferes with duties. See also IMD 4.005 and 4.010, Board and Institution Policy on Outside Activities and Related Compensation.

(2) Institution employees shall provide written reports to their president regarding potential conflicts of interest as defined under ORS 244.020(8). Other Department employees shall provide the same reports to the Chancellor. Complaints by any person regarding potential conflicts of interest may be referred for investigation to the president, Chancellor or Director of Internal Audit who shall investigate the complaint.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 6-1991, f. & cert. ef. 10-9-91; HEB 1-1993, f. & cert. ef. 2-5-93; HEB 5-1996, f. & cert. ef. 12-18-96

**580-021-0028****Fellowship Leave**

(1) A fellowship leave is leave available to faculty who have received certain fellowships that support research, writing, advanced study or travel related to scholarly or professional activities, including, but not limited to, Fulbright, NEA, NEH, Guggenheim, or other comparable federal or private fellowships, payable only to the faculty member.

(2) Any unclassified employee appointed at .5 FTE or more may be granted a fellowship leave upon approval of an institution president or designee. In addition, an institution president or designee may authorize continuation of institutional health care coverage and payment of employer contribution toward health care or other personnel expenses during a fellowship leave.

(3) Each faculty member, in applying for a fellowship leave, shall sign an agreement to return to the institution for a period of at least one year's service on completion of the leave. If the faculty member fails to fulfill this obligation, the faculty member shall repay the full cost of benefits paid by the institution during the leave. This amount is due and payable three months following the date design-

ated in the institution's fellowship leave agreement for the faculty member to return to the institution.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351

Hist.: OSSHE 5-1999(Temp), f. & cert. ef. 9-24-99 thru 3-17-00; OSSHE 1-2000, f. & cert. ef. 2-23-00

**580-021-0030****Vacations**

(1) Eligibility. Vacation means absence from work permitting rest and recreation for a specified period of time during which regular compensation continues. Unclassified employees gain vacation privileges only if employed at .50 FTE or more on a 12-month appointment.

(2) Computation. Eligible unclassified employees accrue vacation on a monthly basis, beginning the first of the month following date of hire or on the first of the month if an employee is hired the first working day of the month. Vacation accrues on the last day of the month and is available for use the first day of the next month subject to the restrictions in Section (3) of this rule. A 9-month employee appointed to a 12-month contract may receive credit for the previous 9-month contract, on a pro-rata basis. Eligible employees with a 12-month, 1.0 FTE contract accrue 15 hours of vacation per month; eligible employees on a .50 FTE or more contract accrue vacation in proportion to their FTE. An employee who terminates OUS employment before completing the 6-month wait period receives no vacation, and is not entitled to compensation for vacation accrued. On February 28, 1998, eligible employees shall be credited with vacation leave on a pro-rata basis at a rate of 14.67 hours per month as if monthly accrual had begun on their last vacation anniversary date or, for those employed fewer than 11 months, on their date of hire.

(3) Wait Period and Maximum Balance. Vacation accrual is available to the unclassified employee for use six months after vacation accrual begins. Until September 1, 1999, there will be no maximum on the amount of vacation leave that an employee can accrue. However, effective September 1, 1999, no employee may accrue in excess of 260 hours, and any accrued vacation leave in excess of this cap will be forfeited.

(4) Transfer.

(a) Inter-institutional/Unclassified to Unclassified. If an eligible unclassified employee transfers to another unclassified position within the Department and remains eligible for vacation accrual, the employee shall transfer all accrued vacation leave to the new position. However, if there is a break in service for more than 30 days, all accrued vacation pay will be paid off by the sending institution and the employee will be considered a new hire in the position. Moving from position to position within the same institution shall not be considered a transfer or a break in service for purposes of this rule.

(b) For purposes of this Rule, OHSU shall be considered an institution within the Department whereby an OHSU unclassified employee who "transfers to unclassified position within the Department and remains eligible for vacation accrual," may, subject to approval by the receiving department or institution, transfer all accrued vacation time from OHSU to an institution within the Department; upon such a transfer, the vacation benefits of a former OHSU employee shall be administered in accordance with 580-021-0030.

(c) Classified to Unclassified Appointment. If a classified employee of the Department receives an unclassified appointment within the Department and is eligible for vacation leave, the employee may bring up to 80 hours of accrued vacation leave; the receiving department or institution may accept up to 250 hours maximum. The former classified employee shall receive cash compensation from the sending department or institution for any remaining accrued vacation leave. The former classified employee may use accrued vacation without serving a 6-month wait period.

(5) The accrual of vacation leave is reduced on a pro-rata basis for the period of leave without pay, sabbatical leave, and educational leave. Vacation leave is accrued during other periods of paid leave.

(6) Payment for Accrued Vacation Leave. Unclassified employees are not entitled to payment for unused vacation leave except upon termination of employment or upon transfer within the



Department to another unclassified position not eligible for vacation benefits. Unclassified employees who transfer to a classified position within State of Oregon employment are subject to applicable OUS rules or collective bargaining agreements governing payment for accrued vacation. The maximum number of hours that can be paid upon termination or transfer is 180 hours.

(7) Scheduling and Use of Vacation Leaves. Vacation leaves are scheduled with the approval of the employee's supervisor and should be planned cooperatively with the employee. Vacation leave should be scheduled in such a manner as to minimize disruption to the organization. Supervisors must be reasonable in allowing the use of vacation leave and may not unreasonably deny vacation requests where the result would be the forfeiture of accrued vacation. For purposes of calculation, one normal work day is the equivalent of eight hours of vacation leave for a full-time employee.

(8) Record Keeping. Each institution is responsible for maintaining the individual records of vacation accrual and use.

(9) Vacation Donation. The transfer of vacation time, for use by another employee, classified or unclassified, is not permitted.

(10) Vacation Borrowing. Employees are not permitted to borrow against vacation that is not yet accrued. (Section 12, relating to interim provisions for employees moving from Management Service to Unclassified Service, was repealed December 1, 1999.)

Stat. Auth.: ORS 240 & 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 11-1984, f. & ef. 11-9-84; HEB 10-1990, f. & cert. ef. 7-26-90; HEB 1-1993, f. & cert. ef. 2-5-93; HEB 4-1996, f. & cert. ef. 10-24-96; HEB 5-1996, f. & cert. ef. 12-18-96; OSSHE 2-1998, f. & cert. ef. 2-25-98; OSSHE 7-2001(Temp), f. & cert. ef. 12-5-01 thru 5-1-02; OSSHE 2-2002, f. & cert. ef. 5-1-02

## 580-021-0035

### Absence Due to Illness

Reassignment of the work of a staff member incapacitated by illness over a period longer than one month must have the approval of the president or division head.

Stat. Auth.: ORS 351.070

Stats. Implemented:

Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 1-1993, f. & cert. ef. 2-5-93

## 580-021-0040

### Sick Leave Plan for Academic Personnel

(1) Eligibility. All full-time academic staff will be credited with eight hours of sick leave for each full month of service, or two hours for each full week of service less than one month. Part-time academic staff employed .50 FTE appointment or more will be credited pro rata amount. Graduate assistants are not eligible to accrue or to use sick leave. An academic staff member whose appointment is less than .50 FTE is not eligible to accrue sick leave, but is eligible to use a pro-rate of sick leave accrued but unused while previously employed .50 FTE or more. In addition, sick leave is not earned or used during sabbatical leave, educational leave or leave without pay. Sick leave credit shall be earned during sick leave with pay and during other periods of paid leave. There is no limit on the amount of sick leave that may be accrued.

(2) Earned Sick Leave Use. Academic staff who have earned sick leave credits must use the credits for any period of absence from service that is due to the employee's illness, injury, disability resulting from pregnancy, necessity for medical or dental care, exposure to contagious disease or attendance upon members of the employee's immediate family (employee's parents, spouse, children, brother, sister, grandmother, grandfather, son-in-law, daughter-in-law or another member of the immediate household) where employee's presence is required because of illness or death in the immediate family of the academic staff member or the academic staff member's spouse. As an alternative, the academic staff member can request to be on sick leave without pay. The institution may require a physician's certificate to support the sick leave claim for any absence in excess of 15 consecutive calendar days or for recurring sick leave use. The institution may require a physician's certificate before allowing return to work to certify that the return would not be detrimental to the academic staff member or to others.

(3) Recordkeeping. At the time and in the manner prescribed by the Chancellor, each academic staff member covered by these provisions shall certify to the officer designated the amount of sick leave earned and the amount of sick leave with pay used. Sick leave records will be maintained in an appropriate file at the institution.

(4) Sick Leave Without Pay. The institutional president or designee may grant sick leave without pay for up to one year when the academic staff member has used all accrued sick leave with pay. The academic staff member must submit a written request for leave and shall be required to submit a physician's certificate. Extensions beyond one year may be granted on a year-by-year basis.

(5) Unearned Sick Leave Advance. The purpose of this section is to provide salary continuance for up to 90 calendar days of absence due to illness through a combination of accrued and advance sick leave. Each full-time academic staff member is entitled to receive a sick-leave-with-pay advance as needed to provide the difference between sick leave earned as of the onset of the illness or injury and 520 hours; part-time staff are eligible to receive a sick-leave-with-pay advance proportional to FTE to provide the difference between sick leave earned as of the onset of the illness or injury and a pro-rate of 520 hours. As sick leave is earned, the amount shall replace any sick leave advanced until all advanced time is replaced with earned time. No more than a 520-hour sick leave advance is available during a seven-year period that begins with the first sick leave advance. More than one sick leave advance is possible as long as the total advance does not exceed 520 hours during a seven-year period. Sick leave that may have been advanced, but unused, cannot be considered for purposes of computing retirement benefits. Academic staff on fixed term appointment cannot receive an advance that extends beyond the end date of the fixed term appointment except upon written approval of the institution president or designee.

(6) Transfer and Termination. An academic staff member is entitled to transfer in unused sick leave earned with any other agency of the State of Oregon including sick leave earned in the classified service provided the break in service upon transfer does not exceed two years. An academic staff member who leaves employment with the State of Oregon and then returns is entitled to reinstate the previous unused, accrued sick leave. An academic staff member who terminates employment is not entitled to compensation for unused sick leave except in the calculation of the Public Employees' Retirement System (PERS) retirement benefit as provided in ORS 237.153. As used in this subsection, and for these purposes only, the term "any other agency of the State of Oregon" shall include and apply to the Oregon Health & Science University (OHSU).

(7) Summer Appointments. Regular nine-month academic staff employed half-time or more to teach summer session or to work on summer wage appointments are eligible to accrue and to use sick leave during the period of such appointment. Regular nine-month staff employed less than half-time during summer session are not eligible to accrue sick leave, but are eligible to use a pro-rate of sick leave earned but unused while previously eligible to accrue leave. Other summer session teaching staff hired only to teach summer session are not eligible to accrue or to use sick leave.

(8) Workers' Compensation Integration. The purpose of this section is to insure that an academic staff member who receives a workers' compensation payment for lost time resulting from a compensable job-related illness or injury and salary paid for the same period of time does not exceed the academic staff member's regular salary for that period, and that paid leave is not charged for the payment received from workers' compensation:

(a) Salary paid for a period of sick leave that is taken as the result of a job-related illness or injury compensable under workers' compensation shall be equal to the difference between the worker's compensation benefit for lost time and the academic staff member's regular salary for the period for which the benefit is being paid. An academic staff member who is receiving workers' compensation time loss benefits can choose to use a prorated amount of accrued sick leave or a prorated amount of other accrued paid leave or sick leave without pay. Should an academic staff member elect to use other accrued paid leave for this purpose, instead of sick leave, the salary paid for this period shall be the difference between the workers' compensation benefit paid for lost time and the academic staff member's

regular salary for the period for which the benefit is being paid. In such instances prorated charges will be made against the accrued paid leave;

(b) An academic staff member is not entitled to keep both salary, including paid leave, and workers' compensation benefits if the total exceeds the employee's regular salary. Each institution is responsible for coordinating the proration of salary, including sick leave or other paid leave, with workers' compensation lost time benefits. The institution is entitled and is responsible to recover any salary overpayment that may have occurred. An academic staff member who receives a regular salary payment and a workers' compensation lost time benefit payment shall immediately notify the institutional payroll or other designated officer of such overpayment and shall return promptly to the institution the amount of the salary overpayment. The institution shall recover the amount of salary overpayment through payroll deduction or by cash payment according to existing institutional procedures.

Stat. Auth.: ORS 240 & 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 6-1984, f. & ef. 7-16-84; HEB 2-1985, f. & ef. 3-4-85; HEB 1-1993, f. & cert. ef. 2-5-93; HEB 5-1996, f. & cert. ef. 12-18-96; OSSHE 6-2001(Temp), f. & cert. ef. 12-5-01 thru 5-1-02; OSSHE 3-2002, f. & cert. ef. 5-1-02

#### 580-021-0041

##### Transfer of Accumulated, Unused Sick Leave

(1) OUS academic and administrative unclassified staff may transfer unused accumulated leave balances between the OUS and state agencies, subject to sick leave transfer provisions in (3) and (4), and applicable collective bargaining agreements.

(2) For purposes of this rule, a "state agency" includes all state agencies in the executive, judicial, or legislative departments of the State of Oregon. Special government bodies, including community colleges, school districts, education service districts, are not considered state agencies for purposes of this rule. Local government public employers other than state agencies are likewise ineligible to transfer unused leave to or from the OUS.

(3) Assumption of Funding Liability. Hiring agencies and departments assume funding liability for sick leave transferred under the provisions of this rule.

(4) Sick Leave. The full amount of accumulated, unused sick leave available at the time an employee separates from service may be transferred to an OUS institution or state agency when the employee is hired. Unearned, advanced sick leave that results in a negative sick leave balance is neither transferred nor accepted by OUS institutions.

(a) Accumulated, unused state agency sick leave earned during employment with a state agency, including leave earned in classified service, may be transferred to the hiring OUS institution if the break in service does not exceed two years, subject to approval of the hiring institution.

(b) Accumulated, unused sick leave earned during employment with an OUS institution shall be transferred to the hiring state agency if the break in service does not exceed two years, subject to the rules of the state agency.

Stat Auth: ORS 351.070

Stats. Implemented:

Hist.: OSSHE 1-2004(Temp), f. & cert. ef. 4-6-04 thru 10-2-04; OSSHE 8-2004, f. & cert. ef. 9-29-04

#### 580-021-0044

##### Use of Employees' Social Security Numbers

(1) The Oregon University System and each institution within the system shall comply with the requirements of Section 7 of the Privacy Act of 1974 when requesting disclosure of an employee's Social Security Number. Pursuant to the authority of the Oregon University System to implement personnel systems and exercise payroll authority, the Chancellor's Office and each institution within the Oregon University System may request that employees furnish valid Social Security Numbers for mandatory and voluntary uses, subject to the use and disclosure provisions of the Privacy Act.

(2)(a) An institution may require disclosure of an employee's Social Security Number for mandatory uses as provided for under Section 7(a)(2) of the Privacy Act, including:

(A) Use and disclosure for certain program purposes, including disclosure to the Internal Revenue Service, the Social Security Administration, the Federal Parent Locator Service, the Department of Veterans Affairs, the Bureau of Citizenship and Immigration Services, Aid to Families with Dependent Children, Medicare and Medicaid, Unemployment Insurance, Workers Compensation, and, in appropriate cases, epidemiological research.

(B) Administration and accounting purposes including the payment of state, federal and local payroll taxes; withholdings for FUTA and FICA; calculation and applicable reporting of pre-tax salary deductions for benefits including, but not limited to, IRC 117 and IRC 127 scholarship and educational assistance programs; IRC 457 deferred compensation and IRC 403(b) tax-sheltered annuity plans; IRC 401(a) retirement plans; IRC 132 pre-tax parking and transit plans, IRC 125 flexible spending account or cafeteria plans; or IRC 105 or 106 health reimbursement arrangements.

(C) To the extent required by federal law, an employee's Social Security Number may be provided to a foreign, federal, state, or local law enforcement agency for investigation of a violation or potential violation of a law for which that entity has jurisdiction for investigation or prosecution.

(b) An institution may request voluntary disclosure and consent to use an employee's Social Security Number for the following purposes: internal verification and identification for personnel administration, employment-related background checks, payroll records, enrollments or elections for participation in campus programs and services provided by the public universities.

(c) An institution may request voluntary disclosure and consent to use the Social Security Number of an employee or the spouse, partner or dependent of the person requesting participation, as required by the administrator of each record-keeping system, benefit, program or service.

(3) A request for disclosure of an employees' Social Security Number will notify the employee:

(a) Whether disclosure is mandatory or voluntary;

(b) Under what statutory or other authority the social security number is requested;

(c) What specific use or uses will be made of the number; and

(d) What effect, if any, refusal to provide the number or to grant consent for a voluntary use as described above in (2)(b) and (c) will have on an individual.

(4) An employee's Social Security Number may not be put to a voluntary use as described above in (2)(b) and (c) unless the employee has granted consent for that use. If, after having provided notice and received consent to use an employee's Social Security Number for specified purposes, an institution wishes to use the Social Security Number for additional purposes not included in the original notice and consent, the requesting entity must provide the employee notice and receive the employee's consent to use the number for those additional purposes.

(5) An employee's refusal to permit a voluntary use of his or her Social Security Number will not be used as a basis to deny the employee a right, benefit, or privilege provided by law.

(6) The Office of the Chancellor will develop a model disclosure and consent form for use by institutions in the Oregon University System. An institution may use a disclosure and consent form that differs from the model form only if:

(a) The differences are required to satisfy specific programmatic requirements or the entity's particular administrative needs; and

(b) The form complies with all requirements of the Privacy Act of 1974 and this rule.

Stat. Auth.: ORS 351.070, 292.043 - 292.180 & 192.502(3)(a)

Stats. Implemented:

Hist.: OSSHE 4-2003(Temp), f. & cert. ef. 12-1-03 thru 5-21-04; OSSHE 3-2004, f. & cert. ef. 4-8-04

**580-021-0045**

**Conditions of Employment on Gift, Grant and Contract Funds**

(1) The president of each institution shall determine whether unclassified personnel whose employment is financed primarily by gifts, grants or contracts shall be subject to *Administrative Rule* provisions regarding vacations, sick leave, tenure, promotion, sabbatical leave and timely notice of nonrenewal or termination of employment.

(2) *Administrative Rules* that do not apply to a particular employee, and any substitute provisions, shall be specifically identified in the notice of appointment.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 2-1980, f. & ef. 4-18-80; HEB 1-1993, f. & cert. ef. 2-5-93; HEB 5-1996, f. & cert. ef. 12-18-96

**580-021-0050**

**Grievance Procedures**

(1) The institutions shall adopt, in consultation with faculty advisory committees including female and minority faculty and representatives of certified bargaining units, if any, appropriate grievance procedures, in accordance with the rulemaking procedures of the Administrative Procedure Act. The grievance procedures shall apply to all unclassified academic employees with faculty rank.

(2) For purposes of this rule and OAR 580-021-0055:

(a) "Grievance" means a complaint by an academic employee that the employee was wronged in connection with compensation, tenure, promotion or other conditions of employment or the employee's rights were denied as to reappointment;

(b) "Other conditions of employment" shall include, but not necessarily be limited to: violations of academic freedom; discriminatory employment practices; nondiscriminatory employment practices; and laws, rules, policies, and procedures under which the institution operates. However, challenges to disciplinary actions or procedures shall be raised under OAR 580-021-0320;

(c) "Days" mean calendar days unless expressly designated otherwise.

(3) The institutions' grievance procedures shall:

(a) Set out the details of a grievance procedure appropriate to the institution;

(b) Include both informal and formal steps. The formal steps shall include an appropriate administrator, a faculty committee (at the option of the grievant) and the institution president. The institution may (at its option) provide a grievance officer. However, a grievance may be resolved at any step. In a formal grievance, all complaints, responses and decisions must be in writing;

(c) Establish time limits within which a grievance must be filed and for each step that will permit timely resolution of issues. Informal grievances shall receive a response within 15 days. In no instance shall the length of time between the presentation of the written grievance and the final institutional decision be more than 180 days, unless agreed to by the grievant. In the event a decision is not made at any level within the designated time limit, the grievant may submit the grievance to the next step;

(d) Provide for a hearing, at the option of the grievant, by a faculty committee selected by the faculty at the institution.

(e) Provide for the appointment by the president of an administrative officer, or officers, (grievance officer) to receive and act upon the recommendations of the faculty committee. The institution may, alternatively, opt to have the president receive and act upon the recommendations of the faculty committee.

(4) The institution may elect not to proceed with a grievance if the grievant also seeks resolution in another forum.

(5) The institution shall adopt rules of procedure for the faculty committee that allow for:

(a) A meaningful opportunity for the grievant to be heard;

(b) An opportunity for each party to present evidence, argument and rebuttal;

(c) The right to representation for each party at that party's expense;

(d) A hearing open to the public at the option of the grievant to the extent allowed by law;

(e) Written conclusions, based only upon evidence presented at the hearing; and

(f) Access by each party to a complete record of the hearing.

(6) The faculty committee shall make recommendations regarding the disposition of the grievance to the grievance officer or president (depending on the institution's election).

(7) Unless the grievance is resolved at a lower level, the president or grievance officer (depending on the institution's election), shall review the recommendations of the faculty committee, if any, and the president or grievance officer shall issue a decision.

(8) If the president or grievance officer (depending on the institution's election) rejects or modifies the recommendations of the faculty hearing committee, the reasons shall be stated in writing, and a copy provided to the grievant and to the hearing committee.

(9) Where the institution has opted to use a grievance officer, the grievant may appeal the decision of the grievance officer to the president pursuant to OAR 580-021-0055.

(10) Under either option as set forth above, and except as set forth herein, the decision of the president shall be final, and shall be an exhaustion of grievant's administrative remedies with the institution and the State Board of Higher Education. If the grievance involves the president or where the president is the immediate supervisor of the grievant, then the appeal, set forth in section 9, shall be to the Chancellor of the Oregon University System (all other provisions of this rule shall otherwise apply).

(11) Nothing contained in this administrative rule shall be construed to limit the right of the State Board of Higher Education to make such inquiry and review into personnel actions as it may from time to time deem, in its sole discretion, appropriate.

(12) Where collective bargaining agreements or administrative rules exist at an institution in which grievance procedures are specified and such procedures exceed the standards in this rule, such agreements or administrative rules shall control, to the extent not inconsistent with the rule.

(13) After consultation with the appropriate faculty committees and approval of the Chancellor's Office, each institution shall adopt its rules by October 1, 2001.

(14) Each institution shall report annually to the Board beginning July 2002, on the number, basis and outcome of all formal grievances filed under the rules herein required.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 5-1987, f. & ef. 6-5-87; HEB 7-1987, f. & ef. 12-11-87; HEB 6-1988, f. & cert. ef. 7-5-88; HEB 1-1993, f. & cert. ef. 2-5-93; HEB 5-1996, f. & cert. ef. 12-18-96; OSSHE 2-2001, f. & cert. ef. 4-27-01

**580-021-0055**

**Appeal of Grievance Decisions**

(1) Where an institution has opted to utilize the process of decision by a grievance officer as set forth in OAR 580-021-0050(3)(e), a grievant may request review by the institution's president of a decision described in OAR 580-021-0050(7). The president shall review the record of the grievance. The president shall decide, based on his/her own review, whether to support the grievance officer's decision. The president's decision must be reached within 90 days of the date on which the request is received in the President's Office.

(2) A request for review by the president shall be in writing and must be received in the President's Office within 15 days of the grievant's receipt of the grievance officer's decision. The request shall briefly state the basis for the request for review and the specific facts that would support action by the president consistent with section(4) of this rule. The request shall include a copy of the grievance officer's decision.

(3) Review by the president shall consist of an examination of the record of the grievance. The president may elect to receive additional written or oral presentations from the grievant and the grievance officer.

(4) The president shall not reverse a decision of a grievance officer unless:



(a) Procedural error was committed by the institution during the grievance procedure and the error resulted in prejudice to the grievant;

(b) The decision of the grievance officer is not supported by substantial evidence; or

(c) The decision is in conflict with applicable rules or law.

(d) The president's decision shall be in writing and shall be sent to the grievant and the grievance officer.

Stat. Auth.: ORS 351.070

Stats. Implemented:

Hist.: HEB 7-1988, f. & cert. ef. 7-5-88; HEB 1-1993, f. & cert. ef. 2-5-93; OSSHE 2-2001, f. & cert. ef. 4-27-01

## Tenure and Promotion

### 580-021-0100

#### Kinds of Appointments

(1) Appointments authorized in Department institutions are: fixed-term appointments, tenure-related appointments (annual tenure and indefinite tenure) and extendible contract appointments as permitted by subsection (1)(c) of this rule:

(a) Fixed-term appointments:

(A) Fixed-term appointments are appointments for a specified period of time, as set forth in the notice of appointment. The faculty member thus appointed is not on the tenure track and the timely notice provisions do not apply;

(B) Fixed-term appointments may be made and are renewable at the discretion of the president;

(C) Fixed-term appointments are designed for use at the discretion of the president in such cases as, but not limited to, appointments of visiting faculty (or similar category); academic staff members whose support wholly or principally comes from gift, grant or contract funds, the cessation of which funding would eliminate the budget base for the position in question; part-time faculty; administrative staff with faculty rank; and faculty appointments during an initial probationary period where an institutional policy has been adopted or negotiated that establishes such probationary period. Fixed-term appointments offered to visiting faculty or similar category shall not exceed a total of seven years;

(D) Institutional staffing plans shall define the characteristics, proper use and appropriate limits on use of visiting faculty or similar category.

(b) Tenure-related appointments:

(A) Annual tenure appointments are appointments given to faculty employed .50 FTE or more whom the institution considers to be on the tenure track, in that, on completion of an appropriate probationary period, they will be evaluated and considered for appointment to indefinite tenure. If the initial annual tenure appointment or successive annual tenure appointments are to be terminated otherwise than for cause or for financial exigency, timely notice shall be given the faculty member;

(B) Indefinite tenure appointments are appointments given selected faculty members having an appointment of .50 FTE or more. Such appointments are made by the president in witness of the institution's formal decision that the faculty member has demonstrated such professional competence that the institution will not henceforth terminate employment except for cause, financial exigency, or program or department reductions or eliminations.

(c) Extendible appointments:

(A) Southern Oregon State College may use an extendible contract that is defined as a contract having a term of not more than three years and that permits, following the first year of the contract term, the term of the contract to be extended an additional year if required conditions have been met, leaving the faculty member at the beginning of each year with a contract having the same term as the original contract;

(B) Such appointments at Southern Oregon State College may be made only after an institutional policy has been adopted following faculty consideration through established governance mechanisms, or negotiated with the exclusive bargaining representative of the faculty. The policy or negotiated agreement must establish the probationary period to be served prior to an extendible contract appointment, describe the procedures and criteria for attaining such

an appointment and describe the conditions under which contracts may or may not be extendible;

(C) The use of such extendible contracts is not to result in the abolishment of tenure at Southern Oregon State College.

(2) "Tenured" faculty, as referred to in Board policies and *Administrative Rules*, are faculty who have been awarded indefinite tenure.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 7-1981(Temp), f. & ef. 9-15-81; HEB 12-1981, f. & ef. 11-20-81; HEB 5-1983, f. & ef. 12-1-83; HEB 1-1993, f. & cert. ef. 2-5-93; HEB 5-1996, f. & cert. ef. 12-18-96

### 580-021-0105

#### Eligibility for Indefinite Tenure

(1) Indefinite tenure may be awarded to faculty employed on appointments of .50 FTE or more as senior instructor, assistant professor, associate professor or professor, if otherwise qualified in accordance with institutional criteria and the Board's *Administrative Rules*.

(2) When indefinite tenure is awarded, there shall be a statement in the faculty member's personal file that the tenure appointment relates only to that FTE level specified in the notice of appointment for the year indefinite tenure is to become effective. For the indefinite tenure appointment to take effect, the statement concerning indefinite tenure must be signed by the faculty member and by the institutional officer authorized by the president to sign such statements. Alteration in the initial commitment may be by mutual consent of the faculty member and the institution or by action provided for elsewhere in the Board's *Administrative Rules*.

(3) Standards of performance and scholarly quality shall be the same for part-time and full-time faculty members.

(4) Faculty members on a full-time tenure appointment may, by mutual agreement of the faculty member and the president or a designee, be given reduced appointments of less than 1.0 FTE under terms and conditions mutually agreed to in writing by the faculty member and the president or a designee.

(5) Indefinite tenure shall be awarded to faculty of demonstrated professional competence by the president under terms and conditions set forth in the Board's *Administrative Rules* and policies and in applicable institutional rules.

(6) Tenure is reaffirmed as being institutional. Faculty having achieved tenure status in one Department institution cannot thereby claim tenure in other Department institutions. Probationary years of service in one Department institution may be counted toward probationary service requirements in another Department institution only with the latter's written approval.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 1-1993, f. & cert. ef. 2-5-93; HEB 5-1996, f. & cert. ef. 12-18-96

### 580-021-0110

#### Initial Appointment and Probationary Service for Faculty on Tenure-Related Appointments

(1) All faculty members on tenure-related appointments of .50 FTE or more, except as provided below, shall be appointed initially on one-year appointments.

(2) Awarding of tenure to full-time faculty, except as provided below, shall involve assessment of the faculty member's performance each year during the probationary period, and assessment of performance over not less than five consecutive years (counting the year at the end of which tenure is granted). An additional probationary year may be required by the president, following that, if the faculty member is not awarded tenure, terminal notice shall be given, except as provided elsewhere in these *Administrative Rules*.

(3) The probationary period for regular part-time faculty employed .50 FTE or more in a tenure-related appointment shall be the same as for full-time faculty, except that it shall be calculated in terms of FTE years rather than calendar years.

(4) Notwithstanding sections (2) and (3) of this rule, the president may in special circumstances consider for tenure any probationary faculty member of the rank of assistant professor or higher, prior

to completion of the normal probationary period, when, following a performance evaluation of the faculty member, a finding is made that such an early award of tenure would be to the advantage of the institution. In no event will the first consideration for tenure occur later than in the fifth year.

(5) Faculty members given an initial appointment at the rank of full professor may be granted tenure on appointment, at the discretion of the president. In unusual cases, and only when specifically approved by the Chancellor, associate professors may be given tenure on initial appointment.

(6) At the time of initial appointment, a mutually acceptable written agreement shall be reached between the faculty member and the president or a designee, subject to delegation of authority under the Board's *Administrative Rules* or policies, as to the extent to which prior experience of the faculty member shall be credited toward the probationary period required before the faculty member may be considered for tenure. The terms of the agreement shall be included in the notice of appointment.

Stat. Auth.: ORS 351.070

Stats. Implemented:

Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 1-1993, f. & cert. ef. 2-5-93

#### 580-021-0115

##### Consecutive Annual Appointments

A series of annual appointments shall be considered consecutive whether or not interrupted by one or more official leaves of absence. An official leave of absence does not count as a year of service for purposes of tenure, nor does it prejudice the staff member's right to consideration for tenure for service actually rendered.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: HEB 3-1978, f. & ef. 6-5-78

#### 580-021-0120

##### Seventh Annual Appointment

A full-time faculty member on annual tenure for a sixth consecutive year shall be awarded indefinite tenure commencing the seventh consecutive year or given notice of termination effective at the end of the seventh year.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: HEB 3-1978, f. & ef. 6-5-78

#### 580-021-0125

##### Appointment of Regular Part-Time Faculty Beyond the FTE Equivalent of the Sixth Consecutive Year

A faculty member on a part-time annual tenure appointment of .50 FTE or more during each full academic year for a sufficient number of years to equal six or more years of full-time service may be reappointed under one of the following conditions:

(1) With indefinite tenure at the FTE level specified in the notice of appointment for the year indefinite tenure is to become effective;

(2) With notice of termination effective at the end of the next year.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: HEB 3-1978, f. & ef. 6-5-78

#### 580-021-0130

##### Exceptions

The provisions of OAR 580-021-0105, 580-021-0110, 580-021-0115, 580-021-0120, and 580-021-0305 shall apply to all tenure-related appointments unless in individual cases there is a specific written agreement to the contrary between the institution and the faculty member. The agreement to the contrary shall be incorporated or referred to in the notice of appointment.

Stat. Auth.: ORS 351

Stats. Implemented: ORS 351.070

Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 5-1996, f. & cert. ef. 12-18-96

#### 580-021-0135

#### Criteria for Faculty Evaluation

(1) Criteria for faculty evaluation, developed with the participation of appropriate faculty and institutional councils, shall be established in each institution:

(a) As a guide in evaluating faculty in connection with decisions on reappointment, promotion, and tenure;

(b) As a basis for assessing those aspects of the faculty member's performance in which improvement is desirable, whether the faculty member is tenured or nontenured, with a view to stimulating and assisting the faculty member toward improvement through the resources available under the institution's staff career support plan.

(2) The criteria shall reflect the primary functions for which the Department was established, namely:

(a) Instruction;

(b) Research accomplishments and other scholarly achievements, or where relevant, other creative and artistic achievement;

(c) Professionally related public service, through which the institution and its members render service to the public (i.e., individuals, agencies, or units of business, industry, government);

(d) Institutional service, including, but not limited to, contributions made toward departmental, school or institutional governance, service to students through student welfare activities such as individual student advising, advising with student organizations or groups and similar activities.

(3) The criteria shall provide guidelines for sources and kinds of data that are appropriate as a basis for effective faculty evaluation at each administrative level (e.g., department, school, institution) and in each area (e.g., teaching, research, scholarly activity, service, etc.) where faculty evaluations are required. Specific provision shall be made for appropriate student input into the data accumulated as the basis for reappointment, promotion, and tenure decisions, and for post-tenure review. Sources of such input shall include, but need not be limited to, solicitation of student comments, student evaluations of instructors and opportunities for participation by students in personnel committee deliberations.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 1-1993, f. & cert. ef. 2-5-93; HEB 5-1996, f. & cert. ef. 12-18-96

#### 580-021-0140

##### Post-Tenure Review

(1) Tenured faculty members shall be evaluated periodically and systematically in accordance with guidelines developed by each institution.

(2) The purposes of post-tenure review are to:

(a) Assure continued excellence in the academy;

(b) Offer appropriate feedback and professional development opportunities to tenured faculty;

(c) Clearly link the level of remuneration to faculty performance; and

(d) Provide accountability to the institution, public, and Board.

(3) Institutions shall develop post-tenure review guidelines in accordance with the objectives and guidelines promulgated in IMD 4.002, OAR 580-021-0135(3), and 580-021-0005(3)(A).

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 5-1996, f. & cert. ef. 12-18-96; OSSHE 1-1999, f. 2-24-99, cert. ef. 3-1-99

#### Sabbatical Leave

#### 580-021-0200

##### Purposes of Sabbatical Leave

Sabbatical leave is granted to unclassified employees having academic rank for purposes of research, writing, advanced study, travel undertaken for observation and study of conditions in our own or in other countries affecting the applicants field or related scholarly or professional activities. Sabbatical leave is a privilege and not a right. It is granted only when it can be shown that the applicant is capable of using this period in a manner that will thereafter increase the applicant's effectiveness to the institution and to the state.

Stat. Auth.: ORS 351.070

Stats. Implemented:

Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 8-1989, f. 12-11-89, cert. ef. 1-1-90; section (2) Renumbered to 581-021-0245; HEB 1-1993, f. & cert. ef. 2-5-93

### 580-021-0205

#### Eligibility for Sabbatical Leave

(1) An unclassified employee appointed at .5 FTE or more, with the rank of Senior Instructor, Assistant Professor, Associate Professor, Professor, Research Associate or Senior Research Associate may be considered for sabbatical leave:

(a) After having been continuously appointed without interruption by a sabbatical leave for 18 academic quarters (excluding Summer Session) or, in the case of 12-month faculty, 72 months; or

(b) After having accumulated the equivalent of 6.0 FTE years over an indefinite period of 9-month or 12-month appointments uninterrupted by a sabbatical leave.

(c) Prior service at the ranks of Instructor, Lecturer or Research Assistant, when leading to a promotion to a higher rank, may be considered by an institution president as part of the period of accumulated service for the purposes of the time requirement for sabbatical eligibility.

(2) A series of appointments shall be considered continuous whether or not interrupted by one or more authorized leaves of absence other than a sabbatical leave. A one-year period of appointment at less than .5 FTE will count as a period of accumulated service for purposes of the time requirement for sabbatical eligibility. An authorized leave of absence will not prejudice the staff member's eligibility for sabbatical leave. Academic staff members may be considered for subsequent sabbatical leaves after again satisfying the conditions specified in subsections (1)(a) or (b) of this rule. Cases involving mixed terms of service may be adjusted by the institutional president or the president's designee, in accordance with the principles set forth in this rule.

(3) For institutional convenience, and at the initiative and sole discretion of the institution, a sabbatical leave may be delayed by up to two years. In such instances, the academic staff member will become eligible for a succeeding sabbatical leave after an equivalently reduced period of years. This section applies to a maximum of 14 consecutive years, covering two possible sabbatical leaves. The same agreement may be negotiated, again for institutional convenience, in subsequent 14-year periods.

(4) Sabbatical leave privileges may be granted to unclassified employees in special positions of responsibility and trust, even though they do not hold academic rank. Eligibility for this class of employees will be determined in the manner described in section (1) of this rule. Recommendations for sabbatical leave for the above-referenced unclassified staff members not otherwise qualified may be made in exceptional cases only at the discretion of institution presidents.

(5) For purposes of determining eligibility for sabbatical leave, time spent on an authorized military leave from a Department institution shall be considered as institutional service.

(6) Salary received by an academic staff member during a sabbatical shall be calculated as follows:

(a) Salary under subsection (1)(a) of this rule shall be a percentage (determined by OAR 580-021-0225 or 580-021-0230) of the academic staff member's annual rate multiplied by the average FTE at which the academic staff member was appointed during the 6.0 FTE years immediately prior to the sabbatical leave. Presidents shall have the authority and discretion to interpret special circumstances in this regard. For purposes of this subsection, eligibility years are the 18 academic quarters (excluding Summer Session) or in the case of 12-month faculty, 72 months of continuous employment at half-time or more that result in the academic staff member's eligibility for sabbatical leave under subsection (1)(a) of this rule.

(b) Salary under subsection (1)(b) of this rule shall be a percentage (determined by OAR 580-021-0225 or 580-021-0230) of the academic staff member's annual rate in effect at the time the sabbatical leave begins.

(c) If during the period of sabbatical leave the institution allocates salary increases to its academic staff members, the annual rate of the academic staff member on sabbatical leave will be increased

by the appropriate amount effective on the date that the salary increase was granted.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 4-1987, f. 4-22-87, ef. 7-1-87; HEB 8-1989, f. 12-11-89, cert. ef. 1-1-90; HEB 1-1993, f. & cert. ef. 2-5-93; HEB 5-1996, f. & cert. ef. 12-18-96

### 580-021-0210

#### Approval and Revisions of Sabbatical Leave Agreements

(1) Sabbatical leave shall be granted only if approved by the president or designee.

(2) Revision of the sabbatical leave program or other terms and conditions of the agreement shall be approved by all parties to the original agreement.

Stat. Auth.: ORS 351.070

Stats. Implemented:

Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 8-1989, f. 12-11-89, cert. ef. 1-1-90; HEB 1-1993, f. & cert. ef. 2-5-93

### 580-021-0215

#### Sabbatical Leave Reports

At the end of the sabbatical leave, the staff member shall submit a report of the accomplishments and benefits resulting from the leave, filing copies with the department head, the dean and the president.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 8-1989, f. 12-11-89, cert. ef. 1-1-90; HEB 1-1993, f. & cert. ef. 2-5-93; HEB 5-1996, f. & cert. ef. 12-18-96

### 580-021-0220

#### Obligation to Return

Each academic staff member, in applying for sabbatical leave, shall sign an agreement to return to the institution for a period of at least one year's service on completion of the leave. If an academic staff member fails to fulfill this obligation, the academic staff member shall repay the full salary paid during the leave plus the health care and retirement contribution paid by the institution on behalf of the academic staff member during the leave. This amount is due and payable three months following the date designated in the sabbatical agreement for the faculty member to return to the institution.

Stat. Auth.: ORS 351.070

Stats. Implemented:

Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 8-1989, f. 12-11-89, cert. ef. 1-1-90; HEB 1-1993, f. & cert. ef. 2-5-93

### 580-021-0225

#### Length of Leave for Academic-Year Staff

Staff members employed on an academic-year basis are eligible for one of the following types of leave:

(1) Academic-year staff other than the University of Oregon School of Law faculty:

(a) One academic year (three terms) on 60 percent salary during the period of sabbatical leave;

(b) Two-thirds of an academic year (two terms) on 75 percent salary during the period of sabbatical leave;

(c) One-third of an academic year (one term) on 85 percent salary during the period of sabbatical leave.

(2) Academic year staff at the University of Oregon School of Law:

(a) One academic year (two semesters) on 50 percent salary during the period of sabbatical leave;

(b) One-half academic year (one semester) on 100 percent salary during the period of sabbatical leave.

Stat. Auth.: ORS 240 & 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 1-1983, f. & ef. 1-19-83; HEB 3-1984, f. & ef. 3-21-84; HEB 1-1993, f. & cert. ef. 2-5-93; HEB 5-1996, f. & cert. ef. 12-18-96

### 580-021-0230

#### Length of Leave for Fiscal-Year Staff

Staff members employed on a fiscal-year basis are eligible for one of the following types of leave:



(1) One year (12 months) on 60 percent salary during the period of sabbatical leave;

(2) Two-thirds of a year (eight months) on 75 percent salary during the period of sabbatical leave;

(3) One-third of a year (four months) on 85 percent salary during the period of sabbatical leave.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 1-1983, f. & ef. 1-19-83; HEB 1-1993, f. & cert. ef. 2-5-93; HEB 5-1996, f. & cert. ef. 12-18-96

#### 580-021-0235

##### Cost of Sabbatical Leaves

The cost of granting a sabbatical leave shall be financed within the funds allotted to the institution that employs the staff member.

Stat. Auth.: ORS 351.070

Stats. Implemented:

Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 1-1993, f. & cert. ef. 2-5-93

#### 580-021-0240

##### Supplementing of Sabbatical Incomes

Staff members on sabbatical leave may supplement their sabbatical salaries to a reasonable degree, provided that such supplementation strictly conforms to the stated and approved purposes of the sabbatical leave.

Stat. Auth.: ORS 351.070

Stats. Implemented:

Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 8-1989, f. 12-11-89, cert. ef. 1-1-90

#### 580-021-0245

##### Policy Regarding Sabbatical Leave

The policy on sabbatical leaves shall be uniform for all Department institutions insofar as possible.

Stat. Auth.: ORS 351.070

Stats. Implemented:

Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 8-1989, f. 12-11-89, cert. ef. 1-1-90; Renumbered from 580-021-0200(2); HEB 1-1993, f. & cert. ef. 2-5-93

### Resignations and Terminations

#### 580-021-0300

##### Resignations

Notice of resignation shall be filed in the president's office as early as possible but in no event later than one month before the resignation is to take effect.

Stat. Auth.: ORS 351

Stats. Implemented: ORS 351.070

Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 5-1996, f. & cert. ef. 12-18-96

#### 580-021-0305

##### Timely Notice

(1) If any appointment of a full-time academic staff member who is on an annual tenure appointment as defined in OAR 580-021-0100(1)(b)(A) is not to be renewed for reasons other than for cause or financial exigency, timely notice of nonrenewal shall be given in writing as follows: during the first annual appointment, by March 15 for those whose contracts expire June 15, or at least three months' notice given prior to expiration of the appointment; during the second year of service, by December 15 for those whose contracts expire on June 15, or at least six months given before expiration of the appointment; in the third and subsequent years, at least 12 months' notice that may be given at any time. In the event that notice is given to faculty members who are in the first or second year of an annual tenure appointment after the prescribed deadline, they shall also receive 12 months' notice of nonrenewal.

(2) Timely notice shall be given to part-time academic staff members on annual appointments on the same basis as to full-time faculty members cited above, except that the length of timely notice for part-time faculty members shall be calculated in terms of FTE years of service rather than in calendar years.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 4-1989, f. & cert. ef. 6-20-89; HEB 1-1993, f. & cert. ef. 2-5-93; HEB 5-1996, f. & cert. ef. 12-18-96

#### 580-021-0310

##### Terminations

Terminations can be either for cause or not for cause. Policies regarding terminations for cause and other sanctions apply to all members of the academic staff, both those having indefinite tenure and those not having indefinite tenure.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: HEB 3-1978, f. & ef. 6-5-78

#### 580-021-0315

##### Termination Not for Cause

Termination not for cause is defined as any termination other than for cause as set forth in OAR 580-021-0320:

(1) Staff Members with Indefinite Tenure:

(a) The appointment of an academic staff member with indefinite tenure will not be terminated for reasons other than for cause, except for financial exigency or program or department reductions or eliminations. Before the appointment of any academic staff member on indefinite tenure can be terminated for financial exigency, a bona fide determination will be made by the president that a financial exigency does exist, and that sufficient funds are not available for payment of compensation for the position concerned. Program or department reductions or eliminations may be made by the president, upon determination, pursuant to institutional procedures providing for faculty and other appropriate input, that such reductions or eliminations are consistent with institutional goals and needs;

(b) Responsibility for the decision as to whether a state of financial exigency exists, and the subsequent decision on actions necessary to meet the financial exigency, or the decision as to the necessity for program or department reductions or eliminations resulting in termination of employment of tenured faculty, shall rest with the president. In considering such matters, the president shall confer in a timely manner with appropriate faculty and other institutional councils and with the Chancellor and the Board concerning the issues involved in arriving at decisions in the foregoing areas;

(c) Institutional procedures relating to program or department reductions or eliminations shall reflect a regard for the rights of the affected academic staff member, and such procedures may not be used as a substitute for the provisions of OAR 580-021-0325 through 580-021-0385 that set forth the procedural protections to be accorded staff members;

(d) If a tenured faculty member's appointment is terminated or if the appointment of a nontenured faculty member is terminated before the end of the period of appointment because of financial exigency, or because of program or department reductions or eliminations, the released faculty member's place will not be filled by a replacement within a period of two years, unless the released faculty member has been offered reappointment and a reasonable time within which to accept or decline it;

(e) If the staff member cannot be retained either in the position in which presently employed or in some alternate position, maximum possible notice of termination shall be provided the academic staff member being terminated for financial exigency, and in the case of faculty terminated because of program or department reductions or eliminations not demonstrably related to a state of financial exigency, 12 months' notice shall be given.

(2) Staff Members without Indefinite Tenure. Appropriate notice of termination shall be provided staff members holding annual tenure appointments as set forth in OAR 580-021-0305. If the employment of such staff member is being terminated for financial exigency or program or department reductions or eliminations so as to render impossible the provision of notice as set forth in OAR 580-021-0305, maximum possible notice will be provided.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 1-1993, f. & cert. ef. 2-5-93; HEB 5-1996, f. & cert. ef. 12-18-96

#### 580-021-0318

##### Other Personnel Actions Not for Cause

As authorized by statute and by authority delegated to the Chancellor and the institution presidents, personnel may be transferred or

reassigned within an institution in accordance with the staff needs of the institution or other units. Such personnel actions should not be considered sanctions for cause unless they result from actions described in OAR 580-021-0325.

Stat. Auth.: ORS 351  
Stats. Implemented:  
Hist.: HEB 1-1984, f. & ef. 1-13-84

#### 580-021-0320

##### Termination and Other Sanctions for Cause

The appointment of a tenured or nontenured academic staff member may be terminated, or other sanctions imposed, for cause. Sanctions for cause include oral or written warning or reprimand, removal from an assigned post and reassignment, suspension for a period not to exceed one year and termination. Sanctions more severe than oral or written warning or reprimand shall be imposed in accordance with the procedure in OAR 580-021-0325 through 580-021-0385. Sanctions of oral or written warning or reprimand may be imposed in accordance with institutional procedures.

Stat. Auth.: ORS 351  
Stats. Implemented: ORS 351.070  
Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 5-1996, f. & cert. ef. 12-18-96

#### 580-021-0325

##### Definition of Cause

(1) "Cause" shall mean:

(a) Conviction of a felony or of a crime involving moral turpitude during the period of employment by the Department (or prior thereto if the conviction was willfully concealed in applying to the Department for employment);

(b) Conduct proscribed by OAR 580-022-0045; or

(c) Failure to perform the responsibilities of an academic staff member, arising out of a particular assignment, toward students, toward the faculty member's academic discipline, toward colleagues or toward the institution in its primary educational and scholarly functions and secondary administrative functions of maintaining property, disbursing funds, keeping records, providing living accommodations and other services, sponsoring activities and protecting the health and safety of persons in the institutional community.

(2) Evidence to demonstrate cause under the standard set forth in subsection (1)(c) of this definition of "cause" may include, but is not limited to, evidence of incompetence; gross inefficiency; default of academic integrity in teaching, research or scholarship; intentional or habitual neglect of duty and failure to perform adequately for medical reasons.

Stat. Auth.: ORS 351  
Stats. Implemented: ORS 351.070  
Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 5-1996, f. & cert. ef. 12-18-96

#### 580-021-0330

##### Initiation of Formal Proceedings

If the president determines that there is probable cause to impose a sanction or sanctions more severe than an oral or written warning or reprimand on an academic staff member, the president shall attempt to reach a satisfactory resolution of the matter. If no satisfactory resolution is reached within a reasonable time, the president shall authorize the preparation of formal charges in accordance with institutional procedure. The charges shall specifically state the facts believed to constitute grounds for imposition of a sanction or sanctions. The person authorized to prepare the charges shall not participate in evaluating the charges. Charges shall be filed with the president, and a copy personally delivered, or sent by certified mail, to the academic staff member within ten days after the authorization of preparation of charges. The charges or a notice accompanying the charges shall inform the academic staff member of the right to a formal hearing on the charges and of the academic staff member's duty to notify the president within ten days after the charges have been delivered or sent whether such hearing is desired.

Stat. Auth.: ORS 351.070  
Stats. Implemented:  
Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 1-1993, f. & cert. ef. 2-5-93

#### 580-021-0335

##### Temporary Suspension of Academic Staff Member

No restraints shall be placed on the academic staff member between the filing of charges and the president's action on the hearing committee's report. However, if at any time during the pendency of charges against an academic staff member, the president makes a written finding stating the reason that there is a clear and present danger that the academic staff member's continued performance of duties will be harmful to the institution, to the academic staff member or to the public at large, the president may suspend the academic staff member, without loss of compensation, from some or all duties.

Stat. Auth.: ORS 351.070  
Stats. Implemented: ORS 351.070  
Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 1-1993, f. & cert. ef. 2-5-93; HEB 5-1996, f. & cert. ef. 12-18-96

#### 580-021-0340

##### Academic Staff Member's Request for a Formal Hearing

Within ten days after the personal delivery or mailing of a copy of the charges to the academic staff member, the academic staff member who is so charged shall state in writing to the president whether a formal hearing on the charges is desired. This ten-day period may be reasonably extended by the president. If the academic staff member requests in writing that a formal hearing not be held, the president may impose an appropriate sanction or sanctions on the academic staff member to be effective as determined by the president. The president shall promptly give written notice thereof to the academic staff member provided, however, that the appointment of an academic staff member shall not be terminated except as provided in OAR 580-021-0365.

Stat. Auth.: ORS 351.070  
Stats. Implemented: ORS 351.070  
Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 1-1993, f. & cert. ef. 2-5-93; HEB 5-1996, f. & cert. ef. 12-18-96

#### 580-021-0345

##### Hearing Committee

Unless the academic staff member requests in writing that a formal hearing on the charges not be held, such hearing shall be held before a special ad hoc committee of from three to five members. Committee members shall be selected in the following manner: the advisory council, faculty senate or other proper elective faculty body shall appoint one or more permanent panels each consisting of ten faculty members; from one, or if necessary, two, of the permanent panels, the same elective body will name from three to five to serve as the hearing committee. The academic staff member and the administration are each allowed one peremptory challenge; a committee member so challenged will then be replaced from the same panel or panels of ten each by the elective body initially charged with impaneling. The committee shall be constituted promptly and shall complete the hearing and its report within 30 days of its constitution, if possible. The hearing committee shall elect a chair from among its members.

Stat. Auth.: ORS 351.070  
Stats. Implemented: ORS 351.070  
Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 1-1993, f. & cert. ef. 2-5-93; HEB 5-1996, f. & cert. ef. 12-18-96

#### 580-021-0350

##### Conduct of Hearing

(1) The committee shall set a date for the hearing, giving the academic staff member and the administration sufficient time to prepare the case. The academic staff member and the administration shall have the option of assistance by counsel, both in preparing for and at the hearing. Not less than one week before the hearing date, the academic staff member shall file with the committee any written statement regarding the case. The committee shall review the charges and the academic staff member's statement, if any, prior to the hearing.

(2) The committee shall consider the case on the basis of the obtainable information and decide what, if any, sanction or sanctions it will recommend be imposed on the academic staff member. The academic staff member shall have the option of a public or private hearing. The conduct of the hearing shall be under the control of the

committee chair, subject to the requirements of this chapter and the procedure of the committee. The committee chair shall have the powers of a hearing officer as defined in OAR 580-021-0425.

(3) A verbatim record of the hearing shall be kept. At the hearing, the committee shall receive the testimony of witnesses, on oath or affirmation, and other evidence concerning any disputed facts. The administration shall have the burden of proving its formal charges against the academic staff member, and the committee findings shall be according to the preponderance of the evidence.

(4) The committee shall not be bound to follow court procedures or rules of evidence, except as otherwise required by law. The academic staff member shall have the right to appear, to participate in the hearing, and to present relevant evidence to the committee. The academic staff member may be represented by counsel with or without being present. The academic staff member and the administration shall have the right to confront and cross-examine all witnesses. Insofar as possible, the administration will secure the cooperation, for attendance at the hearing, of witnesses requested by the academic staff member. The academic staff member and the administration shall be given reasonable opportunity to submit rebuttal testimony or other evidence. At the conclusion of the testimony, the committee may permit each side to make an oral or written summation; if the privilege is extended to one side, it must be extended to the other side. When the committee is satisfied that all pertinent and available evidence has been received, and that such summations as it deems appropriate have been presented, the hearing will be adjourned. The committee will then go into executive session for the purpose of deliberation.

Stat. Auth.: ORS 351.070

Stats. Implemented:

Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 1-1993, f. & cert. ef. 2-5-93

#### 580-021-0355

##### Committee's Report

The committee, by agreement of a majority of the members thereof, shall make explicit findings based on the hearing record with respect to each specification in the formal charges lodged against the academic staff member. Within ten days following determination of its findings, the committee shall recommend, by agreement of a majority of its members what, if any, sanction or sanctions shall be imposed on the academic staff member. The president and the academic staff member shall be given copies of the findings and recommendation. The verbatim record of the hearing shall be made available to the president and to the academic staff member. A copy shall be made available at cost on request by the academic staff member.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 1-1993, f. & cert. ef. 2-5-93; HEB 5-1996, f. & cert. ef. 12-18-96

#### 580-021-0360

##### Action by the President

If deemed necessary, the president may refer the matter back to the committee for further findings of fact. The president shall, promptly after receipt of the committee's final report and after reasonable opportunity to consult with the Chancellor and others, give the academic staff member and the Chancellor written notice of the decision. If the decision is to impose a sanction or sanctions on an academic staff member, the notice shall include the reasons therefor, and when it is to be effective, provided, however, that the appointment of an academic staff member shall not be terminated except as provided in OAR 580-021-0365.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 1-1993, f. & cert. ef. 2-5-93; HEB 5-1996, f. & cert. ef. 12-18-96

#### 580-021-0365

##### Date of Termination

If the appointment of an academic staff member is to be terminated for cause, the appointment shall neither be terminated earlier than one month nor later than one year from the date of the written notice of the president's decision, provided however, that an

academic staff member having indefinite tenure whose appointment is terminated for cause other than misconduct shall continue to receive salary at the current rate for one year from the date of the written notice of the president's decision.

Stat. Auth.: ORS 351.070

Stats. Implemented:

Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 1-1993, f. & cert. ef. 2-5-93

#### 580-021-0370

##### Review by the Board

(1) The Board shall review any case involving imposition of a sanction or sanctions on an academic staff member having indefinite tenure on written notice of appeal by the academic staff member. The appeal shall be filed with the Board Secretary within ten days (or within such extension of time as permitted by the Chancellor) of the date of the written notice of the president's decision, stating grounds for the appeal, with a copy to the president. The Board may on its own initiative review any case involving the question of imposing a sanction or sanctions on an academic staff member. On receiving written notice of appeal by an academic staff member having indefinite tenure or on notice of the Board's decision to review a case, the president shall forward to the Board Secretary a copy of the charges in the case and the academic staff member's written statement, if any, in answer thereto, and the verbatim record of the hearing, and any exhibits, the committee's findings and recommendations and a copy of the notice of the president's decision.

(2) The Board may review the case on the record only; return the case to the institution from which it came for the receipt of further evidence or testimony; conduct such hearings as it deems proper for its review; refer the matter to a committee of Board members for consideration, including possible hearings, and recommendations; or refer the matter to a hearing officer for hearings and recommendation. The Board shall make such determination of the case, pursuant to its policies, as it deems just.

(3) If the Board sustains the decision to impose a sanction or sanctions on the academic staff member, the sanction or sanctions shall be effective at the date originally named by the president, or such later date as determined by the Board.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 1-1993, f. & cert. ef. 2-5-93; HEB 5-1996, f. & cert. ef. 12-18-96

#### 580-021-0375

##### Board's Initiative in Bringing Investigation or Charges

On any occasion when it appears to the Board that there is probable cause to impose a sanction or sanctions on an academic staff member, the Board may direct the president to determine whether there is such probable cause. If the president finds that there is probable cause to impose a sanction or sanctions on the academic staff member, the president shall have formal charges prepared and proceed with the case as provided in OAR 580-021-0330. If the president finds that there is not probable cause to impose a sanction or sanctions on the academic staff member, the president shall transmit such report to the Board, including a full statement of reasons for the finding. If the Board, after receipt of the report, deems that the facts of the case warrant the filing of formal charges, the Board shall provide the president with a statement explaining its exceptions to the findings and may direct the president to have formal charges prepared or, at the request of the president, the Board may direct some person within the Department to prepare the formal charges. The subsequent procedure shall be the same as if charges were initially authorized to be prepared by the president.

Stat. Auth.: ORS 351.070

Stats. Implemented:

Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 1-1993, f. & cert. ef. 2-5-93

#### 580-021-0380

##### No Reprisals

No employee of the Department shall be subject to any reprisals by the Department for appearing as a witness or for participating as a member of a committee in any of the proceedings provided for in this Division.

Stat. Auth.: ORS 351



Stats. Implemented:  
Hist.: HEB 3-1978, f. & ef. 6-5-78

#### 580-021-0385

##### Personnel Record

No notation shall be made in the personnel record of an academic staff member of any investigation that has not resulted in formal charges being brought against the academic staff member under OAR 580-021-0320 through 580-021-0375 or that has not resulted in the imposition or a sanction of oral or written warning or reprimand in accordance with institutional procedures, as provided in OAR 580-021-0320.

Stat. Auth.: ORS 351.070  
Stats. Implemented: ORS 351.070  
Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 1-1993, f. & cert. ef. 2-5-93; HEB 5-1996, f. & cert. ef. 12-18-96

#### 580-021-0400

##### Construction

These rules shall be liberally construed to secure just, speedy, and inexpensive determination of the issues presented. These rules are intended to carry out the intent of the Oregon Administrative Procedure Act and are to be interpreted consistent therewith. Any situation not provided for in these rules shall be governed by the Act and, to the extent applicable, by the law applicable to suits in equity in the circuit courts of Oregon.

Stat. Auth.: ORS 351  
Stats. Implemented:  
Hist.: HEB 3-1978, f. & ef. 6-5-78

#### 580-021-0405

##### Notice of Hearing

If a contested case hearing is to be held by the Board, or by a hearing officer designated by the Board, the Board shall ascertain the time most convenient for the hearing and shall give all parties thereto at least ten days' notice of the time, place and nature of the hearing. The time may be shortened or extended by stipulation of all parties.

Stat. Auth.: ORS 351  
Stats. Implemented: ORS 351.070  
Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 5-1996, f. & cert. ef. 12-18-96

#### 580-021-0410

##### Subpoenas

Subpoenas requiring attendance of witnesses or the production of documentary or tangible evidence at a hearing may be issued by the Board, when authorized by law, on request by any party to the proceeding, including the Board itself, on proper showing of general relevance or reasonable scope of the evidence sought.

Stat. Auth.: ORS 351  
Stats. Implemented:  
Hist.: HEB 3-1978, f. & ef. 6-5-78

#### 580-021-0415

##### Assignment to Hear Proceeding

(1) The hearing shall be before the Board except in those cases assigned by the Board to a hearing officer.

(2) The word "Board" in these rules shall include hearing officer wherever applicable.

Stat. Auth.: ORS 351  
Stats. Implemented:  
Hist.: HEB 3-1978, f. & ef. 6-5-78

#### 580-021-0420

##### Disqualification

Any party to a proceeding before the Board may file an affidavit of personal bias against any officer conducting the hearing. Any hearing officer may withdraw from the proceeding because of personal bias or for any reason deemed sufficient by the Board. The Board, in its discretion, may order a hearing on a question of disqualification of a hearing officer.

Stat. Auth.: ORS 351  
Stats. Implemented:  
Hist.: HEB 3-1978, f. & ef. 6-5-78

#### 580-021-0425

##### Powers of Hearing Officers

(1) A hearing officer or the Board when authorized by law shall have the following powers:

- (a) To give notice of and hold hearings;
- (b) To administer oaths and affirmations;
- (c) To examine witnesses;
- (d) To issue subpoenas;
- (e) To rule on offers of proof and receive evidence;
- (f) To regulate the course of the hearing, including the power to eject any person who in any manner interferes with the orderly procedure of a hearing;

(g) To hold conferences, before or during the hearing, for the settlement or simplification of issues, with consent of the parties;

- (h) To dispose of procedural requests or similar matters;
- (i) To make initial decisions;

(j) To take any other action proper under these rules, including the making of findings of fact, and recommendations to the Board.

(2) The hearing officer's authority in each case will terminate when:

- (a) The hearing officer withdraws from the case for any reason;
- (b) The time for appeal has terminated.

Stat. Auth.: ORS 351  
Stats. Implemented:  
Hist.: HEB 3-1978, f. & ef. 6-5-78

#### 580-021-0430

##### Who May Appear

(1) Each party may be represented by counsel.

(2) Any individual may appear for himself or herself, and any member of a partnership that is a party to any proceeding may appear for such partnership on adequate identification.

Stat. Auth.: ORS 351.070  
Stats. Implemented:  
Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 1-1993, f. & cert. ef. 2-5-93

#### 580-021-0435

##### Standard of Conduct

Contemptuous conduct by any person present at a hearing shall be grounds for exclusion from the hearing by the hearing officer.

Stat. Auth.: ORS 351  
Stats. Implemented:  
Hist.: HEB 3-1978, f. & ef. 6-5-78

#### 580-021-0440

##### Hearing Recorder

The official record of the hearing shall be stenographically or mechanically recorded by a person or persons assigned by the Board capable of doing such recording. The method used shall be in the discretion of the Board.

Stat. Auth.: ORS 351  
Stats. Implemented:  
Hist.: HEB 3-1978, f. & ef. 6-5-78

#### 580-021-0445

##### Transcript of Testimony

A transcript of the official record shall be furnished by the Board for the purposes of rehearing or judicial review. The cost of the record shall not be taxed to parties other than the Board except as is specifically provided in ORS 183.415(8).

Stat. Auth.: ORS 351  
Stats. Implemented:  
Hist.: HEB 3-1978, f. & ef. 6-5-78

#### 580-021-0450

##### Continuances and Postponements

Motion for continuance or postponement of any hearing may be granted by the Board for good cause.

Stat. Auth.: ORS 351  
Stats. Implemented:  
Hist.: HEB 3-1978, f. & ef. 6-5-78

#### 580-021-0455

##### Evidence

(1) In general:

(a) The testimony of witnesses at a hearing shall be on oath or affirmation administered by an officer of the Board authorized to administer oaths and shall be subject to cross-examination;

(b) Any witness may, in the discretion of the Board, be examined separately and apart from all other witnesses except those who are parties to the proceeding;

(c) The Board may limit oral argument in its discretion.

(2) The oath or affirmation taken by a witness before testimony shall be in the same form and manner as is provided by law.

(3) Every party shall have the right to present a case or defense by oral, documentary, or other satisfactory evidence, to submit evidence in rebuttal, and to conduct such cross-examination as may be required for a full and complete disclosure of the facts.

(4) The party having the affirmative of the issue shall have the burden of proof.

(5) Admission and exclusion of evidence:

(a) Evidence of a type commonly relied on by reasonably prudent persons in the conduct of their serious affairs shall be admissible, but irrelevant, immaterial, or unduly repetitious evidence shall be excluded;

(b) Hearsay evidence shall not be admissible over an objection based on lack of opportunity to cross-examine;

(c) The Board may limit expert and opinion evidence in its discretion.

(6) If a party objects to the admission or rejection of any evidence or to the limitation of the scope of any examination or cross-examination, that party shall state briefly the grounds of such objection, whereupon the Board shall give the party adversely affected by its ruling on the objection an automatic exception.

(7) After first advising all parties of its intention to do so, the Board may take notice of judicially cognizable facts as is provided by law and of general, technical or scientific facts within the specialized knowledge of the Board members.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 1-1993, f. & cert. ef. 2-5-93; HEB 5-1996, f. & cert. ef. 12-18-96

#### 580-021-0460

##### Informal Disposition

Informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default, unless precluded by law.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: HEB 3-1978, f. & ef. 6-5-78

#### 580-021-0465

##### Record

The stenographic or mechanical record of the testimony and exhibits, together with all pleadings, motions, and rulings filed in the proceedings, all stipulations, statements of matters officially noticed, questions, and offers of proof, objections and rulings thereon, and proposed findings and exceptions, shall constitute the exclusive record for decision. The record shall also include any Board proceeding on disqualification of any hearing officer and the proposed, intermediate or final order, if any.

Stat. Auth.: ORS 351

Stats. Implemented: ORS 351.070

Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 5-1996, f. & cert. ef. 12-18-96

#### 580-021-0470

##### Decision

(1) Except as provided in section (2) of this rule, the Board shall render its decision within 60 days after completion of the hearing. The decision shall be accompanied by findings of fact and conclusions of law. A copy of the decision and the findings of fact and conclusions of law shall be mailed to each party.

(2) If a majority of the Board officials has not heard the proceedings or read the transcript, a proposed decision of the Board, including findings of fact and conclusions of law, shall be mailed to each party, who shall have 15 days after receipt to submit written exceptions to the proposed decision to the Board and to request an opportunity to present argument to the Board. The Board shall grant such opportunity for argument as soon as it can reasonably be

arranged. The Board shall render its decision, accompanied by findings of fact and conclusions of law, within 60 days after presentation of the argument.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 1-1993, f. & cert. ef. 2-5-93; HEB 5-1996, f. & cert. ef. 12-18-96

## DIVISION 22

### ACADEMIC FREEDOM

#### 580-022-0005

##### Academic Freedom

(1) All teachers in Department institutions are entitled to freedom in the classroom in discussing subjects, but they should be careful not to introduce into their teaching controversial matter that has no relation to the subject.

(2) As a matter of policy the Board neither attempts to control, sway nor limit the personal opinion or expression of that opinion of any person on the faculty or otherwise on the Department's payroll. In the exercise of this freedom of expression, faculty members should manifest appropriate restraint, should show respect for the opinions of others, and should make every effort to indicate that they do not speak on behalf of the Department or institution.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 1-1993, f. & cert. ef. 2-5-93; HEB 5-1996, f. & cert. ef. 12-18-96

### Political Activities

#### 580-022-0010

##### Public Activities

(1) Although there is no prohibition against active participation by Department employees in various community and public affairs, it is expected that time given to such activities shall not interfere with the duties of the employees concerned.

(2) No employee shall take action that might be construed as committing the institution or the Board to a position on public issues.

Stat. Auth.: ORS 351.070

Stats. Implemented:

Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 1-1993, f. & cert. ef. 2-5-93

#### 580-022-0015

##### Candidates for Public Office

(1) In accordance with the Oregon Constitution, it is Board policy to allow employees to seek political office and to serve in the event of election. Before an employee shall become a candidate for any public office, whether for a salaried or nonsalaried position, the employee is expected to consult with the president.

(2) Political activity shall in no way interfere with the performance of the major duties prescribed by the Board and the presidents.

(3) Because circumstances under which a campaign is conducted will vary widely depending on the nature of the elective office and the extent of opposition, the determination of whether an employee may continue full-time duties while conducting or engaged in a campaign rests with the employee's president. In the event of election to the State Legislature, an employee normally will be placed on leave of absence without pay during the period of full-time responsibility. If elected or appointed to a full-time salaried office, the employee may be placed on leave of absence without pay during the term of office or may be required to resign.

Stat. Auth.: ORS 351.070

Stats. Implemented:

Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 1-1993, f. & cert. ef. 2-5-93

#### 580-022-0020

##### Relationships with State Government

(1) Except for the Chancellor and designees, no employee of the Department is authorized to represent the Department, including any institution or other activity thereof, to the Legislature, its members

or committees, to the Office of the Governor, and to the Executive Department and its Divisions.

(2) Nothing in this rule shall be construed as inhibiting an employee of the Department from exercising the right of citizenship in a personal capacity, or be construed as inhibiting any employee of the Department from appearing before a body of state government identified in this rule in response to a request from that body.

(3) Faculty members are authorized to visit the Legislative Sessions and Hearings with students in the interests of furthering the effectiveness of organized class work, or to respond to requests from the Legislature for establishment and maintenance of special involvements such as student intern programs.

Stat. Auth.: ORS 351.070

Stats. Implemented:

Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 1-1993, f. & cert. ef. 2-5-93

### Holidays and Miscellaneous Privileges

#### 580-022-0025

##### Academic Staff Holidays

(1) The following are institution holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day. The institutions will be closed on these days. However, units deemed by the institution to provide a necessary function may remain open at the discretion of the institution. Other holidays designated by state law, such as Veteran's Day, Presidents' Day and Martin Luther King, Jr.'s Birthday, are not institution holidays unless the institution is closed by a discretionary act of the president. Institution presidents may designate the day after Thanksgiving as an institution holiday in lieu of one of the listed discretionary holidays.

(2) Any business transaction required or permitted to be performed on a holiday designated by state law may be performed on the next succeeding business day without penalty, even though the institution may be open on the holiday.

(3) Holidays for academic staff shall be those days designated as institution holidays (as described in section (1) of this rule), holidays designated by faculty collective bargaining agreements, and any additional day designated by the Governor.

(4) Holidays observed by classified employees are established by the Executive Department or by collective bargaining agreements.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 5-1988, f. & cert. ef. 5-13-88; HEB 1-1993, f. & cert. ef. 2-5-93; HEB 5-1996, f. & cert. ef. 12-18-96

#### 580-022-0030

##### Staff Fee Privileges

Employees of the Department of Higher Education may register for class work at special rates, subject to the following conditions:

(1) Graduate teaching and research assistants may register for credit hours during any term of their appointment and during an intervening summer term under the terms and conditions approved by the Board and described in the Academic Year Fee Book. Graduate assistants are students admitted to a graduate degree program and appointed to an assistantship while working toward a graduate degree. Appointment as an assistant may not be for less than .15 FTE for the term of appointment. Institutions may establish minimum and maximum numbers of credit hours for which graduate assistants may register, provided that the president's approval is required prior to registering for credit hours in excess of 16 in any one term.

(2) On approval of the president or designee, employees appointed at half-time or more (not including temporary classified employees, graduate assistants, and other student employees) may register for a maximum of twelve hours of credit per term at the staff fee rate under the terms and conditions approved by the Board and described in the Academic Year Fee Book. Employees in Centralized Activities must have approval of the Chancellor or designee before registering for credit at the staff fee rate. This policy is effective fall term 2002. The Board of Higher Education will review subsequent to fall 2004.

(3) Auditor privileges are accorded to employees under the terms and conditions approved by the Board and described in the Academic Year Fee Book.

(4) For purposes of this rule, the term "employee" may include persons will full-time courtesy appointments who provide a benefit to the institution in the form of teaching, research, or counseling, under the direction of the institution and using the facilities of the institution.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 8-1979, f. & ef. 8-22-79; HEB 1-1981, f. & ef. 6-4-81; HEB 4-1982, f. & ef. 7-14-82; HEB 10-1986, f. & ef. 7-16-86; HEB 1-1993, f. & cert. ef. 2-5-93; OSSHE 4-2002(Temp), f. & cert. ef. 5-28-02 thru 11-15-02; OSSHE 6-2002, f. & cert. ef. 7-30-02

#### 580-022-0031

##### Transfer of Staff Fee Privileges

Employees of the Department of Higher Education eligible for staff fee privileges (as defined in 580-022-0030) may transfer such privileges to family members or domestic partners consistent with the following terms and conditions:

(1) Persons eligible to receive a transfer of staff fee privileges must be either:

(a) A family member, to include spouse or dependent children, in accordance with the Internal Revenue Service (IRS) code; or

(b) A "domestic partner," as defined per Section One of the Public Employees Benefit Board Affidavit of Domestic Partnership.

(2) Staff fee benefits:

(a) Are usable only once per academic term by either the employee or transferee;

(b) May not be subdivided during a term;

(c) Are limited to one transfer per term; and

(d) Are limited to twelve (12) academic credits per term.

(3) Employee qualification is verified through Human Resource System Records at each institution; recipient status (spousal, dependent, or domestic partner) must be established no later than the first day of classes of the term of enrollment.

(4) Recipients of transferred staff fee privileges may utilize credit at any Oregon Department of Higher Education institution, subject to policies of instructing institution. Institutions reserve the right to exclude programs from eligibility for the privilege.

(5) Mandatory enrollment fees including, but not limited to, Resource, Health Service, Building, and Incidental, will apply.

(6) Transfer of staff fee benefits is not available for retirees of the Oregon Department of Higher Education or employees of Oregon Health Science University participating in the OUS/OHSU inter-governmental agreement.

(7) This policy is effective fall term 2002. The Board of Higher Education will review subsequent to fall 2004.

(8) For further reference to applicable policies and procedures, see "2002-2003" edition of the Academic Year Fee Book (and subsequent editions).

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351

Hist.: OSSHE 2-2000, f. & cert. ef. 6-23-00; OSSHE 5-2002(Temp), f. & cert. ef. 5-28-02 thru 11-15-02; OSSHE 7-2002, f. & cert. ef. 7-30-02

#### 580-022-0035

##### Physical Education Privileges

Insofar as practicable, physical education facilities are available to staff members for recreational purposes on payment of an appropriate fee.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: HEB 3-1978, f. & ef. 6-5-78

#### 580-022-0040

##### Student Health Services

Student health service facilities are not available to staff members.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: HEB 3-1978, f. & ef. 6-5-78



**Proscribed Conduct**

**580-022-0045**

**Proscribed Conduct**

Procedures to impose applicable sanctions may be instituted against any person engaging in any of the following proscribed conduct:

- (1) Obstruction or disruption of teaching, research, administration, disciplinary procedures, or other institutional activities, including the institution's public service functions or other authorized activities on institutionally owned or controlled property;
- (2) Obstruction or disruption interfering with freedom of movement, either pedestrian or vehicular, on institutionally owned or controlled property;
- (3) Possession or use of firearms, explosives, dangerous chemicals, or other dangerous weapons or instrumentalities on institutionally owned or controlled property, unless expressly authorized by law, Board, or institutional rules (for purposes of this section, absence of criminal penalties shall not be considered express authorization);
- (4) Detention or physical abuse of any person or conduct intended to threaten imminent bodily harm or endanger the health of any person on any institutionally owned or controlled property;
- (5) Malicious damage, misuse or theft of institutional property, or the property of any other person where such property is located on institutionally owned or controlled property, or, regardless of location, is in the care, custody or control of an institution;
- (6) Refusal by any person while on institutional property to comply with an order of the president or appropriate authorized official to leave such premises because of conduct proscribed by this rule when such conduct constitutes a danger to personal safety, property, educational, or other appropriate institutional activities on such premises;
- (7) Unauthorized entry to or use of institutional facilities, including buildings and grounds;
- (8) Illegal use, possession, or distribution of drugs on institutionally owned or controlled property;
- (9) Inciting others to engage in any of the conduct or to perform any of the acts prohibited herein. Inciting means that advocacy of proscribed conduct that calls on the person or persons addressed for imminent action, and is coupled with a reasonable apprehension of imminent danger to the functions and purposes of the institution, including the safety of persons, and the protection of its property;
- (10) Violating the Board's Policy for Intercollegiate Athletics as described in **Section 8 of the Internal Management Directives**, specifically including the subsection thereof entitled **Code of Ethics**.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 3-1983, f. & ef. 3-17-83; HEB 1-1991, f. & cert. ef. 2-14-91; HEB 1-1993, f. & cert. ef. 2-5-93; HEB 5-1996, f. & cert. ef. 12-18-96

**580-022-0047**

**Confidentiality and Inadmissibility of Workplace Interpersonal Dispute Mediation Communications**

- (1) This rule applies to workplace interpersonal disputes, which are disputes involving the interpersonal relationships between this agency's employees, officials or employees and officials. This rule does not apply to disputes involving the negotiation of labor contracts or matters about which a formal grievance under a labor contract, a tort claim notice or a lawsuit has been filed.
- (2) The words and phrases used in this rule have the same meaning as given to them in ORS 36.110 and 36.234.
- (3) Nothing in this rule affects any confidentiality created by other law.
- (4) To the extent mediation communications would otherwise compromise negotiations under ORS 40.190 (OEC Rule 408), those mediation communications are not admissible as provided in ORS 40.190 (OEC Rule 408), notwithstanding any provisions to the contrary in section (9) of this rule.
- (5) Disclosures by Mediator. A mediator may not disclose or be compelled to disclose mediation communications in a mediation and,

if disclosed, such communications may not be introduced into evidence in any subsequent administrative, judicial or arbitration proceeding unless:

- (a) All the parties to the mediation and the mediator agree in writing to the disclosure; or
- (b) The mediation communication may be disclosed or introduced into evidence in a subsequent proceeding as provided in subsections (c) or (h)–(j) of section (7) of this rule.
- (6) Confidentiality and Inadmissibility of Mediation Communications. Except as provided in section (7) of this rule, mediation communications in mediations involving workplace interpersonal disputes are confidential and may not be disclosed to any other person, are not admissible in any subsequent administration, judicial or arbitration proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent proceeding, or introduced into evidence by the parties or the mediator in any subsequent proceeding so long as:
  - (a) The parties to the mediation and the agency have agreed in writing to the confidentiality of the mediation; and
  - (b) The person agreeing to the confidentiality of the mediation on behalf of the agency:
    - (A) Is neither a party to the dispute nor the mediator; and
    - (B) Is designated by the agency to authorize confidentiality for the mediation; and
    - (C) Is at the same or higher level in the agency than any of the parties to the mediation or who is a person with responsibility for human resources or personnel matters in the agency, unless the agency head or member of the governing board is one of the persons involved in the interpersonal dispute, in which case the Governor or Governor's designee.
- (7) Exceptions to confidentiality and inadmissibility.
  - (a) Any statements, memoranda, work products, documents and other materials, otherwise subject to discovery that were not prepared specifically for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding.
  - (b) Any mediation communications that are public records, as defined in ORS 192.410(4) and were not specifically prepared for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential or privileged under state or federal law.
  - (c) A mediation communication is not confidential and may be disclosed by any person receiving the communication to the extent that person reasonably believes that disclosing the communication is necessary to prevent the commission of a crime that is likely to result in death or bodily injury to any person. A mediation communication is not confidential and may be disclosed in a subsequent proceeding to the extent its disclosure may further the investigation or prosecution of a felony crime involving physical violence to a person.
  - (d) The parties to the mediation may agree in writing that all or part of the mediation communications are not confidential or that all or part of the mediation communications may be disclosed and may be introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential, privileged or otherwise prohibited from disclosure under state or federal law.
  - (e) A party to the mediation may disclose confidential mediation communications to a person if the party's communication with that person is privileged under ORS Chapter 40 or other provision of law. A party to the mediation may disclose confidential mediation communications to a person for the purpose of obtaining advice concerning the subject matter of the mediation, if all the parties agree.
  - (f) A written mediation communication may be disclosed or introduced as evidence in a subsequent proceeding at the discretion of the party who prepared the communication so long as the communication is not otherwise confidential under state or federal law and does not contain confidential information from the mediator or another party who does not agree to the disclosure.
  - (g) In any proceeding to enforce, modify or set aside a mediation agreement, a party to the mediation may disclose mediation communications and such communications may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the pro-

ceeding to prevent further disclosure of mediation communications or agreements to persons other than the parties to the agreement.

(h) In an action for damages or other relief between a party to the mediation and a mediator or mediation program, mediation communications are not confidential and may be disclosed and may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of the mediation communications or agreements.

(i) To the extent a mediation communication contains information on the substance of which is required to be disclosed by Oregon statute, other than ORS 192.410 to 192.505, that portion of the communication may be disclosed as required by statute.

(j) The mediator may report the disposition of a mediation to the agency at the conclusion of the mediation so long as the report does not disclose specific confidential mediation communications. The agency or the mediator may use or disclose confidential mediation communications for research, training or educational purposes, subject to the provisions of ORS 36.232(4).

(8) The terms of any agreement arising out of the mediation of a workplace interpersonal dispute are confidential so long as the parties and the agency so agree in writing. Any term of an agreement that requires an expenditure of public funds, other than expenditures \$1,000 or less for employee training, employee counseling or purchases of equipment that remain the property of the agency, may not be made confidential.

(9) When a mediation is subject to section (6) of this rule, the agency will provide to all parties to the mediation and to the mediator a copy of this rule or an explanation of where a copy of the rule may be obtained. Violation of this provision does not waive confidentiality or inadmissibility.

Stat. Auth.: ORS 36.224

Stats. Implemented: ORS 36.230(4)

Hist.: OSSHE 6-2000(Temp), f. & cert. ef. 12-21-00 thru 6-15-01; OSSHE 1-2001, f. & cert. ef. 4-27-01

### Employment Discrimination

#### 580-022-0050

#### Discrimination Based on Race, Color, Religion, National Origin, Disability, Age, Marital Status, Sex, or Sexual Orientation

No institution or division shall discriminate in employment based on race, color, religion, national origin, disability, age, marital status, sex or sexual orientation.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 2-1982, f. & ef. 4-20-82; HEB 2-1988, f. & cert. ef. 3-16-88; HEB 11-1990(Temp), f. & cert. ef. 10-3-90; HEB 15-1990, f. & cert. ef. 11-7-90; HEB 16-1990, f. & cert. ef. 12-18-90; HEB 4-1991, f. & cert. ef. 8-15-91; HEB 1-1993, f. & cert. ef. 2-5-93; HEB 5-1996, f. & cert. ef. 12-18-96

### Employment of More than One Member of a Household

#### 580-022-0055

#### Employment of More Than One Member of a Household

(1) In appointing academic staff members, the Department seeks those persons most qualified to fulfill its teaching, research and service obligations. Accordingly, members of the same family may be appointed to academic staff positions when it has been determined that they are the most qualified candidates for the positions.

(2) No academic staff member, without prior permission of the immediate supervisor, shall participate in employment decisions, supervision or grievance adjustment concerning or involving the staff member's spouse, child or stepchild.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 1-1993, f. & cert. ef. 2-5-93; HEB 5-1996, f. & cert. ef. 12-18-96

### Board Rules Governing Institutional Rules Relating to Faculty Records

#### 580-022-0060

#### Institutional Rules

(1) The Board delegates to the president responsibility for developing institutional rules governing the form and variety of faculty records to be maintained in the institution, the nature of the information to be collected, the way in which such faculty information is to be recorded, maintained, used and eventually disposed. Such institutional rules shall be consistent with Oregon Laws and the Board's Administrative Rules. Copies of faculty records rules adopted by each institution shall be presented to the Chancellor and shall be maintained on file in the Board's Office.

(2) The Board expects that the presidents will give faculty an important voice in developing these rules, consistent with the nature of the academic community.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 1-1993, f. & cert. ef. 2-5-93; HEB 5-1996, f. & cert. ef. 12-18-96

#### 580-022-0065

#### Definitions

(1) "Personal Records" means records containing information kept by the institution, school, division or department concerning a faculty member and furnished by the faculty member or by others, including, but not limited to, information as to discipline, counseling, membership activity, other behavioral records, professional preparation and experience, professional performance (e.g., assignment and workload, quality of teaching, research and service to the institution), personnel data relating to such matters as promotions, tenure, leaves, retirement credits and the like and professional activities external to the institution, including, but not necessarily limited to, awards, recognition, research activities and travel.

(2) For purposes of compliance with ORS 351.065, "records of academic achievement" shall mean the record of credits earned toward a degree or in postdoctoral work and/or certificate(s), diploma(s), license(s) and degree(s) received.

Stat. Auth.: ORS 351

Stats. Implemented: ORS 351.070

Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 5-1996, f. & cert. ef. 12-18-96

#### 580-022-0070

#### Limitation on Records to Be Maintained

Only records that are demonstrably and substantially relevant to the educational and related purposes of the institution, school, division or department shall be generated and maintained.

Stat. Auth.: ORS 351

Stats. Implemented: ORS 351.070

Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 5-1996, f. & cert. ef. 12-18-96

#### 580-022-0075

#### Confidential Information Relating to Employed Faculty Not to Be Sought Nor Accepted

When evaluating employed faculty members, the Board, its institutions, schools or departments shall not solicit or accept letters, documents or other materials, given orally or in written form, from individuals or groups who wish their identity kept anonymous or the information they provide kept confidential, except for student evaluations made or received pursuant to OAR 580-022-0100(5).

Stat. Auth.: ORS 351

Stats. Implemented: ORS 351.070

Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 1-1979, f. & ef. 4-27-79; HEB 5-1996, f. & cert. ef. 12-18-96

#### 580-022-0080

#### Certain Information Not Required to Be Given by Faculty Members

No faculty member shall be required to give, but may voluntarily provide, information as to race, religion, sex, political affiliation or preferences, except such information that may be required by state statute, federal law or valid federal rules, regulations or orders. Where the faculty member is asked for such self-designation for any purpose (including federal requests for information), the request shall state the purpose of the inquiry and shall inform the individual of the right to decline to respond.

Stat. Auth.: ORS 351

Stats. Implemented: ORS 351.070  
Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 5-1996, f. & cert. ef. 12-18-96

#### 580-022-0085

##### Locations and Custody of Faculty Records

Official faculty personal records shall be kept in locations central to the institution, school, division, or department by which they are maintained. Custody shall be assigned to designated personnel specifically charged with maintaining the confidentiality and security of the records in accordance with institutional rules. No institution shall maintain more than three files relating to the evaluation of a faculty member, except that an institution may maintain one additional confidential file that shall contain only material excised from other records as permitted by OAR 580-022-0100. Evaluation files are those referred to in ORS 351.065 as “designated” or “authorized.”

Stat. Auth.: ORS 351.070  
Stats. Implemented: ORS 351.070  
Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 1-1993, f. & cert. ef. 2-5-93; HEB 5-1996, f. & cert. ef. 12-18-96

#### 580-022-0090

##### Release of and Access to Faculty Records

(1) Appropriate information about the faculty member may be released on request and without the faculty member’s consent. Such information shall be limited to:

(a) Directory information, that is, information generally needed in identifying or locating a named faculty member including such information as is readily found in published documents such as institutional catalogs;

(b) Objective evidence of a faculty member’s academic achievement, limited to information as to the number of credits earned toward a degree or in postdoctoral work, and certificate(s), diploma(s), license(s) and degree(s) received;

(c) Salary information and the record of terms or conditions of employment;

(d) Records tabulated from students’ classroom survey evaluations, on a finding by the president that privacy rights in an adequate educational environment would not suffer by disclosure.

(2) All information in the faculty member’s personal record file, apart from that identified in section (1) of this rule, shall be considered personal and subject to restricted access as hereinafter set forth in OAR 580-022-0095 through 580-022-0125.

Stat. Auth.: ORS 351.070  
Stats. Implemented: ORS 351.070  
Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 1-1993, f. & cert. ef. 2-5-93; HEB 5-1996, f. & cert. ef. 12-18-96

#### 580-022-0095

##### Confidential Records — Restrictions on Release

(1) Personal records designated as subject to restricted access in accordance with authority granted in ORS 351.065 shall be available only to the faculty member who is the subject of the records as provided for in OAR 580-022-0100 through 580-022-0115 and to institutional personnel, such as faculty, administrators, students and others serving on official institutional committees or in other official institutional capacities. Such institutional personnel shall have a demonstrably legitimate need to review the records in order to fulfill their official, professional responsibilities as defined in institutional rules. These records may not be released to any other person or agency without the faculty member’s written consent, unless on receipt of a valid subpoena or other court order or process or as required by state statute, federal law or valid federal or state rules, regulations or orders.

(2) Institutional rules shall provide for designation of institutional officials to appear in court to test the validity of a subpoena or other court order or process relating to release of faculty records when validity is in question.

Stat. Auth.: ORS 351  
Stats. Implemented: ORS 351.070  
Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 5-1996, f. & cert. ef. 12-18-96

#### 580-022-0100

##### Access to Files by Faculty Members

(1) Faculty members shall be allowed full access to their own personal files and personal records kept by the institution, school, department or division, except as provided in sections (2) and (3) of this rule.

(2) Letters and other information submitted in confidence to the institution, school, department, or division prior to July 1, 1975, shall be maintained in the evaluation files permitted by OAR 580-022-0085. However, if a faculty member requests access to such letters and other information pertaining to the faculty member, the anonymity of the contributors of letters and other information obtained prior to July 1, 1975, shall be protected. The full text shall be made available to the faculty member except those portions of the text that would serve to identify the contributor, which shall be excised by a faculty committee created pursuant to institutional rules. The excised portions of the documents may be retained in the confidential file permitted by OAR 580-022-0085.

(3) Confidential letters and other information received by the institution, school, department, or division after July 1, 1975, prior to the employment of a faculty member, shall be placed in evaluation files relating to the faculty member. If the applicant is not employed, the confidential information submitted concerning the applicant shall remain confidential. If an applicant who is employed requests access to personal files, the anonymity of the contributors of confidential preemployment letters and other preemployment information shall be protected. The full text shall be made available, except that those portions of the text that would serve to identify the contributor shall be excised and may be retained in the confidential file permitted by OAR 580-022-0085.

(4) Any evaluation received by telephone shall be documented in each of the faculty member’s evaluation files by means of a written summary of the conversation with the names of the conversants identified.

(5) If the institution, school, department or division solicits or accepts student survey evaluations of the classroom or laboratory performance of a faculty member, the survey evaluations shall be conducted anonymously. Reports tabulated from student evaluations shall be placed in the evaluation files defined in OAR 580-022-0085. Survey instruments from which evaluation data are obtained shall be delivered to the faculty member. No other evaluative material shall be accepted from students unless the students are first clearly informed that the faculty member will have access to such material and that the anonymity of the student cannot be preserved.

Stat. Auth.: ORS 351.070  
Stats. Implemented: ORS 351.070  
Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 1-1993, f. & cert. ef. 2-5-93; HEB 5-1996, f. & cert. ef. 12-18-96

#### 580-022-0105

##### Entry into File of Comments, Explanations, and Rebuttals

(1) The institutional, school, divisional or departmental official shall, upon request, offer the faculty member opportunity to enter into the evaluation file a rebuttal, refutation, or explanation of any observations contained therein.

(2) On a faculty member’s request, an appropriate faculty committee, as defined in institutional rules, shall examine the faculty member’s file to verify that all statements therein have been provided. If not, the committee shall require that the information be made available.

(3) On a faculty member’s request, the faculty committee shall examine the confidential file to verify that it contains only those excised portions provided in OAR 580-022-0100. The committee shall have the authority to require that any other material be removed from the confidential file.

(4) A copy of the periodic, regular written evaluation of the faculty member containing or having attached to it a statement to the effect that the faculty member may discuss the evaluative statement with the evaluating administrator, shall be given the faculty member. A copy of the evaluative statement, signed by the faculty member signifying receipt of a copy thereof, shall be placed in the faculty member’s evaluation file. The faculty member may enter into the evaluation file such comments, explanations, or rebuttals as desired. A copy of such comments, explanations or rebuttals made



by the faculty member shall be attached to each copy of the evaluative statement retained by the institution, school, division or department.

Stat. Auth.: ORS 351  
Stats. Implemented: ORS 351.070  
Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 5-1996, f. & cert. ef. 12-18-96

#### 580-022-0110

##### **Retention of Evaluative Materials Concerning Candidates for Possible Employment**

(1) If an individual is not employed, it is expected that the evaluative materials brought together by the institution as it evaluates an individual's qualifications in connection with possible employment will be retained as long as may be necessary to respond to affirmative action investigations and investigations of any claimed violation of the civil rights of any person in connection with employment. Thereafter, they will be disposed of in a manner designed to assure confidentiality, in accordance with rules of the State Archivist.

(2) When federal rules or orders require certain personal records to be compiled before the employment of a faculty member and retained thereafter, such records pertaining to persons not employed that have been obtained with the promise of confidentiality will be closed to all persons except as required by federal rules or orders.

Stat. Auth.: ORS 351.070  
Stats. Implemented:  
Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 1-1993, f. & cert. ef. 2-5-93

#### 580-022-0115

##### **Availability to Faculty Members of Objective Information Concerning Categories of Staff**

Institutional rules shall establish procedures through which the faculty member who feels adversely affected by the institutional, school, divisional or departmental personnel action or lack thereof may request from designated institutional officials objective or quantitative information contained in limited access files concerning personnel actions affecting categories of faculty members, where such actions appear to have relevance to the case of the faculty member requesting the information. Information may include but need not be limited to: assignment, load, list of publications. It shall not include any evaluative statements concerning faculty members.

Stat. Auth.: ORS 351  
Stats. Implemented: ORS 351.070  
Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 5-1996, f. & cert. ef. 12-18-96

#### 580-022-0120

##### **Availability of Faculty Records for Research Purposes**

The need for educational institutions to make information about the faculty member available for research purposes shall be acknowledged and provided for, providing the institution has adequate provisions to conceal the identity of the faculty member whose personal data or information are being included in the research. If the confidentiality of faculty records would be jeopardized in any way by the release of the information for research purposes, institutional rules shall provide that the institution obtain written consent of the faculty member prior to releasing personal information for research purposes.

Stat. Auth.: ORS 351  
Stats. Implemented:  
Hist.: HEB 3-1978, f. & ef. 6-5-78

#### 580-022-0125

##### **Permanence, Duplication, and Disposal of Faculty Records**

(1) The individual faculty member's record shall be maintained only for the time required to serve the basic official functions of the office that generates and maintains it. It should then be disposed of in a manner designed to assure confidentiality.

(2) The permanent retention of faculty records shall be limited to those that the president or the State Archivist shall determine to be of long-range value to the faculty member, to the institution, or to the public. ORS 351.065 provides that access to personal records more than 25 years old may not be limited.

(3) Duplication of faculty records shall be minimized. Duplicated records that are made shall be destroyed at a time to be determined and set forth in institutional rules and in such manner as to

assure confidentiality in accordance with the rules of the State Archivist, or with the Archivist's approval.

Stat. Auth.: ORS 351.070  
Stats. Implemented:  
Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 1-1993, f. & cert. ef. 2-5-93

## **DIVISION 31**

### **LIBRARIES**

#### 580-031-0005

##### **Coordinated System of Libraries**

A closely coordinated and integrated system of autonomous libraries shall be maintained. Unnecessary duplication in materials, services and procedures will be avoided. The library facilities and resources of the entire Department will be readily available to all faculty members and students of Department institutions.

Stat. Auth.: ORS 351  
Stats. Implemented: ORS 351.070  
Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 5-1996, f. & cert. ef. 12-18-96

## **DIVISION 40**

### **BOARD'S FINANCIAL POWERS**

#### 580-040-0005

##### **Delegation and Assignment of Responsibility**

The Board delegates general supervision of fiscal and administrative activities to the Chancellor and designated staff. Major changes in organization or procedures in such activities shall be reported to the Board for approval. The Board directs the Vice Chancellor for Finance and Administration to execute Board policy in all areas of fiscal and administrative services. Among these are:

- (1) Designing, installing, supervising and auditing of fiscal and accounting policies and procedures in the Department;
- (2) Designing budget systems and procedures describing Department goals, program proposals to achieve these goals and the level and type of financial support necessary to implement approved programs during prescribed time periods. The Office of Finance and Administration is also responsible for budget execution review to assure conformance with the adopted budget;
- (3) Establishing policies and procedures for administration of gift, grant and contract funds;
- (4) Custody, control, and management of the investment of Department funds;
- (5) Coordinated administration of policies relating to procurement, receipt and management of tangible personal property of the Department;
- (6) Development of an analytic program, founded on recognized institutional research techniques, providing input to the Department's budget preparation and program evaluation efforts;
- (7) Development of a program to analyze Department administrative policies and practices and recommend specific actions to improve services and minimize costs;
- (8) Sign claims on behalf of the Board, sign payrolls and sign checks on bank accounts with the State Treasurer or commercial banks.

Stat. Auth.: ORS 351.070  
Stats. Implemented: ORS 351.070  
Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 6-1986, f. & ef. 1-23-86; HEB 10-1990, f. & cert. ef. 7-26-90; HEB 1-1993, f. & cert. ef. 2-5-93; HEB 5-1996, f. & cert. ef. 12-18-96

#### 580-040-0007

##### **Retainage Processing Charges**

(1) The contractor for a construction contract may elect to have retainage deposited in an interest-bearing bank account, or to deposit securities in lieu of retainage. Contractors exercising one of these options will be charged for the cost of processing transactions related to that option.

(2) The following charges will be accrued and deducted from the final payment to the contractor:

- (a) \$50 for setting up initial records;

(b) \$15 for each subsequent transaction regarding the retainage funds or securities. These transactions include but are not limited to: depositing and withdrawing funds and reconciling the bank statement each month; receiving securities or safekeeping receipts for securities; preparing letters or statements to the institution, contractor or financial institution; and releasing funds or securities to the contractor.

Stat. Auth.: ORS 279 & 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 6-1985, f. & ef. 10-28-85; HEB 1-1993, f. & cert. ef. 2-5-93; HEB 1-1996, f. & cert. ef. 12-18-96

#### 580-040-0010

##### Institutional Authority to Establish Fees and Charges

(1) The Board of Higher Education delegates to each president the authority and responsibility to establish as necessary, but ordinarily not more often than annually, fees for certain services and materials provided or coordinated by the institution. The fees are supplemental to required instruction fee, building fee, health service fee, incidental fee and other charges determined and established by the Board. The additional services and materials for which fees and charges may be established include student family, cooperative and miscellaneous housing; instruction-related services; motor vehicle and bicycle parking; hospital, medical, surgical, oral health and clinic services; short courses and workshops; fines for violation of campus regulations; special music, counseling and testing services; and off-campus facilities and services arranged by the institution.

(2) For services and materials other than student family, cooperative and miscellaneous housing, the fees and charges shall be established at levels that assure recovery of the cost of providing the services and materials, including that portion of the operating costs required by legislative action on the Department budget, and in accordance with criteria stated in the Administrative Rules.

(3) The rates for student family, cooperative and miscellaneous housing shall be the amount necessary to meet, for that type of housing, the operating costs, required assessments, debt service, and the requirements of the Board's building repair reserve and equipment replacement reserve policies. For each type of housing, the rates charged for individual units may reflect differences in the age, quality, location, level of service provided and other factors affecting the relative economic value of the unit.

(4) Residents of each of the three types of housing shall contribute, by means of applicable rental rates, toward the total debt service of that type of housing.

(5) Provision for debt service related to each of the three types of housing is the responsibility of the institution at which the housing is located.

(6) For housing units scheduled for demolition, the institution shall provide a means for timely accumulation of reserves or for the acquisition of other funds sufficient to cover the costs of razing and removal. For this purpose, each of the three types of housing shall be provided for separately.

(7) Fees and charges and amendments thereto that the president has Board-delegated authority to establish shall be adopted only after approval by the president in the manner required by the Administrative Procedure Act (ORS Chapter 183) or ORS 351.072. Copies of all fee schedules, charges, and amendments shall be presented to the Vice Chancellor for Finance and Administration for filing in the Chancellor's Office.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 1-1978, f. & ef. 5-16-78; HEB 3-1978, f. & ef. 6-5-78; HEB 6-1986, f. & ef. 1-23-86; HEB 1-1993, f. & cert. ef. 2-5-93; HEB 5-1996, f. & cert. ef. 12-18-96

#### 580-040-0012

##### Delegation of Authority for Census Functions

The Board of Higher Education delegates to the president of Portland State University the authority and responsibility to adopt and administer rules for the population estimation, research, and reporting activities required by ORS 190.510 to 190.610. The rules adopted by the president and effective June 26, 1978, are hereby confirmed, ratified, and approved.

Stat. Auth.: ORS 183, 190 & 351.070

Stats. Implemented:

Hist.: HEB 2-1981, f. & ef. 6-4-81; HEB 1-1993, f. & cert. ef. 2-5-93

#### 580-040-0025

##### Traffic Regulations, Parking Fees, and Enforcement Fines

(1) The Board delegates to institution presidents the authority and responsibility to enact such rules and fines as are deemed necessary and desirable to provide for policing, controlling, regulating and enforcing traffic and parking of motor vehicles and bicycles on property owned by or under the control of the Board. The Board also delegates to institution presidents the authority granted in ORS 352.360(5) to appoint peace officers for the purpose of enforcing institution rules governing traffic and parking.

(2) Parking fees shall be charged at any institution where Article XI-F(1) bond proceeds have been used to finance the cost of acquiring parking sites or to make improvements thereto. Parking fees shall also be charged even though borrowed funds were not obtained if the operating and maintenance cost is \$6 or more per parking space per year.

(3) When fees are to be assessed to users of automotive parking facilities, the rate of charge and income to be produced shall be in such an amount that, with interest income, will provide sufficient funds to cover all operating and maintenance costs and also meet bond debt service and reserve requirements where applicable.

(4) Institutional accounts are not to be charged for parking space furnished to employees for personally owned automobiles. A charge may be made against a department, however, where parking space is furnished to a person with a privately owned vehicle who is rendering service for the benefit of the department with no compensation.

(5) Institutions shall adopt rules concerning the operation and parking of bicycles on property owned by or under the control of the Board. The rules shall clearly state where bicycle parking will be permitted and where it will not be allowed. Penalties for violations may be proposed.

(6) All traffic and parking rules approved by the president must be filed with the Vice Chancellor for Finance and Administration no later than September 1 of each year.

(7) Rules must remain in effect for at least one full calendar year following adoption unless prior approval is obtained from the Vice Chancellor for Finance and Administration.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 6-1986, f. & ef. 1-23-86; HEB 9-1988, f. & cert. ef. 9-23-88; HEB 10-1990, f. & cert. ef. 7-26-90; HEB 1-1993, f. & cert. ef. 2-5-93; HEB 5-1996, f. & cert. ef. 12-18-96

#### 580-040-0030

##### Vehicle Safety Rule

(1) The Board of Higher Education, concerned about travel safety, adopts these rules to require institution action to promote safe travel.

(2) For purposes of this rule:

(a) "Vehicle" means cars, vans, trucks, and buses;

(b) "State-Owned Vehicle" means a vehicle owned by or registered in the name of the State of Oregon, the Board, or any institution;

(c) "Hired Vehicle" means a vehicle that is leased, hired, or rented by the state, the Board, or any institution. This definition excludes borrowed vehicles;

(d) "Borrowed Vehicle" means a vehicle that is not a "state-owned vehicle" or a "hired vehicle" but that is used on state business. "Borrowed Vehicle" includes vehicles owned by employees, students and others participating in institution activities and used on state business;

(e) "State Business" means any activity for which all or part of the expenses may be reimbursed by any unit, department, or program of the Department of Higher Education.

(f) "Officially Sanctioned Program" means any program undertaken to further the instructional, research, or service missions of the institution or designed to promote the cultural and physical development of students. Such programs include but are not limited to:

(A) Academic department programs;

(B) Cocurricular programs;

(C) Intramural, recreational sports, club sports and inter-collegiate athletic programs;

(D) Any student programs or activities identified by the institution president or designee. Examples of such activities include, but are not limited to, student government, student housing activities and activities sponsored by student organizations that are consistent with the institution's mission.

(3) No motor vehicle owned, leased or controlled by the state shall be used to transport students to an event or activity not directly related to an officially sanctioned program. Institutions shall develop policies and procedures to implement this rule, including a means to identify officially sanctioned programs.

(4) The Board of Higher Education delegates to the institution presidents the authority and responsibility to establish specific rules governing travel safety, subject to the following general guidelines:

(a) Institution rules shall provide procedures for certifying that persons who operate state-owned or hired vehicles on state business possess a valid driver's license and have not been convicted of a major traffic offense as defined in ORS 153.500 within three years of the proposed operation;

(b) Institution rules shall require that vehicles (not including buses) used on state business have operable seat belts for all occupants. Institution rules shall also indicate the circumstances under which additional safety equipment such as a flashlight, ice scraper, first aid kit, emergency instructions, tire chains, etc., will be required;

(c) Institution rules shall indicate the circumstances under which relief drivers and the filing of itineraries will be required;

(d) Institution rules shall apply to state-owned vehicles and to hired vehicles. Institution rules also may apply to borrowed vehicles at the discretion of the institution, giving consideration to enforceability, the nature of the travel and other relevant factors.

(5) Each institution shall file a report with the Office of Finance and Administration by August 31 of each year commenting on the adequacy of the travel safety rules and summarizing the vehicle accidents and injuries that have occurred during travel on state business in the preceding 12 months.

(6) Institution travel safety rules and amendments thereto will be effective only upon approval of the Vice Chancellor for Finance and Administration or a designee.

Stat. Auth.: ORS 283.210 & 351.277

Stats. Implemented: ORS 351.070

Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 9-1984, f. & ef. 8-21-84; HEB 6-1986, f. & ef. 1-23-86; HEB 13-1986, f. & ef. 9-20-86; HEB 10-1990, f. & cert. ef. 7-26-90; HEB 1-1993, f. & cert. ef. 2-5-93; HEB 5-1994, f. & cert. ef. 4-28-94; HEB 5-1996, f. & cert. ef. 12-18-96

## 580-040-0035

### Summer Session Fee Book

The document entitled "Summer Session Fee Book" dated December 19, 2003 is hereby amended by reference as a permanent rule. All prior adoptions of summer session fee documents are hereby repealed except as to rights and obligations previously acquired or incurred thereunder.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 2-1978, f. & ef. 5-16-78; HEB 3-1979, f. & ef. 4-27-79; HEB 4-1980, f. & ef. 4-18-80; HEB 3-1981, f. & ef. 6-4-81; HEB 3-1982, f. & ef. 4-20-82; HEB 2-1983, f. & ef. 2-11-83; HEB 2-1984, f. & ef. 3-21-84; HEB 3-1985, f. & ef. 3-4-85; HEB 9-1986, f. & ef. 4-7-86; HEB 3-1987, f. & ef. 3-9-87; HEB 3-1988, f. & cert. ef. 3-16-88; HEB 2-1989, f. & cert. ef. 2-14-89; HEB 3-1990, f. & cert. ef. 2-13-90; HEB 2-1991, f. & cert. ef. 3-12-91; HEB 1-1992, f. & cert. ef. 2-12-92; HEB 2-1993, f. & cert. ef. 2-5-93; HEB 2-1994, f. & cert. ef. 2-15-94; HEB 1-1995, f. & cert. ef. 2-23-95; HEB 1-1996, f. & cert. ef. 2-5-96; HEB 1-1997, f. & cert. ef. 1-28-97; OSSHE 1-1998, f. & cert. ef. 1-27-98; OSSHE 7-1998, f. & cert. ef. 12-23-98; OSSHE 7-1999, f. & cert. ef. 12-22-99; OSSHE 5-2000, f. & cert. ef. 12-21-00; OSSHE 1-2002, f. & cert. ef. 1-2-02; OSSHE 6-2003, f. & cert. ef. 12-24-03

## 580-040-0040

### Academic Year Fee Book

The document entitled "Academic Year Fee Book 2004-05," dated June 4, 2003, is hereby amended by reference as a permanent rule. All prior adoptions of academic year fee documents are hereby

repealed except as to rights and obligations previously acquired or incurred thereunder.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 4-1978, f. & ef. 6-15-78; HEB 5-1979, f. & ef. 7-20-79; HEB 11-1979, f. & ef. 8-22-79; HEB 1-1980, f. & ef. 4-18-80; HEB 7-1980, f. & ef. 6-18-80; HEB 11-1980, f. & ef. 8-20-80; HEB 4-1981(Temp), f. & ef. 7-1-81; HEB 5-1981, f. & ef. 8-18-81; HEB 15-1981(Temp), f. & ef. 12-18-81; HEB 5-1982, f. & ef. 7-14-82; HEB 4-1983, f. & ef. 7-29-83; HEB 4-1984, f. & ef. 6-20-84; HEB 5-1985, f. & ef. 8-12-85; HEB 12-1986, f. & ef. 7-30-86; HEB 6-1987, f. & ef. 8-4-87; HEB 8-1988, f. & cert. ef. 8-5-88; HEB 10-1988, f. & cert. ef. 11-16-88; HEB 3-1989, f. & cert. ef. 11-27-89; HEB 6-1989, f. & cert. ef. 7-28-89; HEB 7-1990, f. & cert. ef. 6-4-90; HEB 8-1990(Temp), f. & cert. ef. 7-26-90; HEB 12-1990, f. & cert. ef. 10-3-90; HEB 5-1991, f. & cert. ef. 8-15-91; HEB 8-1992, f. & cert. ef. 7-31-92; HEB 2-1993, f. & cert. ef. 2-5-93; HEB 5-1993, f. & cert. ef. 8-11-93; HEB 7-1994, f. & cert. ef. 8-4-94; HEB 3-1995, f. & cert. ef. 8-1-95; HEB 3-1996, f. & cert. ef. 8-8-96; HEB 5-1996, f. & cert. ef. 12-18-96; HEB 3-1997, f. & cert. ef. 7-24-97; OSSHE 4-1998, f. & cert. ef. 7-22-98; OSSHE 5-1998(Temp), f. & cert. ef. 8-21-98 thru 1-31-99; OSSHE 9-1998, f. & cert. ef. 12-23-98; OSSHE 3-1999(Temp), f. & cert. ef. 7-22-99 thru 1-14-00; OSSHE 4-1999, f. & cert. ef. 9-16-99; OSSHE 3-2000, f. & cert. ef. 7-26-00; OSSHE 4-2001, f. & cert. ef. 7-27-01; OSSHE 8-2002, f. & cert. ef. 8-14-02; OSSHE 2-2003, f. & cert. ef. 8-4-03; OSSHE 6-2004, f. & cert. ef. 6-15-04

## 580-040-0041

### Revolving Charge Accounts Policy

(1) Institutions offering extended payment terms utilizing a revolving charge account method shall adopt rules creating the Revolving Charge Account Plan, and describing the terms and conditions applicable to the Plan.

(2) Transactions covered by the Plan may include (by way of description and not limitation) tuition, fees, housing charges and other obligations primarily involving students; facilities rentals, lease agreements, program user charges and other transactions with non-students; and fines and penalties, incurred by anyone.

(3) If adopted, institutional rules shall:

(a) Describe the interest to be charged, as well as service charges, collection and other fees and costs, if any, and penalties that would apply should an account become delinquent;

(b) Provide for an agreement to be signed by the obligor, the form of which shall be approved by the Vice Chancellor for Finance and Administration; the institution shall use its best efforts to have the agreement signed, except for debts arising from fines, penalties and the like; and

(c) Provide that tuition and fees incurred in any given term be paid in full prior to enrollment in any subsequent term.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 9-1990(Temp), f. & cert. ef. 7-26-90; HEB 13-1990, f. & cert. ef. 10-3-90; HEB 7-1992, f. & cert. ef. 4-30-92; HEB 5-1996, f. & cert. ef. 12-18-96

## Personal Services Contracts

## 580-040-0100

### Screening and Selection for Personal Services Contracts

(1) The Department of Higher Education periodically requires the services of an individual or firm to perform personal or professional services. These rules set forth the screening and selection process to be used for all such contracts, except where a University System institution has adopted its own screening and selection rules, and except for contracts covered by OAR 580-050-0020 (Architectural and Engineering Services).

(2) The Department of Higher Education will contract for personal or professional services when the specialized skills, knowledge and resources are not available within the Department; when the work cannot be done in a reasonable time with the Department's own workforce; when an independent and impartial evaluation of a situation is required by a contractor with recognized professional expertise and stature in a field; when it will be less expensive to contract for the work; or when grants require subcontracting.

(3) For the purposes of this rule, the term:

(a) "Director" means the Director of Legal Services of the Department of Higher Education, or designee;

(b) "Department" means the Department of Higher Education on its own behalf or acting on behalf of a University System institution;



(c) "University System Institution" means a college and university that is a part of the Oregon University System;

(d) "Contractor" means an individual or firm selected to perform personal or professional services for the Department of Higher Education and with whom the Department may contract;

(e) "Personal Services Contract" means a contract for personal or professional services performed by an independent contractor.

(f) "AOUS" means the Chancellor's Office and the institutions of the Oregon University System.

(4) Formal Selection Procedure: This procedure will be used whenever the estimated payment to the contractor exceeds \$25,000. Exceptions to this procedure are specified in sections (5), (6), (7) and (8). The amount of the contract may not be manipulated to avoid the need for informal or formal procedures.

(a) Announcement: The Department will give notice of intent to contract for personal services in a trade periodical or newspaper of general circulation. The notice shall include a description of the proposed project, the scope of the services required, project completion dates and a description of special requirements, if any. The notice will invite qualified prospective contractors to apply. The notice will specify when and where the application may be obtained, to whom it must be returned, and the closing date. The Department will provide notices to the Office of Minority, Women and Emerging Small Business.

(b) Application: The application will consist of a statement that describes the prospective contractor's credentials, performance data and other information sufficient to establish contractor's qualification for the project, as well as any other information requested in the announcement.

(c) Initial Screening: The Director will evaluate the qualifications of all applicants and select a prospective contractor whose application demonstrates that the contractor best fulfills the provisions of paragraph (d)(B) of this section.

(d) The Final Selection Procedure:

(A) Interviews: The Director will interview, through any appropriate medium, the finalists selected from the initial screening.

(B) Award of Contracts: The Director will make the final selection based on applicant capability, experience, project approach, compensation requirements, and references.

(5)(a) Informal Selection Procedure: This procedure may be used when the estimated payment for the proposed services to be performed by the contractor does not exceed \$25,000, or, at the Director's discretion, when the informal selection procedure will not interfere with competition among prospective contractors or reduce the quality of services or increase costs.

(b) Selection: The Department will contact a minimum of three prospective contractors known to the Department to be qualified to offer the sought-after services. An estimated fee will be requested, and the selection will be made by the Director based upon the factors described in paragraph (4)(d)(B) of this rule. If three quotes are not received, the Department will make a written record of its efforts to obtain quotes.

(6) Personal Services Contracts not exceeding \$5,000: The Department may enter into Personal Services Contracts not exceeding \$5,000 without following the procedures identified elsewhere in this rule. However, the Department will make reasonable effort to choose the most qualified contractor. The amount of the contract is not to be manipulated to avoid the need for informal or formal procedures.

(7) Department may negotiate with a single source if the services are available only from one contractor, or the prospective contractor has special skills uniquely required for the adequate performance of the services;

(8) Emergency Appointment Procedure: The Director may select a contractor without following any of the above procedures when conditions require prompt action to protect life or property. In such instance, the recommended appointment and a written description of the conditions requiring the use of this appointment procedure shall be submitted to the Director. The Director will determine if an emergency exists, declare the emergency, and, when appropriate, approve the appointment.

(9) The Department will maintain a file with the office of the Director of Legal Services, on the selection process for all Personal Services Contracts entered on behalf of Department that will include:

(a) The method and copy of announcement;  
(b) The names of firms/individuals and cost estimates considered;

(c) A justification of need for the contract;  
(d) The basis for selection;  
(e) Rationale by which rates were established;  
(f) How reasonableness of price was determined;  
(g) A copy of the resulting contract and any subsequent amendments.

(10) University System institutions using this rule will maintain a file on the selection process for all Personal Services Contracts entered on behalf of the institution and notify Director of location of the files required in this section. Such files will contain:

(a) The method and copy of announcement;  
(b) The names of firms/individuals and cost estimates considered;

(c) A justification of need for the contract;  
(d) The basis for selection;  
(e) Rationale by which rates were established;  
(f) How reasonableness of price was determined;  
(g) A copy of the resulting contract and any subsequent amendments.

Stat. Auth.: ORS 279.051 & 351

Stats. Implemented: ORS 351.070

Hist.: HEB 3-1993, f. & cert. ef. 3-5-93; HEB 5-1996, f. & cert. ef. 12-18-96; OSSHE 7-2004, f. & cert. ef. 7-23-04

### Competitive Procedures for the Purchasing, Procurement, and Contracting of Goods and Services

#### 580-040-0200

##### Purpose

The purpose of the rules outlined in Oregon Administrative Rules chapter 580, division 40, rules 580-040-0200 through 580-040-0295, is to:

(1) Establish competitive procedures that are flexible enough to allow campuses to purchase and contract in a way that most suits their institutional organization;

(2) Reduce prior approvals and ensure accountability through auditing;

(3) Generate and retain only necessary documentation;

(4) Develop procedures that will allow campuses to use the most appropriate procurement methods and encourage innovation;

(5) Allow campuses to work cooperatively with each other and other governmental units; and

(6) Allow institutions to do business more easily with local and regional vendors.

Stat. Auth.: ORS 351

Stats. Implemented: ORS 351.070

Hist.: HEB 6-1995, f. & cert. ef. 11-2-95

#### 580-040-0205

##### Code of Ethics

(1) The following Code of Ethics shall act as a guideline for employees to follow in contracting and purchasing.

(a) Give first consideration to the objectives and policies of OUS and the institution.

(b) Strive to obtain the maximum value for expenditures.

(c) Grant all competitive suppliers equal consideration insofar as state or federal statutes and institutional policies permit.

(d) Conduct business with potential and current suppliers in an atmosphere of good faith, devoid of intentional misrepresentation.

(e) Demand honesty in sales representation whether offered through the medium of an oral or written statement, an advertisement, or a sample of the product.

(f) Encourage all segments of society to participate by demonstrating support for emerging small, disadvantaged, and minority-owned and women-owned businesses and Qualified Rehabilitation Facilities.

(g) Consistent with the provisions of ORS 244, decline personal gifts or gratuities from any current or potential supplier of goods or services to OUS or its institutions.

(h) Refrain from knowingly engaging in any outside matters of financial interest incompatible with the impartial, objective, and effective performance of duties. Activities that may create a conflict of interest must be addressed in accordance with the procedures outlined in OUS's Internal Management Directives.

(i) Receive written consent of originator of proprietary ideas and designs before using them for competitive purchasing purposes.

(j) Foster fair, ethical, and legal trade practices.

(2) The Code is for use only by OUS and its institutions and creates no enforceable obligations for contractors, proposers, bidders or other parties doing business with OUS nor may it be used by contractors, proposers, bidders or other parties doing business with OUS who are challenging actions taken by OUS, its institutions, officers, employees, or agents.

Stat. Auth.: ORS 351

Stats. Implemented: ORS 351.070

Hist.: HEB 6-1995, f. & cert. ef. 11-2-95; HEB 5-1996, f. & cert. ef. 12-18-96; OSSHE 7-2004, f. & cert. ef. 7-23-04

## 580-040-0210

### Delegation of Authority

(1) Institutions of OUS may follow the procedures in OAR 580-040-0223 to 580-040-0295 or may develop and promulgate their own procedures by Administrative Rule for purchasing and contracting provided that such procedures ensure competitive practices. Procedures developed by the campuses must be approved by the OUS Vice Chancellor for Finance and Administration prior to adoption.

(2) Notwithstanding section (1) of this rule, institutions shall be subject to:

(a) OAR 580-040-0223;

(b) OAR 580-040-0228;

(c) OAR 580-040-0290;

(d) OAR 580-040-0292; and

(e) OAR 580-040-0295.

(3) For those institutions following OAR 580-040-0223 to 580-040-0295, the Oregon State Board of Higher Education delegates authority to each OUS president to develop guidelines and oversee practices regarding the purchasing and procurement of, and contracting for, goods and services including information technology and telecommunications at each respective campus consistent with these rules.

(4) OAR 580-040-0223 to 580-040-0295 provide procedures to be used for purchasing and contracting except for:

(a) Contracts covered under the following Oregon Administrative Rules:

(A) OAR 580-040-0100 — Screening and Selection for Personal Services Contracts; or

(B) OAR 580-050-0032 to 580-050-0042 — Facilities contracting; or

(b) Where an OUS institution has adopted its own rules, consistent with OAR 580-040-0223 to 580-040-0295, to cover purchasing and contracting.

Stat. Auth.: ORS 351

Stats. Implemented: ORS 351.070

Hist.: HEB 6-1995, f. & cert. ef. 11-2-95; OSSHE 7-2004, f. & cert. ef. 7-23-04

## 580-040-0215

### Definitions

The following definitions shall apply to all Oregon Administrative Rules contained in this division unless the context requires otherwise:

(1) "Bid": A competitive offer, which is binding on the bidder, in which price, delivery (or project completion) and conformance with specifications and the requirements of the Invitation to Bid or other competitive bidding method will be the predominant award criteria.

(2) "Bidder": A person or entity offering to supply goods or services to OUS or any of its institutions in response to an Invitation to Bid or other competitive bidding method.

(3) "Closing": The date and time announced in the solicitation (e.g., Invitation to Bid or Request for Proposals) as the deadline for submitting bids or proposals.

(4) "Competitive Process": The process of procuring goods and services by fair and open competition, under varying market conditions, with the intent of minimizing opportunities for favoritism and assuring that contracts are awarded equitably and economically using various factors in determining such equitability and economy.

(5) "Competitive Quotes": The solicitation of offers from competing bidders. The solicitation may be accomplished by advertisement and/or by OUS or any of its institutions initiating a request to vendors to make an offer. The solicitation and the offer may be in writing or oral.

(6) "Contract": The written agreement, including OUS's or any of its institution's solicitation document and the accepted portions of a bid or proposal, between OUS or any of its institutions and the contractor describing the work to be done and the obligations of the parties. Depending upon the goods and services being procured, OUS or any of its institutions may use "contract" as meaning a purchase order, price agreement, or other contract document in addition to OUS's or any of its institution's solicitation document and the accepted portions of a bid or proposal.

(7) "Contract Price": The total of the awarded bid or proposal amount, including any approved alternates, and any fully executed change orders or amendments.

(8) "Contractor": The individual, firm, corporation or entity awarded the contract to furnish OUS or any of its institutions the goods, services, or work procured through a competitive process.

(9) "Days": Calendar days, including weekdays, weekends and holidays, unless otherwise specified.

(10) "Electronic Data Interchange (EDI)": The movement of electronic information from computer to computer. The electronic transfer of standard business transaction information between organizations in a structured application.

(11) "Emergency": Not reasonably foreseeable circumstances that create a substantial risk of loss, damage, interruption of services or threat to the public health or safety that requires prompt execution of a contract to remedy the condition.

(12) "Emerging Small Business (ESB)": The meaning given in ORS 200.005(3) and (4).

(13) "Facsimile": Electronic equipment that communicates and reproduces both printed and handwritten material. If used in conjunction with a reference to a document (e.g., facsimile bid), the term refers to a document (in the example given, a bid) that has been transmitted to and received by OUS or any of its institutions via facsimile.

(14) "Invitation to Bid": The solicitation of competitive, written, signed, and sealed bids in which specification, price and delivery (or project completion) are the predominant award criteria.

(15) "Minority Business Enterprise (MBE)": The meaning given in OAR 125-030-0000.

(16) "Opening": The date, time, and place announced in a solicitation for the public opening of written, sealed bids or proposals.

(17) "OUS": Oregon University System — Based on context can refer to either the University System administrative offices, and/or the institutions of the Oregon University System.

(18) "Price Agreement": A nonexclusive agreement in which the contractor agrees to provide specific items or services to OUS or an institution at a set price during a specified period of time.

(19) "Proposal": A competitive offer, binding on the proposer and submitted in response to a Request for Proposals, where proposal evaluation and contract award are based on criteria such as proposer qualifications and experience, product features and characteristics, service quality and efficiency and conformance with the specifications and requirements of the solicitation. Price may be an evaluation criterion for proposals, but will not necessarily be the predominant basis for contract award.

(20) "Proposer": A person or entity who submits a proposal in response to a Request for Proposals.

(21) "Qualified Vendor Listing": A list of vendors identified from a Request for Qualifications or Request for Information who

are able to provide specific goods or services. Vendors on the list are not, however, under contract to provide those goods or services.

(22) "Request for Information (RFI)": A written document soliciting information regarding products or services that OUS or an institution is interested in procuring. An RFI should describe the purpose of the procurement and the method to be used in evaluating the responses received.

(23) "Request for Proposal (RFP)": The solicitation of written, competitive proposals or offers, to be used as a basis for making an acquisition, or entering into a contract when specification and price will not necessarily be the predominant award criteria.

(24) "Request for Qualifications (RFQ)": A written document soliciting information regarding the qualifications of providers of services OUS or an institution is interested in procuring. An RFQ should describe the services that are needed and the method to be used in evaluating the responses received.

(25) "Requirements Contract": An agreement in which a single contractor agrees to supply all of OUS's or any of its institution's requirements for specific goods, equipment, or services that arise during a specified time period.

(26) "Responsible Bidder or Proposer": Has the meaning given in OAR 580-040-0275.

(27) "Responsive Bid or Proposal": Has the meaning given in OAR 580-040-0277.

(28) "Retainer Agreement": An agreement by which, pursuant to a formal Request for Proposals or bid process, multiple contractors are authorized to provide specific supplies or equipment to or perform specific services for OUS or its institutions in response to requests for price quotations.

(29) "Single Seller": The only vendor of a particular product or service reasonably available. If OUS or one of its institutions chooses to procure a particular product or service that is only available from one vendor, documentation must be maintained to support the determination that the product or service is available only from that one seller.

(30) "Solicitation Document": An Invitation to Bid or Request for Proposals, which includes all documents, whether attached or incorporated by reference, utilized for soliciting bids or proposals.

(31) "Women Business Enterprise (WBE)": The meaning given in OAR 125-030-0000.

(32) "Work": The furnishing of all materials, equipment, labor, and incidentals necessary to successfully complete any individual item or the entire contract and the timely carrying out and completion of all duties and obligations imposed by a contract.

Stat. Auth.: ORS 351

Stats. Implemented: ORS 351.070

Hist.: HEB 6-1995, f. & cert. ef. 11-2-95; HEB 5-1996, f. & cert. ef. 12-18-96; OSSHE 7-2004, f. & cert. ef. 7-23-04

## 580-040-0220

### Designation of Purchasing Agents and Contract Officers

Each institution president shall designate staff authorized to enter into purchasing and contracting agreements for the institution. Such staff, referred to as authorized personnel, shall be the only individuals who may procure supplies, equipment, and services and enter into contracts.

(1) The chief administrative officer of each institution shall keep a list, either by name or by title, of those designated authorized personnel along with a description of the types and amounts of procurements and contracts they are authorized to enter into.

(2) Purchasing and contracting agreements issued by individuals not designated as authorized personnel shall be void.

(3) Authorized personnel shall be responsible for ensuring that the proper procedures, as detailed in OAR 580-040-0223 to 580-040-0295, are followed for all institutional procurements. Institutions may take appropriate action in response to expenditures authorized contrary to OAR 580-040-0223 to 580-040-0295. Such actions include, but are not limited to, providing educational guidance, imposing disciplinary measures, and holding individuals personally liable for such expenditures.

Stat. Auth.: ORS 351

Stats. Implemented: ORS 351.070

Hist.: HEB 6-1995, f. & cert. ef. 11-2-95

## 580-040-0223

### Applicable Model Public Contract Rules

The following provisions of the Attorney General's Model Public Contract Rules shall be applicable to the bidding, awarding, and administration of public contracts of OUS and any of its institutions:

(1) OAR 137-030-0010(5) — Compliance and exceptions to terms and conditions of solicitation documents;

(2) OAR 137-030-0012 — Bids or Proposals Are Offers;

(3) OAR 137-030-0030(2) and (3) — Identification and Receipt of bids or proposals;

(4) OAR 137-030-0050 — Request for Change or Protest of Solicitation Specifications or Contract Provisions;

(5) OAR 137-030-0055 — Addenda to Solicitation Documents;

(6) OAR 137-030-0060 — Pre-Opening Modification or Withdrawal of Bids or Proposals;

(7) OAR 137-030-0065 — Receipt, Opening, and Recording of Bids and Proposals;

(8) OAR 137-030-0070 — Late Bids and Proposals, Late Withdrawals, and Late Modifications;

(9) OAR 137-030-0075 — Mistakes in Bids or Proposals;

(10) OAR 137-030-0080 — Time for Acceptance;

(11) OAR 137-030-0085 — Extension of Time for Acceptance of Bid or Proposal;

(12) OAR 137-030-0102 — Rejection of all Bids or Proposals;

(13) OAR 137-030-0104 — Protest of Contractor Selection, Contract Award;

(14) OAR 137-030-0115(1) — Cancellation of invitations to bid or requests for proposals in the public interest;

(15) OAR 137-030-0120 — Disposition of Bids or Proposals if Solicitation Cancelled;

(16) OAR 137-030-0130 — Foreign Contractor; and

(17) OAR 137-030-0150 — Right to Inspect Plant.

Stat. Auth.: ORS 351

Stats. Implemented: ORS 351.070

Hist.: HEB 6-1995, f. & cert. ef. 11-2-95; HEB 5-1996, f. & cert. ef. 12-18-96; OSSHE 7-2004, f. & cert. ef. 7-23-04

## 580-040-0225

### Processes for Procurement of Goods and Services

(1) OUS shall establish several basic processes for the procurement of goods and services:

(a) Formal;

(b) Informal;

(c) Emergency;

(d) Single Seller;

(e) Intergovernmental;

(f) Procurement Cards;

(g) Price Agreements;

(h) Retainer Agreements;

(i) Requirements Contracts; and/or

(j) Qualified Vendor Listings.

(2) For each of the processes used in the procurement of goods and services, authorized personnel shall retain documentation, either hard copy or electronic, supporting the process and the actions taken to fulfill the guidelines of that process consistent with the requirements of OAR 580-040-0295. Such documentation shall be subject to audit.

(3) The formal procurement process shall be used, unless other exemptions apply, for all purchases of supplies, equipment, and services where the estimated cost exceeds \$50,000.

(a) Multiple contracts, purchase orders, or purchasing requisitions shall not be issued separately with the intent to circumvent the formal purchasing process.

(b) The formal process may be accomplished in either of two ways the institution selects:

(A) Invitation to Bid — The formal bid process will require that the invitation to bid be advertised in a manner that is likely to reach bidders. The advertisements shall include information regarding the goods or services to be purchased and the time schedule for the receipt of such goods or services. The contract under this process shall be awarded to the lowest responsive and responsible bidder who meets the specifications of the contract.



(B) Request for Proposal (RFP) — The formal Request for Proposal process shall follow the same guidelines as the formal bid process except that the specifications and price will not necessarily be the predominant award criteria. Award criteria shall be detailed in the Request for Proposal.

(4) The informal procurement process may be used for all purchases of supplies, equipment, and services where the estimated cost exceeds \$5,000 but does not exceed \$50,000 and where OUS or any of its institutions chooses not to follow the formal procurement process. The informal procurement process may also be used for any procurement regardless of the estimated cost if use of the informal procurement process will not interfere with competition among prospective contractors, reduce the quality of services, or increase costs.

(a) The informal process may be accomplished through the solicitation of competitive quotes from at least three vendors. Solicitation may be accomplished by advertisement and/or by OUS or any of its institutions initiating a request to vendors to make an offer. Written, oral, or electronic quotes may be solicited.

(b) When procuring goods or services through the solicitation process, information regarding vendors contacted, basis for selection, prices of various vendors and other information pertinent to the solicitation must be clearly documented. If three vendors are not reasonably available, the justification for soliciting fewer vendors shall be documented.

(5) When procuring supplies, equipment and services through an emergency process, the designation of such emergency may only be authorized by an institution president or chief financial officer. The procurement process to be used will be at the discretion of authorized personnel, but must be documented. Such documentation must justify the use of such emergency process.

(6) When purchasing supplies, equipment and services from a single seller, institutions are not required to follow competitive procedures. Institutions shall, at the time of initial procurement, specify their intent, if any, to procure future upgrades or other compatible items through that vendor. Institutions shall document findings to support the determination that the product is available from only one seller.

(7) Regardless of dollar value, OUS and its institutions may contract with, and purchase goods and services from, other State of Oregon agencies, local government units, federal government units, or any other governmental entity without the use of competitive procedures. However, contracts with other states and foreign governments must be approved by the Oregon Attorney General's office.

(8) Procurement cards, or other methods of direct purchasing, may be used for any purchase where the estimated cost does not exceed \$5,000.

(9) Following appropriate competitive procedures, OUS and its institutions may enter into price agreements with vendors to provide specific items at a set price during a specified period of time. OUS and its institutions may also purchase using State of Oregon or other governmental unit price agreements as authorized personnel deem appropriate without the use of competitive procedures.

(10) OUS and its institutions may enter into retainer agreements with vendors using appropriate competitive procedures that take into account, at a minimum, the qualifications and reputation of the vendors, price structure, ability and willingness to respond to requests from one or more colleges and universities, location, and such other factors as authorized personnel deem appropriate.

(a) A Request for Proposals (RFP) or bid process shall be used in selecting vendors for specific retainer agreements.

(b) Vendors may be selected to provide specific goods or services based on availability, responsiveness, quality, geographic location, track record, price, etc. Selection of vendors from the retainer agreement may be based on quotes or on the specific nature of the goods or services to be provided. The agent or officer should solicit prices from at least two vendors under the retainer agreement, or document the reason for not doing so.

(c) Authorized personnel shall maintain appropriate records of the competitive process used to select a vendor from the list of vendors with current retainer agreements in force at the time the selection is made.

(11) Consistent with these rules, OUS and its institutions may enter into requirements contracts to supply all of OUS's or an institution's requirements for specific goods, equipment, or services that arise during a specified time period.

(12) OUS or its institutions may contract directly with a vendor listed on a qualified vendor list if only one vendor meets OUS's or an institution's needs and if the RFI or RFQ informed potential vendors that direct contracting could occur. If more than one vendor meets OUS's or an institution's needs, solicitations shall follow the appropriate procedures. However, solicitation may be limited to the qualified vendor listing.

(13)(a) Notwithstanding any of the procedures in this rule, OUS and its institutions are authorized to develop alternative formal procurement methods that meet the following objectives:

(A) Respond to innovative business and market methods; or

(B) Contribute to institution productivity improvement and process redesign; or

(C) Result in comprehensive cost-effectiveness and productivity for the institution; and

(b) Provide open consideration to more than one vendor using evaluation criteria that may include, but are not limited to, cost, quality, service, compatibility, product reliability, operating efficiency, expansion potential, vendor experience and reliability, commitment to support regional business development and support for innovation.

Stat. Auth.: ORS 351

Stats. Implemented: ORS 351.070

Hist.: HEB 6-1995, f. & cert. ef. 11-2-95; HEB 5-1996, f. & cert. ef. 12-18-96;

OSSHE 7-2004, f. & cert. ef. 7-23-04

## 580-040-0230

### Exemptions

(1) Institutions need not follow, regardless of value, competitive procedures for the following:

(a) Contracts for the provision of educational services.

(b) Single seller goods and services. When purchasing from a single seller, institutions shall document findings to support the determination that the product is available from only one seller.

(c) Brand-name goods and services or product prequalification. Institutions may specify brand name in the procurement of goods and services if that particular product or service has specific documentable attributes not found in other products. In addition, when specific design or performance specifications must be met for a product to be purchased, an institution may specify a list of qualified products by reference to the prequalified product(s) of particular manufacturers or sellers.

(d) Advertising and media services contracts.

(e) Price-regulated goods and services. Institutions may, regardless of dollar value, contract for the direct purchase of goods or services where the rate or price for the goods or services being purchased is established by federal, state, or local regulatory authority.

(f) Purchases under federal contracts. When the price of goods and services has been established by a contract with an agency of the federal government pursuant to a federal contract award, OUS and its institutions may purchase the goods and services in accordance with the federal contract without subsequent competitive bidding. In addition, specific equipment that is expressly required under the terms of the contract and that is only available from one source is exempt from competitive procedures.

(g) Copyrighted materials. Institutions may purchase copyrighted materials without competitive bid and regardless of dollar amount. Copyrighted materials covered by this exemption may include, but are not limited to, textbooks, workbooks, curriculum kits, reference materials and audio, visual, and electronic media.

(h) Investment contracts.

(i) Food contracts. This exemption shall apply exclusively to the procurement of food and food-related products.

(j) Periodicals, library books and library materials.

(k) Maintenance services for the useful life of goods. Institutions may purchase maintenance services for the useful life of goods directly from the vendor of those goods.

(l) Used personal property.

(m) Goods purchased for resale.

(n) Intercollegiate athletic programs. OUS and its respective institutions may specify a product by brand name or make or the products of particular manufacturers or sellers when procuring equipment and supplies used in intercollegiate or interscholastic athletic programs.

- (o) Media for athletic programs.
- (p) Athletic contest agreements.
- (q) Cadaveric organs.
- (r) Hotel sites for large conferences and workshops.
- (s) Dues, registrations, and membership fees.
- (t) Gasoline, diesel fuel, heating oil, lubricants, and asphalt.
- (u) Purchases of supplies, maintenance, and services for ocean-going vessels when they are in other than home port.
- (v) Equipment repair and overhaul.
- (w) Goods and services purchased in foreign countries.

(2) Exemptions from competitive procedures may be granted for a particular contract or contracts not otherwise exempted under these rules by the president or chief financial officer of the institution. Sufficient documentation must be retained regarding the need for such exemptions.

Stat. Auth.: ORS 351

Stats. Implemented: ORS 351.070

Hist.: HEB 6-1995, f. & cert. ef. 11-2-95; HEB 5-1996, f. & cert. ef. 12-18-96; OSSHE 7-2004, f. & cert. ef. 7-23-04

#### 580-040-0235

##### Basis for Awarding of Contracts

OUS and its respective institutions shall award contracts based on various factors that shall be identified in the notice of contract. Such factors may include, but not be limited to, price; quality; life cycle costing; vendor experience and reliability; support for regional business development; support for productivity innovation; performance specifications; and timeliness.

Stat. Auth.: ORS 351

Stats. Implemented: ORS 351.070

Hist.: HEB 6-1995, f. & cert. ef. 11-2-95; HEB 5-1996, f. & cert. ef. 12-18-96; OSSHE 7-2004, f. & cert. ef. 7-23-04

#### 580-040-0240

##### Determination of Contractual Terms and Conditions

Except to the extent OUS has established mandatory contract provisions, OUS and any of its institutions are authorized to determine the terms and conditions of solicitations and contracts, provided such terms and conditions are not contrary to statutory or regulatory requirements applicable to OUS.

Stat. Auth.: ORS 351

Stats. Implemented: ORS 351.070

Hist.: HEB 6-1995, f. & cert. ef. 11-2-95; OSSHE 7-2004, f. & cert. ef. 7-23-04

#### 580-040-0245

##### Contract Amendments (Including Change Orders and Extra Work)

An amendment for additional work or product that is reasonably related to the scope of work under the original contract, including change orders, extra work, field orders, or other change in the original specifications that increases the original contract price or length of time, may be made with the contractor without competitive bidding provided that the amendment does not materially alter such a contract or that the increase in the value of the contract does not change the required method of procurement.

Stat. Auth.: ORS 351

Stats. Implemented: ORS 351.070

Hist.: HEB 6-1995, f. & cert. ef. 11-2-95; HEB 5-1996, f. & cert. ef. 12-18-96

#### 580-040-0255

##### Pre-Bid and Pre-Proposal Conferences

(1) Pre-bid or pre-proposal conferences may be scheduled. Each pre-bid and pre-proposal conference shall be described in the corresponding solicitation document as “voluntary” or “mandatory.” If such a conference is designated as “mandatory,” it shall be required for a bidder or proposer to attend in order to submit a bid or proposal for the corresponding contract.

(2) The bidder or proposer may authorize a representative other than himself/herself to attend the pre-bid or pre-proposal conference.

Stat. Auth.: ORS 351

Stats. Implemented: ORS 351.070

Hist.: HEB 6-1995, f. & cert. ef. 11-2-95

#### 580-040-0260

##### Acceptance of Bids and Proposals by Facsimile or Electronic Data Interchange

OUS and any of its institutions may determine if it is appropriate for bids and proposals to be accepted by facsimile or Electronic Data Interchange. Institutions shall establish the conditions for solicitations, either individually or by type of solicitation. When OUS or any of its institutions chooses to accept bids or proposals by facsimile, it shall follow the requirements outlined in OAR 137-030-0013(3). When OUS or any of its institutions chooses to accept bids or proposals by Electronic Data Interchange, it shall follow the requirements outlined in OAR 137-030-0014(4).

Stat. Auth.: ORS 351

Stats. Implemented: ORS 351.070

Hist.: HEB 6-1995, f. & cert. ef. 11-2-95; OSSHE 7-2004, f. & cert. ef. 7-23-04

#### 580-040-0275

##### Responsible Bidders; Responsibility Investigation

(1) A “responsible bidder or proposer” is an individual, firm, corporation or entity who has the capability in all respects to perform fully the contract requirements, the integrity and reliability that will assure good faith performance, and who has not been disqualified by OUS or any of its institutions.

(2) OUS or any of its institutions has the right, prior to awarding any public contract, to make such investigation as is necessary to determine whether a bidder is responsible.

Stat. Auth.: ORS 351

Stats. Implemented: ORS 351.070

Hist.: HEB 6-1995, f. & cert. ef. 11-2-95; HEB 5-1996, f. & cert. ef. 12-18-96; OSSHE 7-2004, f. & cert. ef. 7-23-04

#### 580-040-0277

##### Responsive and Nonresponsive Bids or Proposals; Acceptance and Rejection

(1) A “responsive bid or proposal” is one that complies in all material respects with an Invitation to Bid or Request for Proposals and with all prescribed bidding and proposal procedures and requirements. A “nonresponsive bid or proposal” is one that does not meet all material aspects of an Invitation to Bid or a Request for Proposal or that does not comply with all prescribed bidding and proposal procedures and requirements.

(2) OUS or any of its institutions shall accept, and consider for award, only those bids or proposals that are responsive as defined in this rule. Nonresponsive bids or proposals shall be rejected.

(3) Nothing in this rule shall limit the ability of OUS or any of its institutions to monitor contractor or vendor performance during the term of a contract.

Stat. Auth.: ORS 351

Stats. Implemented: ORS 351.070

Hist.: HEB 6-1995, f. & cert. ef. 11-2-95; OSSHE 7-2004, f. & cert. ef. 7-23-04

#### 580-040-0280

##### Rejection of Individual Bids or Proposals

(1) This rule applies to rejections, in whole or in part, of individual bids or proposals. OUS or any of its institutions may reject, in whole or in part, any bid or proposal not in compliance with all prescribed bidding procedures and requirements, and may reject for good cause any bid or proposal upon a written finding by OUS or the institution that it is in the public interest to do so.

(2) Reasons for rejecting a bid or proposal include but are not limited to finding that:

(a) The bidder or proposer has not prequalified as required in the Invitation to Bid or Request for Proposal, or is disqualified under ORS 200.075, 279.037, or these rules; or

(b) The bidder or proposer has been declared ineligible by the Commissioner of the Bureau of Labor and Industries under ORS 279.361; or

(c) The bid or proposal is nonresponsive, that is, it does not conform in all material respects to solicitation document requirements, including all prescribed public procurement procedures and requirements; or

(d) The supply, service or construction item offered in the bid or proposal is unacceptable by reason of its failure to meet the requirements of the solicitation documents or permissible alternates or other acceptability criteria set forth in the solicitation documents; or

(e) The bidder or proposer is nonresponsible, i.e., is not capable of satisfying the terms and conditions of the public contract in a timely manner due to financial incapacity, inability to obtain bonding, loss of license, poor performance history or other objective cause; or

(f) The bidder or proposer within the last five years has been found, in a civil, criminal, or administrative proceeding, to have committed or engaged in fraud, misrepresentation, price-rigging, unlawful anti-competitive conduct or similar behavior; or

(g) The bidder or proposer has been determined responsible (i.e., adjudicated by a court, or as determined in writing by OUS or any of its institutions in the case of a public contract) for more than one breach of a public or private contract or contracts in the last three calendar years before the scheduled date of the bid or proposal opening; or

(h) The bid or proposal security has not been submitted or properly executed as required by the solicitation documents; or

(i) The bidder or proposer has not met the emerging small business, disadvantaged business, minority business and women business enterprise requirement, if any, established by OUS or any of its institutions, and has not made a good faith effort in accordance with ORS 200.075 to comply with the requirements prior to the time bids or proposals are opened; or

(j) The bidder or proposer has failed to certify in accordance with OAR 580-040-0292(3); or

(k) Other circumstances of the particular bid or proposal, or bidder or proposer, indicate that acceptance of the bid or proposal would impair the integrity of the selection process or result in an imprudent contract by OUS or the institution.

(3) For purposes of this rule, the business registry of bidders or proposers shall be subject to scrutiny, i.e., confirmation of ownership or identification of officers and directors, in order to identify previously disqualified bidders or proposers, and thus prevent any subterfuge, change of apparent ownership or other adjustments in formal appearance, to avoid application of this rule or of the disqualification provisions of ORS 279.037 to 279.045 and these rules.

Stat. Auth.: ORS 351

Stats. Implemented: ORS 351.070

Hist.: HEB 6-1995, f. & cert. ef. 11-2-95; HEB 5-1996, f. & cert. ef. 12-18-96; OSSHE 7-2004, f. & cert. ef. 7-23-04

#### 580-040-0285

##### Bidder or Proposer Disqualification

(1) As used in this rule:

(a) "Disqualification" means the debarment, exclusion or suspension of a person from the right to submit bids or proposals in response to OUS or institution solicitations for a reasonable, specified period of time named in the order of disqualification. A contractor or vendor so debarred, excluded or suspended is disqualified.

(b) "Person" means an individual, partnership or corporation. Disqualification attaches to and follows the individual, so that an individual who is a partner in a partnership or an officer or principal in a corporation that is disqualified may not reform the business entity as a way of avoiding the disqualification.

(2) The following are grounds for bidder or proposer disqualification:

(a) The person does not have sufficient financial ability to perform the contract. If a bond is required to ensure performance of a contract, evidence that the person can acquire a surety bond in the amount and type required shall be sufficient to establish financial ability;

(b) The person does not have equipment available to perform the contract;

(c) The person does not have key personnel available of sufficient experience to perform the contract; or

(d) The person has repeatedly breached contractual obligations to public and private contracting agencies.

(3) As provided in ORS 200.075, the following are grounds for suspension of a bidder's, proposer's, contractor's, or subcontractor's right to bid, propose or participate in a public contract:

(a) If the person has entered into any agreement representing that a disadvantaged, minority, women or emerging small business enterprise, certified pursuant to ORS 200.055, will be performing or supplying materials under a public improvement contract without the knowledge and consent of the certified enterprise;

(b) If a person exercises management and decision-making control over the internal operations, as defined by ORS 200.075(1)(b), of any subcontractor that is certified disadvantaged, minority, women, or emerging small business enterprise;

(c) If the person uses a disadvantaged, minority, women or emerging small business enterprise to perform contracting services or provide supplies under a public improvement contract to meet an established DBE/MBE/WBE/ESB goal, when the enterprise does not perform a commercially useful function, as defined by ORS 200.075(3), in performing its obligations under the contract.

(4) OUS or any of its institutions may make such investigation as is necessary to determine whether there are grounds for disqualifying a person. If a bidder or proposer, or prospective bidder or proposer, fails to supply such information promptly as requested by OUS or an institution, such failure is grounds for disqualification.

(5) Any information voluntarily submitted by a bidder or proposer, or prospective bidder or proposer, pursuant to an investigation under section (4) of this rule, or in a prequalification statement, or in a prequalification request submitted pursuant to these rules, shall be deemed a trade secret pursuant to ORS 192.501(2), if requested by the person submitting the information and verified to be a trade secret by OUS or one of its institutions.

(6) The bidder or proposer, or prospective bidder or proposer, will be notified in writing by personal service or certified mail of OUS's or one of its institution's decision to disqualify the person from bidding or proposing with OUS or the institution. The notice shall contain:

(a) The effective date of the disqualification and the effective period of disqualification;

(b) The grounds for disqualification from bidding or proposing; and

(c) A statement of the person's appeal rights and applicable appeal deadlines.

(7) If a person wishes to appeal OUS's or any of its institution's decision to disqualify, the person must notify OUS or the institution, as appropriate, in writing within three business days after receipt of the notification.

Stat. Auth.: ORS 351

Stats. Implemented: ORS 351.070

Hist.: HEB 6-1995, f. & cert. ef. 11-2-95; HEB 5-1996, f. & cert. ef. 12-18-96; OSSHE 7-2004, f. & cert. ef. 7-23-04

#### 580-040-0290

##### Purchasing Policies Governing the Acquisition of Goods and Services from Qualified Rehabilitation Facilities

OUS and its institutions shall purchase goods and services from Qualified Rehabilitation Facilities in accordance with the provisions of ORS 279.835 to 279.855 and applicable Administrative Rules.

Stat. Auth.: ORS 351

Stats. Implemented: ORS 351.070

Hist.: HEB 6-1995, f. & cert. ef. 11-2-95; OSSHE 7-2004, f. & cert. ef. 7-23-04

#### 580-040-0292

##### Affirmative Action; General Policy

(1) The general policy of OUS and its institutions shall be to expand economic opportunities for Minority Business Enterprises, Women Business Enterprises and Emerging Small Businesses by offering the contracting and subcontracting opportunities available through OUS and institution contracts. Notice of all contract and bid request solicitations using the formal process outlined in OAR 580-040-0225 shall be provided to the Advocate for Minority, Women and Emerging Small Business and the Oregon Department of Administrative Services for the Oregon Opportunity Register and Clearinghouse when any other solicitation is sent.



(2) OUS shall not knowingly contract with or procure goods or services from any organization, business entity or individual that discriminates on the basis of age, disability, national origin, race, marital status, religion, sex or sexual orientation.

(3) Bidders and proposers shall certify, as part of the bid or proposal documents accompanying the bid or proposal on a public contract, that such bidder or proposer has not discriminated against minority, women or emerging small business enterprises in obtaining any required subcontracts.

Stat. Auth.: ORS 351

Stats. Implemented: ORS 351.070

Hist.: HEB 6-1995, f. & cert. ef. 11-2-95; HEB 5-1996, f. & cert. ef. 12-18-96; OSSHE 7-2004, f. & cert. ef. 7-23-04

#### 580-040-0295

##### Record Keeping Requirements

(1) Documentation of all purchasing and contracting transactions will be made available for inspection by OUS Internal Audit Division upon request.

(2) Authorized personnel shall maintain documentation, whether written or electronic, regarding all purchasing and contracting transactions.

(a) For purchases not exceeding \$5,000, only a vendor invoice must be retained.

(b) For purchases where the cost exceeds \$5,000 but does not exceed \$50,000, the following must be retained:

(A) The method of procurement;

(B) The names of firms/individuals and cost estimates considered;

(C) The basis for selection or awarding of contract;

(D) Other information pertinent to the solicitation; and

(E) Any other documentation required by these rules.

(c) For purchases where the estimated cost exceeds \$50,000, the following must be retained:

(A) The method of procurement;

(B) A copy of the announcement requesting bids or proposals;

(C) The names of firms/individuals and cost estimates considered;

(D) The basis for selection or awarding of contract;

(E) A copy of the resulting contract and any subsequent amendments;

(F) Other information pertinent to the solicitation; and

(G) Any other documentation required by this rule.

Stat. Auth.: ORS 351

Stats. Implemented: ORS 351.070

Hist.: HEB 6-1995, f. & cert. ef. 11-2-95; HEB 5-1996, f. & cert. ef. 12-18-96; OSSHE 7-2004, f. & cert. ef. 7-23-04

#### SURPLUS PROPERTY DISPOSAL

#### 580-040-0300

##### Purpose

These rules establish, for the Institutions of the Oregon University System (OUS) and the Chancellor's Office, a process for disposal of surplus and scrap property that safeguard's state assets, creates efficiency in surplusing or scrapping, maximizes the value received for property that is surplus to institutional or the System needs, and is attentive to environmental impacts.

Stat. Auth.: ORS 351.210

Stats. Implemented: ORS 351.210

Hist.: OSSHE 4-2004, f. & cert. ef. 6-9-04

#### 580-040-0301

##### Definitions

For purposes of OAR 580-040-0301 through 580-040-0311, unless context requires otherwise:

(1) "Board" means Oregon State Board of Higher Education.

(2) "Chancellor's Office" means the offices that provide direct administrative support to the Chancellor and the Board, and are not part of an OUS institution.

(3) "Employee" means a person who, within the last twelve months, has been paid a wage for full-time, part-time, or temporary work by an institution or the Chancellor's Office.

(4) "Federally Funded Surplus Property" means personal property, vehicles, and titled equipment, purchased with federal grant or other federal funds and that is worn-out, obsolete, or excess to the Chancellor's Office or an institution's needs, or otherwise unsuitable for intended use, the disposal of which would be to the financial benefit of the institution or Chancellor's Office.

(5) "Institution" means any of the institutions of the Oregon University System.

(6) "President" means the chief executive officer of an Oregon University System campus or designee.

(7) "Scrap" means materials, including lost, mislaid, or abandoned property having no financial value or such low financial value as to make sale not cost effective.

(8) "Surplus Property" means all personal property, including lost, mislaid or abandoned property, vehicles and titled equipment that is worn-out, obsolete or excess to the Chancellor's Office or an institution's needs, or otherwise unsuitable for intended use, the disposal of which would be to the financial benefit of the institution or Chancellor's Office.

Stat. Auth.: ORS 351.210

Stats. Implemented: ORS 351.210

Hist.: OSSHE 4-2004, f. & cert. ef. 6-9-04

#### 580-040-0302

##### General

(1) The Chancellor's Office and Oregon University System institutions may, in accordance with these rules, dispose of any worn out, obsolete, scrap, or otherwise unsuitable surplus property, the disposal of which would be to the benefit of the Chancellor's Office or the institution, except as set forth in subsection (2).

(2) These rules do not apply to any equipment, goods, supplies, material, information technology or other personal property encumbered by a certificate of participation that will be disposed of in accordance with applicable law.

Stat. Auth.: ORS 351.210

Stats. Implemented: ORS 351.210

Hist.: OSSHE 4-2004, f. & cert. ef. 6-9-04

#### 580-040-0303

##### Delegations

These rules apply to the Chancellor's Office. An institution may follow the procedures set out herein or adopt its own rules, which rules will conform to the purposes set out below. Prior to adoption, the OUS Senior Vice Chancellor for Finance and Administration must approve the rules developed by the campuses. In addition, the State Board of Higher Education delegates to each president responsibility for implementing these rules or rules adopted by that institution. Purposes: Rules developed for surplus and scrap property will:

(1) Safeguard state assets;

(2) Create efficiency in surplusing or scrapping;

(3) Maximize the value received for property to the extent consistent with efficiency; and

(4) Attempt to reduce negative environmental impacts.

Stat. Auth.: ORS 351.210

Stats. Implemented: ORS 351.210

Hist.: OSSHE 4-2004, f. & cert. ef. 6-9-04

#### 580-040-0304

##### Environmental Standards

Disposal of surplus property and scrap will be accomplished in accordance with all state, federal, and local regulations regarding environmental health and recycling. If ownership of surplus property or scrap is transferred to another party, the institution, or Chancellor's Office transferring the property must document passing of title. The acquiring party assumes environmental responsibility when title transfers.

Stat. Auth.: ORS 351.210

Stats. Implemented: ORS 351.210

Hist.: OSSHE 4-2004, f. & cert. ef. 6-9-04

#### 580-040-0305

##### Maintenance of Proper Inventory Records and Justification of Sale or Disposal

(1) The Chancellor's Office and institutions will each set thresholds and standards that identify by value or type, for personal property for which disposal records must be maintained.

(2) Disposal records for assets, whether or not capitalized, will include the following information:

- (a) Description of property and, if capitalized, asset number; and
- (b) Reason, date, and method of disposal.

Stat. Auth: ORS 351.210

Stats. Implemented: ORS 351.210

Hist.: OSSHE 4-2004, f. & cert. ef. 6-9-04

#### 580-040-0306

##### Disposition of Federally Funded Surplus Property

Federally funded property will be disposed of in accordance with applicable federal law or federal grant terms, if any. Otherwise, such property will be disposed of in accordance with these rules, or institution rules adopted hereunder.

Stat. Auth: ORS 351.210

Stats. Implemented: ORS 351.210

Hist.: OSSHE 4-2004, f. & cert. ef. 6-9-04

#### 580-040-0307

##### Disposition of Property Acquired by Gift

Disposition of property acquired by gift will be in accordance with the Internal Revenue Code and any restrictions applicable to the property. Otherwise, the property will be disposed of in accordance with these or institution rules adopted hereunder.

Stat. Auth: ORS 351.210

Stats. Implemented: ORS 351.210

Hist.: OSSHE 4-2004, f. & cert. ef. 6-9-04

#### 580-040-0308

##### Exchange or Trade-in Option.

The Chancellor's Office or institution may exchange or trade-in property when such exchange or trade-in is in the best interest of the Chancellor's Office or institution and is otherwise in compliance with applicable rules or policy. Exchange or trade-in will be considered disposal for purposes of these rules. Records will be kept regarding the valuation methodology used in evaluating the relative benefits of trade-in, exchange or sale.

Stat. Auth: ORS 351.210

Stats. Implemented: ORS 351.210

Hist.: OSSHE 4-2004, f. & cert. ef. 6-9-04

#### 580-040-0309

##### Transfer of Property to a Collaborating Government or Non-Profit Institution

Transfers of surplus property or scrap may be made to a collaborating government or other non-profit institution when intended for institution purposes and consistent with restrictions on its transfer.

Stat. Auth: ORS 351.210

Stats. Implemented: ORS 351.210

Hist.: OSSHE 4-2004, f. & cert. ef. 6-9-04

#### 580-040-0310

##### Method of Disposal; Eligibility to Acquire

(1) The Chancellor's Office or institution will use a method of disposal that is cost-effective, taking into account the costs of disposal and the potential for financial return. Disposal methods include, but are not limited to, exchanges, trade-ins, auctions, sealed bid sales, scrapping, fixed price retail sales, donation to other state agencies, Oregon political subdivisions, public non-profits, web-based auctions or sales and, for scrap, transfer for no valuable consideration.

(2) No current or former employee or agent for such will be granted any benefit or opportunity not granted the general public in acquisition of items through the disposal process.

(3) All property is conveyed "AS-IS, WHERE-IS" with no warranty, express or implied, of merchantability or fitness for a particular purpose, or any other warranties or guarantees. A purchaser or disappointed bidder will have no recourse against the State of Oregon, the Oregon University System, an institution, or any of their officers, employees, or agents. All sales will be final.

(4) The Chancellor's Office or institution may provide that payment may be made by credit card, cash, cashier's check, personal check, wire transfer, or money order.

(5) Surplus property paid for, but not claimed with the time specified in the sales terms and conditions will be conclusively considered the property of the Chancellor's Office or institution and may be disposed of in compliance with these rules.

(6) Title to surplus property or scrap is transferred to the purchaser when the Chancellor's Office or institution makes the item available to the purchaser either by the purchaser, purchaser's agent, or purchaser's or institution's designated shipper taking possession of the item. Surplus property must be paid for in full before the institution or Chancellor's Office will make it available to the purchaser. Purchaser assumes all responsibility, including risk of loss or damage, for the item when title is transferred.

Stat. Auth: ORS 351.210

Stats. Implemented: ORS 351.210

Hist.: OSSHE 4-2004, f. & cert. ef. 6-9-04

#### 580-040-0311

##### Disposal of Computer and Other Electronic Storage Devices and Media

Prior to disposal of any computer, computer peripheral, computer software, electronic storage device, or storage media device, the Chancellor's Office or institution will, as applicable, completely erase or otherwise render unreadable all information, data, and software residing on the Device, unless the information, data, or software is to be conveyed and may be conveyed lawfully.

Stat. Auth: ORS 351.210

Stats. Implemented: ORS 351.210

Hist.: OSSHE 4-2004, f. & cert. ef. 6-9-04

## DIVISION 41

### ACCOUNTING POLICIES

#### 580-041-0010

##### Receivables

(1) Business offices of the Department of Higher Education shall be diligent in the collection of accounts and notes receivable. The procedures followed shall be in conformity with the requirements of federal and state law and regulation. The procedures shall be formally adopted by an institution after public hearing under the Administrative Procedure Act, with prior notice to the Controller and the Vice Chancellor for Finance and Administration.

(2) Deletion of the reference to specific sanctions permits the institutions to adapt to changes in law or judicial interpretation as well as to institutional differences. The Office of Finance and Administration will assist the institutions by suggesting a model institutional rule, after consultation with the institutions.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 6-1978, f. & ef. 10-25-78; HEB 3-1986, f. & ef. 1-17-86; HEB 10-1990, f. & cert. ef. 7-26-90; HEB 5-1996, f. & cert. ef. 12-18-96

## DIVISION 42

### GIFT, GRANT, AND CONTRACT MANAGEMENT

#### 580-042-0005

##### General Authority

The Board encourages gifts by faithfully devoting them, subject to the terms of the gift, to the institution or program for which intended, and by other suitable means.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: HEB 3-1978, f. & ef. 6-5-78

#### 580-042-0010

##### Delegation

(1) Institutions are authorized to apply for and accept, on behalf of the Board, gifts or grants and to negotiate contracts that will not result in:

(a) Enrollments in excess of those on which budgets have been based;

(b) Commitment of funds beyond those available in budgets approved by the Board, or the normal continuation thereof;

(c) Creating a commitment for the institution or the state to continue support of a program funded through gifts, grants or contracts, in the event such funds are discontinued;

(d) Development or support of activities inconsistent with the approved mission of the department and/or institution;

(e) Launching of new curricular programs that have not received prior Board approval;

(f) Purchase of land or improvements thereof requiring an outlay of \$10,000 or more;

(g) Establishing or significantly expanding a clientele for services of an essentially nonresearch or noninstructional nature.

(2) The Vice Chancellor for Finance and Administration or a designee is authorized to approve applications for and acceptance of other gifts, grants or contracts.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 2-1986, f. & ef. 1-17-86; HEB 10-1990, f. & cert. ef. 7-26-90; HEB 1-1993, f. & cert. ef. 2-5-93; HEB 5-1996, f. & cert. ef. 12-18-96

### 580-042-0015

#### Institutional Responsibility

Requests for gift, grant, or contract funds may be initiated by an institution, division or statewide service, acting for the Board, subject to the following considerations:

(1) A request obligating the Board to increase an allocation of state appropriations or seek additional state funds where the gift, grant or contract to be discontinued is subject to Board approval before the request is submitted to the granting agency.

(2) When all or a major portion of project performance requires the services of institutional personnel or use of its property or if project funding includes indirect cost allowances, funding is to be requested in the name of the Board.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 2-1986, f. & ef. 1-17-86; HEB 4-1993, f. & cert. ef. 5-10-93; HEB 5-1996, f. & cert. ef. 12-18-96

### 580-042-0020

#### Board Acceptance of Scholarship Gifts

(1) Gifts made to an institution by any donor to provide scholarships on a competitive basis shall be reported to the Board as scholarship gifts, provided the institution participates in the selection of the recipients.

(2) Gifts made to an institution by nonprofit organizations for the benefit of designated students shall be reported as scholarship gifts to the institution on the assumption that the recipients were selected on a competitive basis.

(3) Gifts made by individuals, or by partnerships and corporations operated for profit, for designated students not selected on some competitive basis ordinarily used in selecting scholarship recipients, shall not be accepted as scholarship gifts to the institution. These payments may be deposited to the credit of the student in the institutional business office in an agency account known as "Student Safekeeping." These contributions or payments shall be considered gifts to the recipient and not to the institution and will not be reported to the Board.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 1-1993, f. & cert. ef. 2-5-93; HEB 5-1996, f. & cert. ef. 12-18-96

## DIVISION 43

### POLICIES RELATING TO INVENTIONS, LICENSE AGREEMENTS, EDUCATIONAL AND PROFESSIONAL MATERIALS DEVELOPMENT, PATENTS, AND COPYRIGHTS

### 580-043-0006

#### Policy

The educational and research activities of employees of the Board of Higher Education and its institutions frequently result in the discovery of new knowledge in the form of inventions, technological improvements, and the production of educational and professional materials. It shall be the general policy of the Board that such results be made available to the public in the most expeditious manner.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: HEB 8-1978, f. & ef. 12-5-78

### 580-043-0007

#### Objectives of Policies

It is Board intent to:

(1) Provide systematic means of bringing inventions, technological improvements and educational and professional materials into the public domain.

(2) Encourage the development of new knowledge while protecting traditional academic freedom of employees in the publication of materials, development of inventions and discovery of technological improvements.

(3) Establish principles and procedures for equitably sharing net royalty income with employees, and with sponsoring agencies when required by an agreement.

Stat. Auth.: ORS 351

Stats. Implemented: ORS 351.070

Hist.: HEB 8-1978, f. & ef. 12-5-78; HEB 5-1996, f. & cert. ef. 12-18-96

### 580-043-0011

#### Employee Responsibilities and Rights

(1) As a condition of employment, all Board and institution employees shall agree to assign to the Board rights to:

(a) Any invention or improvement in technology conceived or developed using institutional facilities, personnel, information or other resources; and

(b) Educational and professional materials, whether or not registered for copyright, that result from the instructional, research or public service activities of the institutions.

(2) Employees shall be responsible for disclosing to designated institutional representatives all inventions, technological improvements and educational and professional materials conceived, developed and/or produced during the conduct of normal activities.

(3) Employees shall be responsible for cooperating and assisting Board and institutional representatives responsible for patenting, licensing, registering for copyright, publishing and generally assisting public access to new knowledge resulting from employee activities.

(4) Employees shall be eligible to share in net royalty income from each invention or separate improvement thereof, an amount not to exceed:

(a) 40 percent of the first \$50,000, 35 percent of the next \$50,000, and 30 percent of all additional net royalty income received by the Board for inventions and technological improvements; and

(b) 50 percent of net royalty income from educational and professional materials.

(5) For the limited purposes of administering the policies under Division 43, persons acting in the following capacities shall be entitled to the benefits and subject to the responsibilities of said rules: graduate teaching assistants, graduate teaching fellows, graduate research assistants and student employees.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 8-1978, f. & ef. 12-5-78; HEB 9-1980, f. & ef. 8-20-80; HEB 1-1982, f. & ef. 4-20-82; HEB 1-1993, f. & cert. ef. 2-5-93; HEB 5-1996, f. & cert. ef. 12-18-96

### 580-043-0016

#### Institutional Responsibilities

To manage inventions, technological improvements and educational and professional materials developed by employees, institutions shall:

(1) Apply Board-adopted policies and procedures.



(2) Encourage employee activities that lead to new knowledge.  
(3) Actively seek applications for new knowledge developed by employees.

(4) Anticipate and comply with conditions in contracts, grants and agreements with sponsoring agencies.

(5) Recommend to the Vice Chancellor for Finance and Administration or designee contractual agreements, patent applications and equitable sharing of net royalty income.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 8-1978, f. & ef. 12-5-78; HEB 1-1986, f. & ef. 1-17-86; HEB 10-1990, f. & cert. ef. 7-26-90; HEB 1-1993, f. & cert. ef. 2-5-93; HEB 5-1996, f. & cert. ef. 12-18-96

#### 580-043-0026

##### Office of Finance and Administration Responsibilities

The Office of Finance and Administration shall:

(1) Assist institutions in the development of procedures implementing Board policies and managing new knowledge.

(2) Monitor institutional application of Board policies.

(3) Review and approve institutional recommendations regarding assignment of rights, applications for patents, execution of licenses and agreements and distribution of royalties.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 8-1978, f. & ef. 12-5-78; HEB 1-1993, f. & cert. ef. 2-5-93; HEB 5-1996, f. & cert. ef. 12-18-96

### DIVISION 46

#### INSTITUTION FOUNDATIONS

#### 580-046-0005

##### Recognition of a Foundation

(1) An institution president may award recognition as an institution foundation to an entity that meets and maintains the requirements of these rules. Throughout Division 046, "president" refers to an institution president and "foundation" refers to an institution foundation.

(2) Only one entity may have recognition as a foundation, except that the president may recognize other foundations existing at the time this rule is adopted. The president shall report all awards of recognition to the Chancellor. All private support of the institution not provided directly to the institution shall be through a recognized foundation, or affiliated or associated organizations as provided by OAR 580-046-0020(4) and (5).

(3) To be eligible for recognition and to maintain continued recognition, a foundation must:

(a) Be created and operated with the primary purpose of support of the institution;

(b) Have as its purpose the solicitation, management and/or investment of private support for the benefit of the institution; and

(c) Be organized and operated in a manner to permit compliance with these rules.

(4) Procedures for Recognition:

(a) An entity seeking recognition as a foundation shall submit to the president for review its:

(A) Articles of incorporation;

(B) Bylaws; and

(C) Any other of its organic or enabling documents.

(b) A president shall notify the governing body of a foundation in writing of recognition and that compliance with these rules is a condition of continued recognition.

(c) The foundation shall submit all amendments to the documents described in subsection (4)(a) of this rule to the president who shall submit them to the Chancellor.

(5) State System Foundation:

(a) The Chancellor may recognize as the State System foundation an entity created to provide support to the Oregon State System of Higher Education.

(b) In the event of recognition, the procedure, conditions and limitations of these rules shall apply.

(c) In such instances, all references in these rules to a president shall be deemed to refer to the Chancellor and references to institution shall be deemed to refer to the State System. Where these require reports to the Chancellor, the Chancellor shall report to the President of the Board of Higher Education.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 7-1989, f. & cert. ef. 9-19-89; HEB 1-1993, f. & cert. ef. 2-5-93; HEB 5-1996, f. & cert. ef. 12-18-96

#### 580-046-0010

##### Privileges and Responsibilities of Recognition

(1) Privileges of recognition by a president of a foundation may include:

(a) License to use the institution name, logos, informal seals, symbols and marks; and

(b) Use of institution resources in the manner provided by OAR 580-046-0035(7).

(2) No individual, group or entity not awarded recognition under these rules shall use any of the privileges described in this rule or otherwise make use of the institution name except as expressly approved by the institution by license or contract.

(3) A foundation's governing body promptly shall provide to the president a resolution of acceptance of the condition expressed in OAR 580-046-0005(4)(b), and such resolution of acceptance shall be reaffirmed annually.

Stat. Auth.: ORS 351

Stats. Implemented: ORS 351.070

Hist.: HEB 7-1989, f. & cert. ef. 9-19-89; HEB 5-1996, f. & cert. ef. 12-18-96

#### 580-046-0020

##### Institution Foundation Organization, Affiliates, Relationships

(1) A foundation shall be organized and operated pursuant to the Oregon nonprofit corporation law.

(2) A foundation shall obtain and maintain status as a tax-exempt entity pursuant to **Section 501(C)(3)** of the federal **Internal Revenue Code** and other similar Oregon statutes.

(3) A foundation's articles of incorporation or other governing documents shall require that, upon its dissolution or withdrawal of recognition, the foundation's net assets shall, within the limitations imposed by legal and fiduciary rights and responsibilities, be distributed to the institution that awarded recognition, or another entity that has been awarded recognition by that institution pursuant to OAR 580-046-0005.

(4) A foundation may include as part of its organization one or more affiliates that support a particular unit or activity of the institution but that are not separately incorporated.

(a) An affiliate may have an advisory board that reports to and is advisory to the foundation governing body. Institution employees may serve on an affiliate's advisory board so long as they do not comprise a majority of the advisory board membership nor a majority of any quorum of such body. Institution employees may provide staff support for an advisory board, subject to OAR 580-046-0035(7).

(b) A foundation shall not delegate to an advisory board of an affiliate its authority to hire personnel or to enter into contracts.

(c) A member of each advisory board of an affiliate should serve on the foundation governing body whenever possible.

(d) No entity shall become an affiliate of a foundation until the affiliation is approved in writing by the president and reported to the Chancellor.

(5) A foundation may establish or associate with another entity interested in the institution, provided:

(a) The president in writing approves of such relationship prior to any operations and the president reports approval to the Chancellor;

(b) Such relationship does not impair or circumvent the requirements of OAR 580-046-0025 and otherwise is consistent with the requirements of these rules; and

(c) All for-profit activities are approved by the president and reported to the Chancellor.

(6) Upon application of an institution, the Board of Higher Education may grant specific exemptions from the provisions of sections (4) and (5) of this rule.

Stat. Auth.: ORS 351

Stats. Implemented: ORS 351.070

Hist.: HEB 7-1989, f. & cert. ef. 9-19-89; HEB 1-1993, f. & cert. ef. 2-5-93; HEB 5-1996, f. & cert. ef. 12-18-96

#### 580-046-0025

##### Foundation Independence from Institution

(1) A foundation shall be independent of the institution.

(2) To assure independence, a foundation's governing body, employees, and agents:

(a) Shall not be subject to control by the institution or an institution employee;

(b) Shall not give the appearance that the institution or any of its officers or employees control the foundation or its property, including investment of gifts and endowments made to the foundation.

(3) No institution employee may be a voting member of a governing body of the institution-recognized foundation.

Stat. Auth.: ORS 351.070

Stats. Implemented:

Hist.: HEB 7-1989, f. & cert. ef. 9-19-89; HEB 1-1993, f. & cert. ef. 2-5-93

#### 580-046-0030

##### President's Responsibilities, Additional Rules

(1) A president or designee shall be, and other institution employees may be, ex officio, nonvoting members of a foundation's governing body and of any executive or similar committee empowered to act for the governing body. Such appointments shall be described in all contracts entered into pursuant to OAR 580-046-0035(7).

(2) The president shall monitor foundation activities and institution foundation relationships to ensure compliance with Board of Higher Education rules and periodically shall report thereon to the Chancellor.

(3) A president may establish additional written policies and guidelines applicable to a foundation consistent with these and all Board of Higher Education rules and Internal Management Directives. Such policies and guidelines shall be reported to the Chancellor and the Board prior to their adoption.

(4) The president shall report to the Chancellor as required by OAR 580-046-0005(2) & (4)(c); 580-046-0020(4)(d), (5)(a), and (5)(c); 580-046-0030(2) & (3); 580-046-0035(3), (6)(b), (6)(c), & (7)(b); 580-046-0040(2)(a); & 580-046-0045(1).

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: HEB 7-1989, f. & cert. ef. 9-19-89

#### 580-046-0035

##### Foundation and Institution Operational Procedures, Gifts, Accounts, Institution Support, Contracts

(1) An institution employee may, consistent with ORS 351.130, encourage gifts to the institution directly as well as through the foundation.

(2) In accepting gifts of any kinds, a foundation shall:

(a) Obtain institution approval of any restrictive terms and conditions, and advise donors that a restricted gift for the benefit of the institution may not be accepted without institution approval; and

(b) Coordinate with the institution's development office or other appropriate institutional officer regarding funding goals, programs or campaigns proposed by an institution.

(3) The foundation shall report gifts to the foundation and to an institution as a result of foundation activities. Such reports shall be made annually to the president. The president shall provide such reports to the Chancellor.

(4) Revenue received from an institution activity, other than through normal development activities, shall not be deposited in a foundation account.

(5) An institution and the institution-recognized foundation shall develop and implement guidelines regarding the identification of funds so that the intended donee, whether institution or foundation, actually receives the funds, subject to the following:

(a) If the foundation is the intended recipient of funds made payable to an institution, the funds shall first be deposited in a state account and then transferred to the foundation.

(b) Funds payable or gifts made to the institution shall not be transferred to the foundation unless accompanying documents demonstrate that the foundation is the intended recipient.

(c) If the foundation deposits funds in its accounts or receives other gifts intended for the institution, the foundation shall transfer those funds or gifts to the institution.

(6) Salaries, consulting fees, loans, perquisites or other benefits provided to or on behalf of an institution employee, other than a student employee, by a foundation shall be:

(a) Approved by the Board of Higher Education when paid to the president or other employee appointed directly by the Board of Higher Education.

(b) Approved by the president in writing, and reported to the Chancellor in instances where subsection (a) of this section does not apply.

(c) Paid by the foundation to the institution, which in turn will make payments to the employee in accordance with normal institution practice, except where the Chancellor approves a different form of payment. All exceptions shall be reported to the Board of Higher Education annually by the Chancellor.

(d) This subsection is not applicable to reimbursements for actual and necessary travel and other expenses incurred for authorized institution or foundation purposes that are reported by the foundation to the president annually.

(7) Institution Contract with Foundation:

(a) An institution may provide pursuant to a written contract limited and reasonable support to the foundation, including but not limited to the cost of utilities and janitorial services and all or part of the salary and related personnel costs of staff support, from funds otherwise available to the institution. As used in these rules, staff support is assistance by any personnel whose responsibilities and activities exclude policy making and other functions that would nullify the independence of the foundation from the institution.

(b) An institution providing support to a foundation shall contract with the foundation regarding the terms and conditions for implementing OAR 580-046-0010(1) and subsection (7)(a) of this rule and may contract for other purposes consistent with these rules. Any such contract and amendments thereto shall:

(A) Accurately and fully describe the extent of such use and support and the consideration therefor;

(B) Be reviewed by an Assistant Attorney General assigned to the Oregon Department of Higher Education; and

(C) Be approved by the president and by the Chancellor or their respective designees.

(c) Funds received by an institution because of a contract with a foundation shall be placed in a current restricted account that is not a depository for donated or gift money.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 7-1989, f. & cert. ef. 9-19-89; HEB 1-1993, f. & cert. ef. 2-5-93; HEB 5-1996, f. & cert. ef. 12-18-96

#### 580-046-0040

##### Foundation Activities

(1) Financial and other activities of a foundation shall be administered and reported in accordance with law, prudent business practices and generally accepted accounting principles.

(2) Audits and Financial Reports of the Foundation:

(a) A foundation shall be audited annually by a certified public accountant. The audit report shall be provided promptly to the president, who shall submit it and accompanying documents to the Chancellor. The audit report shall be accompanied by a current list of foundation officers, directors, trustees, managers and legal counsel and the officers of any group or entity described in OAR 580-046-0020(4) and (5).

(b) A foundation shall permit the president or, after consultation with both the institution and foundation president, the Chancellor, using institution or OSSHE internal auditors, to inspect and audit all foundation books and records at reasonable times. The foundation

shall provide such reports of and information on its financial status and operations as required by the president or the Chancellor in order to assure conformance by the institution and the foundation with these rules.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 7-1989, f. & cert. ef. 9-19-89; HEB 1-1993, f. & cert. ef. 2-5-93; HEB 5-1996, f. & cert. ef. 12-18-96

#### 580-046-0045

##### Revocation of Recognition

(1) The president may revoke recognition as provided therein, if the president finds that a foundation or its operation conflict with these rules or the mission of the institution. The president shall inform and consult with the Chancellor regarding all activities involved in revocation of recognition and shall provide to the Chancellor copies of all documents relating thereto.

(2) Prior to ordering revocation of recognition, a president shall notify the foundation's governing body of the reasons that could form the bases for revocation of recognition. Within 30 days of receipt of the president's notification, the foundation may in writing propose actions to remedy the deficiencies described by the president.

(3) If the president approves the proposed actions, the foundation's governing body shall implement the proposals within a time specified by the president.

(4) If the president rejects the foundation's proposed actions or finds that they are not adequately implemented, the president may revoke recognition by a written order to the foundation's governing body specifying the reasons for revocation.

(5) An order revoking recognition may be appealed to the Board of Higher Education if filed with the Secretary of the Board within 30 days of the date the president issues the order revoking recognition. The Board shall review the president's decision but shall not reverse that decision unless the Board finds the president acted arbitrarily or capriciously.

(6) An order revoking recognition shall terminate the contract provided by OAR 580-046-0035(7) and the privileges of recognition.

Stat. Auth.: ORS 351.070

Stats. Implemented:

Hist.: HEB 7-1989, f. & cert. ef. 9-19-89; HEB 1-1993, f. & cert. ef. 2-5-93

## DIVISION 50

### REAL PROPERTY, FACILITY, AND CAMPUS PLANNING

#### 580-050-0000

##### Definitions

All capitalized terms in chapter 580, division 50 have the meanings set forth below, unless otherwise defined in the chapter 580, division 50 rules.

(1) Addendum or Addenda: An addition or deletion to, a material change in, or general interest explanation of the Solicitation Document. Addenda will be labeled as such and distributed to all interested Entities.

(2) Bid: A competitive offer, binding on the Bidder and submitted in response to an Invitation to Bid.

(3) Bidder: An Entity that submits a Bid in response to an Invitation to Bid.

(4) Board: Oregon State Board of Higher Education.

(5) Closing: The date and time announced in the Solicitation Document as the deadline for submitting Offers.

(6) Construction Trade Services: Construction services that are not personal services on projects that are not Public Improvements.

(7) Consultants: Architects, engineers, planners, land surveyors, appraisers, managers and related professional consultants.

(8) Contract: The Written agreement, resulting from the Solicitation Document that sets forth the rights and obligations of the parties.

(9) Contract Price: The total of the awarded Bid or Proposal amount, including any approved alternates, and any fully executed change orders or amendments.

(10) Contractor: The Entity awarded the Contract in response to the Solicitation Document.

(11) Days: Calendar days unless otherwise specified by these rules.

(12) Disqualification or Disqualify: The preclusion of an Entity from contracting with an Institution for a period of time. An Institution is authorized to disqualify an Entity in accordance with OAR "Disqualification of an Entity."

(13) Electronic Offer: An Offer made by an Offeror in response to an Institution's or the Board's Solicitation Document posted on its procurement website. In order to accept Electronic Offers, Institutions and the Board must create a separate e-mail address and mailbox to which Electronic Offers may be made and this mailbox must send automatic replies to Offerors indicating when their Offer was received.

(14) Emergency: Circumstances that could not have been reasonably foreseen that create a substantial risk of loss, damage, interruption of services or threat to the public health or safety that require prompt execution of a Contract to remedy the condition.

(15) Entity: A natural person capable of being legally bound, sole proprietorship, corporation, partnership, limited liability company or partnership, limited partnership, profit or nonprofit unincorporated association, business trust, two or more persons having a joint or common economic interest, or any other person with legal capacity to contract, or a government or governmental subdivision.

(16) Facsimile: A document that has been transmitted to and received by the Institution in a format that is capable of being received via a device commonly known as a facsimile machine (e.g., a Facsimile Bid). A facsimile machine allows hard copy documents (written, typed or drawn material) to be sent over telephone lines and printed in another location.

(17) Foreign Contractor: A Contractor that is not domiciled in or registered to do business in the State of Oregon.

(18) Institution: One of the universities that is part of the Oregon University System, including the Board's Chancellor's Office.

(19) Institution Facilities Planning Official: The Senior Vice Chancellor for Finance and Administration or his or her designee at an Institution with the authority to enter into Contracts. An Institution may further designate persons who may act as the Institution Facilities Planning Official.

(20) Invitation to Bid or ITB: A Solicitation Document calling for Bids.

(21) Offer: A Bid or Proposal as applicable.

(22) Offeror: A Bidder or Proposer as applicable.

(23) Opening: The date, time, and place announced in the Solicitation Document for the public opening of Written sealed Offers.

(24) Project Contract: A Contract entered into with an Entity that has signed a retainer agreement under OAR 580-800-0032(4).

(25) Proposal: A competitive offer submitted in response to a Request for Proposals or a request from an Institution Facilities Planning Official to respond to a proposed assignment under OAR 580-050-0020(3)(b) or (c).

(26) Proposer: An Entity that submits a Proposal in response to a Request for Proposals.

(27) Public Improvement: Projects for construction, reconstruction or major renovation on real property by or for an Institution where the Contract Price exceeds \$25,000, other than projects for which no funds of a public agency are directly or indirectly used except for participation that is incidental or related primarily to project design or inspection. "Public Improvement" does not include Emergency work, minor alteration, ordinary repair, or maintenance necessary in order to preserve a Public Improvement or projects where the total Contract Price is less than \$25,000.

(28) Public Work: Includes, but is not limited to, roads, highways, buildings, structures and improvements of all types, the construction, reconstruction, major renovation or painting of which is carried on or contracted for by an Institution or the Board to serve the public interest but does not include the reconstruction or reno-



vation of privately owned property which is leased by the Board or an Institution.

(29) Request for Proposals or RFP: A Solicitation Document calling for Proposals.

(30) Responsible Offeror (also, Responsible Bidder or Responsible Proposer, as applicable): Is an Entity that has submitted an Offer and meets the standards set forth in OAR "Rejection of an Offer (1)(c)(G)" and that has not been disqualified by the Institution under OAR "Disqualification of an Entity."

(31) Request for Qualifications or RFQ: A Written document that: (a) Provides a general description of a proposed project; (b) Indicates the type of Consultant services needed, including, if deemed necessary or appropriate, a description of the particular services needed for part or all of a proposed project or projects; and (c) Requests each prospective Consultant to provide a Written response setting forth the Consultant's specific experience and qualifications for performing the type of services required.

(32) Responsive Offer (also, Responsive Bid or Responsive Proposal, as applicable): An Offer that substantially complies with applicable solicitation procedures and requirements and the Solicitation Document.

(33) Signed or Signature: Any mark, word, or symbol executed or adopted by an Entity evidencing an intent to be bound.

(34) Solicitation Document: An Invitation to Bid or Request for Proposals or Request for Qualifications including all documents incorporated by reference.

(35) Specification: Any description of the physical or functional characteristics, or of the nature of a supply, service or construction item, including any requirement for inspecting, testing, or preparing a supply, service, or construction item for delivery and the quantities or qualities of materials to be furnished under the Contract. Specifications generally will state the result to be obtained and may, on occasion, describe the method and manner of doing the Work to be performed.

(36) Work: The furnishing of all materials, equipment, labor, and incidentals necessary to successfully complete any individual item or the entire Contract and successful completion of all duties and obligations imposed by the Contract.

(37) Written or Writing: Conventional paper documents, either manuscript or printed, in contrast to spoken words. It also includes electronic transmissions or Facsimile documents when required by applicable law, or to the extent permitted by the Solicitation Document or Contract.

Stat. Auth.: ORS 351.060 & 351.070

Stats. Implemented: ORS 351.060 & 351.070

Hist.: OSSHE 5-2004(Temp), f. & cert. ef. 6-9-04 thru 12-5-04

#### 580-050-0001

##### Comprehensive Plan Coordination

(1) Use of property owned by the Board will conform to this rule and the procedures in the Oregon University System Coordination Plan created pursuant to the Land Conservation and Development Commission OAR chapter 660, division 030, State Agency Coordination. In approving decisions concerning use of property owned by the Board, the Oregon University System, Institutions, and managers at activity locations will find that the project, plan, or action complies with the Statewide Planning Goals and is compatible with applicable acknowledged comprehensive plans.

(2) Compliance with Statewide Goals and compatibility with acknowledged Comprehensive Plans will be achieved by making decisions concerning property owned by the Board in conformance with local jurisdiction comprehensive land use plans and land use regulation as follows:

(a) For each of the Institutions, a long-range campus development plan will be formulated covering at least the area within the approved campus boundaries. Campus plans will be reviewed with officials of the local jurisdiction for conformance with the local acknowledged Comprehensive Plan. A campus plan may be formulated as a refinement plan or amendment to the local Comprehensive Plan and be implemented as a special zoning district or planning district within the local jurisdiction land use regulations;

(b) For other lands that support activities governed by the Board, the activity and the land use will conform to the local jurisdiction acknowledged Comprehensive Plan and associated land use regulations.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 4-1990, f. & cert. ef. 2-13-90; HEB 2-1992, f. & cert. ef. 2-12-92 (and corrected 2-21-92); HEB 5-1996, f. & cert. ef. 12-18-96; OSSHE 5-2004(Temp), f. & cert. ef. 6-9-04 thru 12-5-04

#### 580-050-0005

##### Conveyances

Authorized conveyances of all interests in real property will be approved by the Assistant Attorney General serving as chief counsel to the Department, or a designee, and executed by the Board President and Board Secretary pursuant to ORS 351.150.

Stat. Auth.: ORS 351.150

Stats. Implemented: ORS 351.150

Hist.: HEB 3-1978, f. & ef. 6-5-78; OSSHE 5-2004(Temp), f. & cert. ef. 6-9-04 thru 12-5-04

#### 580-050-0010

##### Easements

The Board President and the Board Secretary are authorized, without Board approval, to execute easements affecting real property owned by the State of Oregon for the benefit of the Board in accordance with the following:

(1) The easement will be recommended by the Senior Vice Chancellor for Finance and Administration, or designee, and will be in a form approved by the Assistant Attorney General serving as chief counsel to the Board, or designee.

(2) If the property affected is within approved projected campus boundaries, the easement will relate only to utilities, traffic control devices, sidewalks, surface transportation, and other similar items, with appropriate access.

(3) If the property affected is not within approved projected campus boundaries, the easement will relate either to utilities or to rights of way for access to adjacent properties.

(4) Easements granting rights in real property other than those set forth in sections (2) and (3) of this rule will be approved by the Board prior to their execution by the Board President and Board Secretary.

Stat. Auth.: ORS 351.070 & 351.150

Stats. Implemented:

Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 8-1985, f. & ef. 12-19-85; HEB 10-1990, f. & cert. ef. 7-26-90; HEB 2-1992, f. & cert. ef. 2-12-92 (and corrected 2-21-92); OSSHE 5-2004(Temp), f. & cert. ef. 6-9-04 thru 12-5-04

#### 580-050-0015

##### Purchases and Leases of Real Property

The Senior Vice Chancellor for Finance and Administration or designee has authority to purchase real properties or enter into leases, with appropriate report to be made to the Board, subject to the following conditions:

(1) Location. Properties will be located within the Board-established projected campus boundaries of an Institution. Property exchanges are subject to specific Board authorization.

(2) Sources of Funds. Properties to be purchased principally as sites for educational and general construction or improvements, or principally for current educational and general use, will be financed from funds available for these purposes, usually a state appropriation or proceeds from the sale of bonds issued under the provisions of Article XI-G of the Oregon Constitution. Properties to be purchased principally as sites for auxiliary enterprises construction or improvements, or principally for current auxiliary enterprises use, will be financed from funds available for these purposes, such as proceeds from the sale of bonds issued under provisions of Article XI-F(1) of the Oregon Constitution or appropriate restricted funds.

(3) Purchase Price. Purchases will be made at prices based on current market values, determined by averaging two or more independent appraisals. Limit on each purchase will be \$500,000. All purchases will conform to the procedures set out in OAR.

(4) Value of Lease. The total cost of the lease over its term, including any options to extend the lease, will not exceed \$500,000. All leases will conform to the requirements set out in OAR.

(5) Priority of Property Acquisitions. To the extent practical, purchases will be made in the following priority order:

(a) Site for building construction or other improvement projects for which funds are available;

(b) Unimproved property;

(c) Property with improvements having value materially less than the land;

(d) Sites intended for building or other improvement projects for which construction authorization is expected to be sought from the Legislature at its next session, with a high priority assigned to the project;

(e) Property for which the owner plans costly improvements or other action that would materially increase the market value and cost to the Board if acquired later;

(f) Property offered for sale by owner.

(6) Condemnation. Authorization to acquire real property by condemnation is subject to specific Board action.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 8-1985, f. & ef. 12-19-85; HEB 10-1990, f. & cert. ef. 7-26-90; HEB 2-1992, f. & cert. ef. 2-12-92 (and corrected 2-21-92); HEB 5-1996, f. & cert. ef. 12-18-96; OSSHE 5-2004(Temp), f. & cert. ef. 6-9-04 thru 12-5-04

## Capital Construction

### 580-050-0020

#### Appointment of Professional Consultants

The Institution Facilities Planning Official is authorized to select and enter into contracts with Consultants for the design, evaluation, and management of construction projects or real property. Services performed by Consultants may include but are not limited to: energy management, construction management, facilities planning, materials testing, hazardous materials evaluation and abatement, engineering, cost estimating, land surveying, appraisal, commissioning, special inspections and related services in accordance with the following standards and procedures:

(1) General Standards; Selection Factors. The purposes of this rule are to assure that Consultants are evaluated fairly for Contracts; that those selected will be highly qualified; and to encourage excellence and cost consciousness on the part of Consultants in performing professional services for the Institutions. The following factors, which are based on the qualifications of the Consultants, will be considered in evaluating and selecting Consultants:

(a) Experience, design talent, required licensure, professional certification(s) and technical competence, including an indication of the design, evaluation, planning, management, or other processes expected to be used in the Consultant's performance of services under any resulting Contract;

(b) Capacity and capability to perform the services within the time limitations set for the completion of the project;

(c) Past record of performance on contracts with governmental agencies and private owners with respect to such factors as cost control, quality of work, ability to meet schedules, coordination and supervision of sub-consultants, timely payment of sub-consultants and suppliers, and contract administration;

(d) Availability to and familiarity with the area in which the project is located, including knowledge of design and construction techniques peculiar to the area;

(e) Proposed cost management techniques to be employed; and

(f) Ability to communicate effectively.

(2) Procurement of Consultant Services Under Retainer Agreements.

(a) At least biennially, in a trade periodical or an Oregon newspaper of general circulation, or on the Oregon University System's procurement website, and in at least one trade periodical or newspaper geared towards minority, women and emerging small businesses, the Senior Vice Chancellor for Finance and Administration or designee will publish a notice advertising the Board's Request for Proposals for Consultant services for future services and inviting

Consultants to submit a Proposal to perform the services described in the RFP at such time that the services are requested by the Institution. The Senior Vice Chancellor for Finance and Administration or designee will also provide a copy of the above notice to the Office of Minority, Women, and Emerging Small Business.

(b) Following the procedures set out in section (2)(a) of this rule, the Senior Vice Chancellor for Finance and Administration or designee will prepare a list of potential Consultants that have met the minimum criteria for selection set out in the retainer agreement RFP. An Institution that wishes to use the services of Consultants that have entered into retainer agreements may appoint a person to serve on the evaluation committee. Such committee will review the list prepared by the Senior Vice Chancellor for Finance and Administration or designee of any of the Consultants who have met the minimum criteria for selection set out in the RFP and will select Consultants who appear to have the qualifications for and interest in performing professional services for the Institutions. The committee will recommend to the Senior Vice Chancellor for Finance and Administration or designee the selected Consultants.

(c) Each selected Consultant will be invited to enter into a retainer agreement for a two-year period with the option to extend for an additional two-year term. Services of the selected Consultants will be available to all Institutions that the Consultants have indicated they are willing to work at. The Senior Vice Chancellor for Finance and Administration or designee may enter into interagency agreements to permit other public agencies to utilize the services of Consultants selected for retainer agreements pursuant to this subsection, under the terms of those retainer agreements.

(d) The Office of Finance and Administration will maintain a current roster of all Consultants who have signed retainer agreements with the Board and copies of the retainer agreements.

(3) General Procurement of Consultant Services: The procedures to be followed when contracting for professional consulting services will depend upon a combination of factors including the total anticipated Contract Price and whether or not the Consultant has entered into a retainer agreement pursuant to section (2) of this rule.

(a) For contracts where the anticipated Contract Price, including Consultant fees and reimbursable expenses and all amendments contemplated by the parties, is \$25,000 or less, the Institution Facilities Planning Official may contract for such professional services with any Consultant who has entered into a retainer agreement or such other Consultant as the Institution Facilities Planning Official may choose who appears to have the qualifications for and interest in the proposed assignment.

(b) For contracts involving an anticipated Contract Price, including Consultant fees and reimbursable expenses and including amendments contemplated by the parties, between \$25,001 and \$200,000, or in an Emergency situation, the Institution Facilities Planning Official may select a Consultant to perform the needed services using the following procedure:

(A) Select a Consultant:

(i) From those who have signed a retainer agreement who appear to have the qualifications for and interest in the assignment; or

(ii) Select at least three Consultants not on a retainer agreement who appear to have the qualifications for and interest in the proposed assignment and notify each Consultant selected in reasonable detail of the proposed assignment and invite each Consultant to submit a Written Proposal which includes their qualifications.

(B) The Institution Facilities Planning official will negotiate the payment terms and specific statement of work of a Contract with the selected Consultant using a form of contract deemed legally sufficient by the Department of Justice (for all Consultant Contracts requiring Department of Justice approval). If a mutually satisfactory contract cannot be agreed to, the Institution Facilities Planning Official may select another Consultant on retainer or who submitted a Proposal and enter into contract negotiations.

(c) For professional service contracts with an anticipated Contract Price, including Consultant fees and reimbursable expenses, over \$200,001, except in Emergency situations, the Institution Facilities Planning Official will select for consideration no fewer than three Consultants using the following procedure:

(A) Announcement: The Institution Facilities Planning Official will give notice of intent to contract for professional services in a trade periodical, or newspaper of general circulation, or on the Institution's procurement website and in at least one trade periodical or newspaper geared towards minority, women and emerging small businesses. The notice will invite qualified prospective Consultants to respond to the Solicitation Document. The notice will specify where the Solicitation Document may be obtained and the Closing. The Institution Facilities Planning Official will also provide a copy of the notice of intent to the Office of Minority, Women and Emerging Small Business.

(B) Consultant's Response: The Consultant's Proposal must include a statement that describes the prospective Consultant's credentials, performance data and other information sufficient to establish the Consultant's qualification for the project, as well as any other information required by the Solicitation Document.

(C) Initial Screening: The Institution Facilities Planning Official will appoint a Consultant screening committee consisting of no fewer than two individuals to review, score, and rank the Consultants according to the criteria set out in the Solicitation Document. The Consultant screening committee will evaluate the qualifications of all Proposers and select no fewer than three prospective Consultants whose Proposals demonstrate that the selected Consultants can best fulfill the provisions of section (1) of this rule. In the event that fewer than three Consultants reply to the Solicitation Document, the Institution Facilities Planning Official may still proceed with the final selection of a Consultant if the Institution Facilities Planning Official makes a Written finding that the purpose set out in section (1) of this rule will still be met by continuing with the selection process.

(D) The Final Selection Procedure:

(i) Interviews: Following screening and evaluation, the Institution Facilities Planning Official and Consultant screening committee may invite to interview, in person, a minimum of three finalists selected from the initial screening or such lesser number as have been determined to be Responsible and Responsive Proposers.

(ii) Award of Contracts: The Institution Facilities Planning Official will make the final selection based on the factors set out in the Solicitation Document; recommend the Consultant to the president or designee if the Institution Facilities Planning Official does not have contracting authority and notify the selected Consultant of such selection.

(iii) The Institution Facilities Planning Official will then negotiate the payment terms and the statement of work of a Contract with the selected Consultant using a form of Contract deemed legally sufficient by the Department of Justice. In the event a mutually satisfactory Contract cannot be agreed to, the Consultant screening committee may select for consideration and contract negotiations another Consultant from the remaining recommended Consultants.

(4) Any Consultant who has submitted a Proposal as outlined in subsections (2)(b), (3)(b) or (3)(c) of this rule and claims to have been adversely affected or aggrieved by the selection of a competing Consultant, and unless a different deadline is specified in the Solicitation Document, will:

(a) Have seven (7) calendar days after receiving notice of selection to submit a Written protest of the selection to the Institution Facilities Planning Official. The Institution Facilities Planning Official will not consider a selection protest submitted after the time period provided in this subsection, unless a different deadline is provided in the notice of selection.

(b) The Institution Facilities Planning Official will have the authority to accept, reject, settle or resolve a written protest submitted in accordance with this rule.

(c) Judicial review of the disposition of a written protest submitted in accordance with subsection (4)(a) of this rule may be available pursuant to the provisions of ORS 183.484.

(5) Notwithstanding anything in this rule to the contrary, the Institution Facilities Planning Official may enter into a Contract with a Consultant without following the processes herein in the following situations:

(a) The Consultant previously performed Work on a project, the Institution terminated the Work or decided not to complete the Work or decided not to proceed with all phases of the project and the Institution

now wants to continue the project and wants to use the same Consultant in order to continue professional liability insurance coverage or because the Institution Facilities Planning Official reasonably believes no other Consultant would want to do the Work or the cost would be greater to have a different Consultant complete the work;

(b) The new Work constitutes a latter phase of a multi-phased project; or

(c) The new Work constitutes an addition to or remodel of a building which the Consultant previously worked on and the Institution Facilities Planning Official reasonably believes that there will be cost savings in using a Consultant who is familiar with the previous Work; or

(d) The Institution Facilities Planning Official reasonably believes that the Consultant has special skills uniquely required for the adequate performance of the Work.

Stat. Auth.: ORS 351

Stats. Implemented: ORS 351.070

Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 8-1985, f. & ef. 12-19-85; HEB 10-1990, f. & cert. ef. 7-26-90; HEB 2-1992, f. & cert. ef. 2-12-92 (and corrected 2-21-92); HEB 6-1994, f. & cert. ef. 4-28-94; HEB 4-1995, f. & cert. ef. 8-1-95; HEB 5-1996, f. & cert. ef. 12-18-96; OSSHE 5-2004(Temp), f. & cert. ef. 6-9-04 thru 12-5-04

## 580-050-0025

### Naming Buildings

No building or structure of the Oregon University System will be named after a living person. However, the Board may make exceptions to this rule if a donor contributes a substantial share of the cost of construction or if other unusually meritorious reasons exist. Subject to the limitations in this rule, Presidents are authorized to name buildings or structures.

Stat. Auth.: ORS 351.070

Stats. Implemented:

Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 2-1992, f. & cert. ef. 2-12-92 (and corrected 2-21-92); OSSHE 5-2004(Temp), f. & cert. ef. 6-9-04 thru 12-5-04

## 580-050-0032

### Contracts for Repairs and Public Improvements

(1) The Institution Facilities Planning Official will be the contracting officer. All Contracts for Construction Trade Services or for Public Improvements will be awarded and executed by the Institution Facilities Planning Official.

(2) The Senior Vice Chancellor for Finance and Administration, or designee, may delegate, through the Institution president, to a specific person or persons at each Institution the authority to execute Contracts for Public Improvements and Construction Trade Services, provided that all applicable statutory and rule requirements are fulfilled. The Institution president may, by written agreement with the president of another Institution, subject to this rule, transfer such delegation to a person at such other Institution. A copy of each Contract must be filed with the Institution Facilities Planning Official who may audit the project and the contracting process.

(3) The Institution Facilities Planning Official will award Contracts valued at \$25,000 or more for Public Improvements and Construction Trade Services to the lowest Bidder or best Proposer pursuant to appropriate competitive processes, utilizing ITBs or Requests for Proposals, including negotiated procurements for design-build or construction manager/general contractor services. Criteria for award will include price and any other factors as the Institution Facilities Planning Official deems appropriate, including, but not limited to, past performance of the Contractor, experience of the Contractor and the Contractor's management team on projects of similar size and scope, the Contractor's reputation for quality and timely completion of projects, the Contractor's business and project management practices, the Contractor's demonstrated commitment to affirmative action, the Contractor's willingness to agree to the Contract terms proposed by the Institution Facilities Planning Official and the Contractor's ability to post required bonds. The Institution Facilities Planning Official will maintain appropriate records of the competitive process utilized for each Contract. The appropriate planning official of each Institution will determine the procedures to be used for the award of Contracts valued at less than \$25,000 for Construction Trade Services.



(4) The Senior Vice Chancellor for Finance and Administration or designee may enter into retainer agreements, including price agreements, with Contractors using appropriate competitive procedures that take into account, at a minimum, the qualifications and reputation of Offerors, price structure, ability and willingness to respond to requests from one or more Institutions, location and such other factors as the Senior Vice Chancellor for Finance and Administration or designee will deem appropriate. At least biennially, in a trade periodical or an Oregon newspaper of general circulation or on the Oregon University System procurement website, and in at least one trade periodical or newspaper geared towards minority, women and emerging small businesses, the Senior Vice Chancellor for Finance and Administration or designee will publish a notice advertising the Board's Request for Proposals for Public Improvement and Construction Trade Services for future services and inviting construction firms to submit a Proposal to perform the services described in the Request for Proposals at such time that the services are requested by the Institution. The Senior Vice Chancellor for Finance and Administration or designee will also provide a copy of the above notice to the Office of Minority, Women and Emerging Small Business. The Institution Facilities Planning Official may utilize the services of Contractors under retainer agreement for projects whose total Contract Price is less than \$500,000.

(a) Project Contracts to the retainer agreement, describing the scope of the specific work and the price for which it will be performed, must be executed prior to the commencement of any Work by a Contractor. If the Project Contract requires review for legal sufficiency by the Department of Justice, that review must be received prior to any Work being performed by the Contractor or payment being made by the Institution, except as set out in relevant sections of OAR chapter 137, division 45.

(b) Project Contracts having a total Contract Price of \$25,000 or less on a project where the combined price of all contracts awarded on the project is less than \$25,000 will not be subject to the provisions of section (7) of this rule. However, projects may not be divided into more than one Project Contract to avoid the application of section (7);

(c) The Institution Facilities Planning Official will maintain appropriate records of the competitive process used to select a specific Contractor from the list of Contractors with current retainer agreements in force at the time the selection is made and the Project Contract is issued;

(d) The Institution Facilities Planning Official will solicit prices from at least two Contractors under retainer agreements, or document in the contracting file the reason for not doing so.

(5) The Institution president may declare an Emergency. The reasons for the declaration will include justification for the use of any sole source or negotiated procurements for Public Improvements or Construction Trade Services within the scope of the Emergency declaration. After the president has declared an Emergency, the Institution Facilities Planning Official may negotiate a Contract with any qualified construction firm for Public Improvements or Construction Trade Services included in the scope of the Emergency declaration. The Institution Facilities Planning Official will maintain appropriate records of negotiations carried out as part of the contracting process.

(6) The Institution Facilities Planning Official may enter into a Contract for a Public Improvement or Construction Trade Services with a construction firm without following the procedures set out in this rule if the services are reasonably available only from one firm, if the firm has special skills uniquely required for the adequate performance of the Public Improvements or Construction Trade Services, if the work must be done by a particular firm so as not to void a warranty, or if the firm is the only one authorized by a supplier to install particular items, and if a sole source exemption is not likely to encourage favoritism or substantially diminish competition for public contracts. The Institution must maintain documentation to support its determination that the Work can only be performed by that one firm.

(7) All Public Work Contracts will require Contractors to pay, and Contractors will pay, at least the rate of wage for labor determined by the Bureau of Labor and Industries (BOLI) to be the rate

of wage for an hour's work in the same trade or occupation in the locality where such labor is performed for work performed under the Contract. All Public Work Contracts will require Contractors to pay to BOLI the fee required by ORS 279.375(1).

(8) No Contract will be awarded to any construction firm that is not licensed to do business in the State of Oregon, registered or licensed by the appropriate state licensing boards or listed as ineligible to enter into Public Improvement or Construction Trade Service contracts by the Bureau of Labor and Industries or the Oregon University System.

(9) The Institution Facilities Planning Official will require Offerors and Contractors to post and maintain such bonds as the Institution Facilities Planning Official decides is appropriate. Requirements related to the posting, form, maintenance, and return of bonds will be included in Solicitation Documents. One hundred percent performance and payment bonds will be required on Public Improvement Contracts with a total Contract Price in excess of \$100,000.

(10) All Contractors will provide and maintain insurance as may be required by the Institution Facilities Planning Official. Such insurance will remain in force throughout the term of the Contract, including any extensions.

(11) The Institution Facilities Planning Official may require that retainage of not more than five percent of the Contract Price is withheld from payments to any Contractor. This requirement is not applicable to Project Contracts. Retainage will be withheld, applied, and adjusted as set out in OAR "Retainage."

(12) The Institution Facilities Planning Official may execute change orders or amendments to Contracts in accordance with OAR 580-050-0033.

(13) The Board of Higher Education and/or the Director of the Internal Audit Division may audit or investigate any Contract or retainer agreement executed under authority of this rule.

(14) The procedures set out in OAR through will be used in soliciting, evaluating, and rejecting or accepting Bids or Proposals for Contracts for Public Improvements or Construction Trade Services.

(15) Notwithstanding anything in this rule to the contrary, Institutions are not required to use a competitive process to select a Contractor to perform contracts for Public Improvements or Construction Trade Services if:

(a) The Contract is with another public agency or the federal government;

(b) It is an Emergency; or

(c) The Institution Facilities Planning Official grants an exemption from the competitive process after finding that the exemption:

(A) Is unlikely to encourage favoritism in the award of public contracts;

(B) Is unlikely to substantially diminish competition for public contracts; and

(C) Will likely result in substantial cost savings to the Institution.

(d) In making these findings the Institution Facilities Planning Official may consider the type, cost and amount of the Contract, the number of Entities available to make Offers and such other factors as the Institution Facilities Planning Official deems appropriate.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 2-1992, f. & cert. ef. 2-12-92 (and corrected 2-21-92); HEB 1-1993, f. & cert. ef. 2-5-93; HEB 4-1995, f. & cert. ef. 8-1-95; HEB 5-1996, f. & cert. ef. 12-18-96; OSSHE 5-2004(Temp), f. & cert. ef. 6-9-04 thru 12-5-04

## 580-050-0033

### Change Orders and Amendments

The Senior Vice Chancellor for Finance and Administration or designee may delegate to each Institution the authority to execute change orders or amendments to Contracts for Public Improvements and Construction Trade Services and Consultant Contracts under OAR 580-050-0020 in accordance with the following conditions:

(1) No change order or amendment substantially changes the identity or overall scope of the Work encompassed within the original Contract and Solicitation Document;

(2) Sufficient funds are available within the project budget for the Work contemplated by a change order or amendment;

(3) Approval of a change order or amendment will not result in a project exceeding the appropriation or limitation approved by the Legislative Assembly or Emergency Board and, if required, released for construction purposes.

(4) The Senior Vice Chancellor for Finance and Administration may revoke delegated authority upon written notice to the president of the Institution for which revocation is sought.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 2-1992, f. & cert. ef. 2-12-92 (and corrected 2-21-92); HEB 5-1996, f. & cert. ef. 12-18-96; OSSHE 5-2004(Temp), f. & cert. ef. 6-9-04 thru 12-5-04

### Use of Property

#### 580-050-0040

##### General Purpose

(1) The successful Offeror for a Public Improvement project approved by the Board of Higher Education will have made good faith efforts to subcontract or establish joint ventures with or obtain materials to be used in performing the Contract from minority, women and emerging small business enterprises.

(2) For purposes of this rule and OAR 580-050-0041 and 580-050-0042, minority, women and emerging small business enterprises are those certified as such by the Office of Minority, Women and Emerging Small Business at the Bid or Proposal Closing.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 14-1990, f. & cert. ef. 10-3-90; HEB 5-1992, f. & cert. ef. 4-10-92; HEB 4-1995, f. & cert. ef. 8-1-95; HEB 5-1996, f. & cert. ef. 12-18-96; OSSHE 5-2004(Temp), f. & cert. ef. 6-9-04 thru 12-5-04

#### 580-050-0041

##### Emerging Small Businesses

(1) The successful Offeror for a Public Improvement project approved by the Board of Higher Education will meet the project's goal, if any, for subcontracting with or obtaining materials to be used in performing the Contract from emerging small businesses. The goal will be set out in the Specifications that accompany the project's Solicitation Document.

(2) The goal for each project will be based upon the nature of the project, its size and location, and the availability of emerging small businesses.

(3) Should an Offeror fail to meet the requirements of section (1) of this rule, the Offer will be disqualified unless the Offeror notifies the Institution Facilities Planning Official of the Offeror's good faith efforts by submitting in Writing within 24 hours of the Closing:

(a) The identity of each emerging small business enterprise requested to submit Bids, Proposals and/or quotations;

(b) The amounts of any such Bids, Proposals and/or quotations;

(c) The identity of each emerging small business enterprise to be engaged as a subcontractor;

(d) The reason for rejection of an emerging small business enterprise whose Bid, Proposal, or quotation is equal to or lower than that of the subcontractor engaged or projected for that work;

(e) All other evidence of good faith efforts through performance of all of the actions described in section (4) of this rule.

(4) Proof of performance of the following actions will create a rebuttable presumption that the Offeror has made good faith efforts; conversely, failure of proof of such performance will create a rebuttable presumption of lack of good faith efforts:

(a) The Offeror attended any presolicitation or prebid meetings that were scheduled by the Institution to inform emerging small business enterprises of contracting and subcontracting, or material supply or other opportunities available on the project;

(b) The Offeror identified and selected economically feasible units of the project that could be subcontracted to emerging small business enterprises in order to increase the likelihood of participation by such enterprises;

(c) The Offeror advertised once in at least two of the following publications: general circulation, trade association, and trade-or-

ented, minority and women-focused publications, if any, concerning the subcontracting, material supply or other opportunities;

(d) The Offeror solicited and provided written notice to a reasonable number of emerging small business enterprises identified from current certified lists of such business enterprises provided or maintained by the Office of Minority, Women and Emerging Small Business, for the selected subcontractor or material supply or other work in sufficient time to allow the enterprises to participate effectively;

(e) The Offeror followed up initial solicitations by contacting the emerging small business enterprises identified in subsection (d) to determine with certainty whether the enterprises were interested in such subcontracting, material supply or other opportunities;

(f) The Offeror provided interested emerging small business enterprises with adequate information about the plans, Specifications and requirements for the selected subcontracting or material supply or other work;

(g) Where applicable, the Offeror advised and made efforts to assist emerging small business enterprises in obtaining bonding, lines of credit, or insurance required by the Institution;

(h) The Offeror used the services of community organizations, contractor groups, state, and federal business assistance offices and other organizations identified by the Office of Minority, Women and Emerging Small Business that provide assistance in the recruitment, and placement of emerging small business enterprises; and

(i) The Offeror negotiated in good faith with emerging small business enterprises submitting Bids, Proposals, or quotations and did not, without justifiable reason, reject as unsatisfactory any Bids, Proposals or quotations prepared by any emerging small business enterprise. "Good faith" negotiating means engaging in good faith discussions with emerging small business enterprises about the nature of the Work, scheduling, requirements for special equipment, opportunities for dividing work among the Offerors and various subcontractors and the Offers of the emerging small business enterprises, including sharing with them any cost estimates from the Solicitation Documents, if available.

(5) Should the Offeror not make the good faith effort required in section (4) of this rule, proof of the following facts will rebut the presumption that good faith efforts as required by OAR 580-050-0040(1) were not made by the Offeror:

(a) The Offeror qualifies as a certified emerging small business enterprise; or

(b) The Offeror has engaged one or more certified emerging small business enterprises as subcontractors which meets or exceeds the goal of the Work and discloses in Writing with its Offer the identity of those firms so engaged and the amount(s) of the contract to be subcontracted to such entities.

(6) The Institution Facilities Planning Official will decide, if necessary, whether good faith efforts have been made, pursuant to the criteria of section (4) of this rule.

(7) Any Offeror whose Offer has been rejected for noncompliance with the requirements of this rule may, within three days of the rejection of the Offer, request the Institution Facilities Planning Official to reconsider the rejection, citing the error or misinterpretation of the documents that the Offeror believes led to the incorrect rejection of its Offer and providing all necessary documentation. Information received after the three-day period will not be accepted. The Institution Facilities Planning Official reserves the right to require the Offeror to divulge its records when a dispute occurs, regardless of whether they have been awarded the Contract or whether a court action has been filed.

(8) The requirements of the prior sections do not apply if the Offeror certifies that, if awarded the Contract, it will not subcontract. As used in this rule, "work" does not mean providing materials or supplies.

(9) The Institution Facilities Planning Official may audit or otherwise inspect the records of Contractors to determine compliance by those Contractors with commitments made in satisfaction of the requirements of this rule. Any Contractor determined to have failed to fulfill such requirements may be subject to penalty, including termination of any Contract or Disqualification from bidding, proposing or performing work on any Contract for the Oregon State Board

of Higher Education for a period of up to three years. Before the Board imposes any such sanction, a Contractor is entitled to a hearing as provided for in ORS 183.413, et seq.

(10) In the event a Request for Proposals, Request for Qualifications or process other than an ITB is used to contract for Public Improvements, the Institution Facilities Planning Official will require in the Solicitation Document or will attempt to negotiate affirmative efforts on behalf of emerging small businesses similar to those outlined in sections (1) or (4) of this rule.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 14-1990, f. & cert. ef. 10-3-90; HEB 5-1992, f. & cert. ef. 4-10-92; HEB 4-1995, f. & cert. ef. 8-1-95; HEB 5-1996, f. & cert. ef. 12-18-96; OSSHE 5-2004(Temp), f. & cert. ef. 6-9-04 thru 12-5-04

#### 580-050-0042

##### Minority Business Enterprises and Women Business Enterprises

(1) The successful Offeror for a Public Improvement project approved by the Board of Higher Education or its designee will make a good faith effort to subcontract with or obtain materials to be used in performing the Contract from minority and women business enterprises.

(2) Proof of performance of the following actions will create a rebuttable presumption that the Offeror has made good faith efforts; conversely, failure of proof of such performance will create a rebuttable presumption of lack of good faith efforts:

(a) The Offeror attended any presolicitation or prebid meetings that were scheduled by the Institution to inform minority and women business enterprises of contracting and subcontracting, material supply or other opportunities available on the project;

(b) The Offeror identified and selected economically feasible units of the project that could be subcontracted to minority and women business enterprises in order to increase the likelihood of participation by such enterprises;

(c) The Offeror advertised in general circulation, trade association, and trade-oriented, minority and women-focused publications, if any, concerning the subcontracting, material supply or other opportunities;

(d) The Offeror solicited and provided written notice to a reasonable number of minority and women business enterprises identified from current certified lists of such business enterprises provided or maintained by the state Office of Minority, Women and Emerging Small Business, for the selected subcontracting or material supply, or other work in sufficient time to allow the enterprises to participate effectively;

(e) The Offeror followed up initial solicitations by contacting the enterprises to determine with certainty whether the enterprises were interested in such subcontracting, material supply or other opportunities;

(f) The Offeror provided interested minority and women business enterprises with adequate information about the plans, Specifications and requirements for the selected subcontracting or material supply, or other work;

(g) Where applicable, the Offeror advised and made efforts to assist minority and women business enterprises in obtaining bonding, lines of credit or insurance required by the Institution;

(h) The Offeror used the services of community organizations, contractor groups, state and federal business assistance offices and other organizations identified by the Office of Minority, Women and Emerging Small Business that provide assistance in the recruitment and placement of minority and women business enterprises; and

(i) The Offeror negotiated in good faith with minority and women business enterprises submitting Bids, Proposals, or quotations and did not, without justifiable reason, reject as unsatisfactory any Bids, Proposals or quotations prepared by any minority or women business. "Good faith" negotiating means engaging in good faith discussions with minority or women businesses about the nature of the Work, scheduling, requirements for special equipment, opportunities for dividing of work among the Offerors, and various subcontractors and the Offers of the minority or women businesses, including sharing with them any cost estimates from the Solicitation Documents, if available.

(3) Should an Offeror fail to meet the requirements of section (2) of this rule, the Offer will be Disqualified unless the Offeror notifies the Institution Facilities Planning Official of the Offeror's good faith efforts by submitting in Writing within 24 hours of the Closing:

(a) The identity of each minority and women business enterprise requested to submit Bids, Proposals, and/or quotations;

(b) The amounts of any such Bids, Proposals and/or quotations;

(c) The identity of each minority and women business enterprise to be engaged as a subcontractor;

(d) The reason for rejection of a minority and women business enterprise whose Bid, Proposal, or quotation is equal to or lower than that of the subcontractor engaged or projected for that work;

(e) All other evidence of good faith efforts through performance of all of the actions described in section (2) of this rule.

(4) Should the Offeror not make the good faith effort required in section (2) of this rule, proof of the following facts will rebut the presumption that good faith efforts as required by OAR 580-050-0040(1) were not made by the Offeror:

(a) The Offeror qualifies as a certified minority or women business enterprise or is an approved joint venture, including but not limited to a mentor-protégé relationship, which includes a minority or women enterprise as a partner in the joint venture; or

(b) The Offeror has engaged one or more certified minority or women business enterprises as subcontractors that meet or exceed the recommended portion of the Work and discloses in Writing with its Offer the identity of those firms so engaged and the amount(s) of the contract to be subcontracted to such entities: The recommended portion for each project will be based upon the nature of the project, its size and location, and the availability of minority and women business enterprises.

(5) The Institution Facilities Planning Official will decide, if necessary, whether good faith efforts have been made pursuant to the criteria of this rule.

(6) Any Offeror whose Offer has been rejected for noncompliance with the requirements of this rule may, within three days of the rejection of the Offer, request the Institution Facilities Planning Official to reconsider the rejection, citing the error or misinterpretation of the documents that the Offeror believes led to the incorrect rejection of its Offer and providing all necessary documentation. Information received after the three-day period will not be accepted. The Institution Facilities Planning Official reserves the right to require the Offerors to divulge their records when a dispute occurs, regardless of whether they have been awarded a contract or whether a court action has been filed.

(7) The requirements of the prior sections do not apply if the Offeror certifies that, if awarded the Contract, it will not subcontract. As used in this rule, "work" does not mean providing materials or supplies.

(8) The Institution Facilities Planning Official may audit or otherwise inspect the records of Contractors to determine compliance by those Contractors with commitments made in satisfaction of the requirements of this rule. Any Contractor determined to have failed to fulfill such requirements may be subject to penalty, including termination of any Contract or Disqualification from bidding, proposing or performing work on any Contract for the Oregon State Board of Higher Education for a period of up to three years. Before the Board imposes any such sanction, a Contractor is entitled to a hearing as provided for in ORS 183.413, et seq.

(9) In the event a Request for Proposals, Request for Qualifications or process other than an ITB is used to contract for Public Improvements, the Institution Facilities Planning Official will require affirmative efforts in its Solicitation Documents or will attempt to negotiate affirmative efforts on behalf of minority and women business enterprises similar to those outlined in this rule.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 14-1990, f. & cert. ef. 10-3-90; HEB 5-1992, f. & cert. ef. 4-10-92; HEB 4-1995, f. & cert. ef. 8-1-95; HEB 5-1996, f. & cert. ef. 12-18-96; OSSHE 5-2004(Temp), f. & cert. ef. 6-9-04 thru 12-5-04

#### 580-050-0100



### Board of Higher Education-Provided Housing

(1) Consistent with ORS 182.415, for the purpose of OAR 580-050-0100, the terms:

(a) "Housing" includes single- and multiple-family dwellings, apartments and manufactured dwellings and manufactured dwelling pads, available on a monthly tenancy, but does not include Dormitory facilities at any Institution.

(b) "Dormitory" includes any facility that houses students.

(c) "Furnishings" includes furniture used in connection with the occupancy of Housing and will not be provided as part of any Housing. Furnishings do not include rugs, draperies, range, refrigerator, washer, dryer or any item of Furnishings received as a gift, nor does it include any furniture purchased prior to September 9, 1971, for the state-owned residence required in relation to the official duties of an Institution President or the Chancellor.

(2) As required under ORS 182.425, the Institutions will collect a rental for Housing provided to officers and employees based on the fair rental value as determined by a qualified appraiser certified under ORS 308.010 or licensed or certified under ORS 674.310, subject to any reductions therefrom authorized under ORS 182.435 as described in Section 7.170 of the Board's Internal Management Directives. Rental fees collected will be credited to the appropriate account.

(3) Determination of fair rental value will be reexamined periodically but not less frequently than once every five years, and the rental will be adjusted annually by the change in real estate values for the affected community as determined by the Oregon University System.

(4) When an Institution provides Housing to an officer or employee, it will notify the Office of Finance and Administration, on the form supplied by the Office, of these arrangements, including the basis for rental charge and such rental rate reductions as may be applicable. The reason for and amount of each specific reduction will be detailed in such notification.

(5) The Office of Finance and Administration will prepare a report indicating the fair rental value of each Housing unit, the date of the most recent appraisal, and the amount of any reductions from the fair rental value and the reasons for the reductions. This report will be available for public inspection.

Stat. Auth.: ORS 182.415, 182.425 & 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 9-1994, f. & cert. ef. 10-12-94; HEB 5-1996, f. & cert. ef. 12-18-96; OSSHE 5-2004(Temp), f. & cert. ef. 6-9-04 thru 12-5-04

### 580-050-0105

#### Properties Subject to Flood Hazards

(1) Flood hazards will be evaluated in the administration of any construction program of buildings, structures, roads, or other facilities to minimize the exposure to potential flood damage and preclude the uneconomic, hazardous, or unnecessary use of flood plains.

(a) National Flood Insurance Regulations and criteria will apply to any plans for construction or development in a flood plain.

(b) Flood-proofing measures to existing facilities will be made where budgets permit, to reduce flood damage potential.

(2) Flood hazards will be evaluated in connection with lands or public properties proposed for disposal to other public instrumentalities or private interest to minimize future state expenditures for flood protection and flood disaster relief.

(a) Appropriate restrictions will be imposed with respect to uses of the lands or properties for disposal.

(b) Appropriate allowance will be made for any estimated loss in sales price resulting from the incorporation of use restrictions outlined in the disposal document.

Stat. Auth.: ORS 351

Stats. Implemented: ORS 351.070

Hist.: HEB 8-1980(Temp), f. & ef. 6-18-80; HEB 10-1980, f. & ef. 8-20-80; HEB 5-1996, f. & cert. ef. 12-18-96; OSSHE 5-2004(Temp), f. & cert. ef. 6-9-04 thru 12-5-04

### 580-050-0110

#### Retainage

(1) An Institution will not retain an amount in excess of 5 percent of the Contract Price for Work completed. If the Contractor has

performed at least 50 percent of the Contract Work and is progressing satisfactorily, upon the Contractor's submission of Written application containing the surety's Written approval, the Institution may, in its discretion, reduce or eliminate retainage on any remaining progress payments. The Institution will respond in Writing to all such applications within a reasonable time. When the Contract Work is 97% percent completed, the Institution may, at its discretion and without application by the Contractor, reduce the retained amount to 100 percent of the value of the remaining unperformed Contract Work. An Institution may at any time reinstate retainage. Retainage will be included in the final payment of the Contract Price.

(2) Upon request of the Contractor, an Institution will deposit cash retainage in an interest-bearing account in a bank, savings bank, trust company, or savings association, for the benefit of the Institution. Earnings on such account will accrue to the Contractor. Institutions will establish the account through the Controller's Office.

(3) In lieu of cash retainage to be held by an Institution, the Contractor may substitute one of the following:

(a) Deposit of securities:

(A) The Contractor may deposit bonds or securities with the Institution or in any bank or trust company to be held for the benefit of the Institution. In such event, the Institution will reduce the retainage by an amount equal to the value of the bonds and securities, and reimburse the excess to the Contractor.

(B) Bonds and securities deposited or acquired in lieu of retainage will be of a character approved by the Controller's Office, including but not limited to:

(i) Bills, certificates, notes, or bonds of the United States.

(ii) Other obligations of the United States or its agencies.

(iii) Obligations of any corporation wholly owned by the federal government.

(iv) Indebtedness of the Federal National Mortgage Association.

(C) Upon the Institution Facilities Planning Official's determination that all requirements for the protection of the Institution's interests have been fulfilled, it will release to the Contractor all bonds and securities deposited in lieu of retainage.

(b) Deposit of surety bond. An Institution, at its discretion, may allow the Contractor to deposit a surety bond in a form acceptable to the Institution in lieu of all or a portion of funds retained or to be retained. A Contractor depositing such a bond will accept surety bonds from its subcontractors and suppliers in lieu of retainage. In such cases, retainage will be reduced by an amount equal to the value of the bond, and the excess will be reimbursed to the Contractor.

(4) An Institution will recover from the Contractor all costs incurred in the proper handling of cash retainage and securities, in accordance with OAR 580-040-0007 or by reduction of the final payment.

(5) Notwithstanding subsection (1) of this rule, an Institution, at its discretion, does not need to withhold retainage on Contracts where the Contract Price does not exceed \$500,000. In addition, if the Work is to be performed in phases the Institution, at its discretion, may release up to 100% of the retainage of a completed phase, depending upon requirements applicable to all phases.

Stat. Auth.: ORS 351.060

Stats. Implemented: ORS 351.060

Hist.: OSSHE 5-2004(Temp), f. & cert. ef. 6-9-04 thru 12-5-04

### 580-050-0120

#### Negotiation When Offers Exceed Cost Estimate

(1) If all Responsive Offers from Responsible Offerors on a competitively bid Project, including Offers received under OAR 580-050-0032(3) and (4), exceed the Institution's Cost Estimate, prior to Contract award the Institution may negotiate Value Engineering and Other Options with the Responsible Offeror submitting the lowest, Responsive Bid or the best, Responsive Proposal in an attempt to bring the Project within the Institution's Cost Estimate.

(2) The following definitions apply to this administrative rule:

(a) Cost Estimate: The Institution's most recent pre-Offer, good faith assessment of anticipated Contract costs, consisting either of an estimate of an architect, engineer or other qualified professional, or confidential cost calculation worksheets, where available, and otherwise consisting of formal planning or budgetary documents.

(b) Other Options: Those items generally considered appropriate for negotiation in the RFP process, relating to the details of Contract performance, but excluding any material requirements previously announced in the Solicitation Document that would likely affect the field of competition.

(c) Project: A Public Improvement or Construction Trade Services.

(d) Value Engineering: Those proposed changes to the plans, Specifications, or other Contract requirements which may be made, consistent with industry practice, under the original Contract by mutual agreement in order to take advantage of potential cost savings without impairing the essential functions or characteristics of the Public Improvement or Construction Trade Services. Cost savings include those resulting from life cycle costing, which may either increase or decrease absolute costs over varying time periods.

(3) In determining whether all Responsive Offers from Responsible Offerors exceed the Cost Estimate, only those Offers that have been formally rejected, or Offers from Offerors who have been formally Disqualified by the Institution, will be excluded from consideration.

(4) Institutions will not proceed with Contract award if the scope of the Project is significantly changed from the original Offer. The scope is considered to have been significantly changed if the pool of competition would likely have been affected by the change; that is, if other Offerors would have been expected by the Institution to participate in the solicitation process had the change been made during the solicitation process rather than during negotiation. This rule will not be construed to prohibit resolicitation of trade subcontracts.

(5) The Institution may discontinue negotiations at any time, and will do so if it appears to the Institution that the apparent low Offeror is not negotiating in good faith or fails to share cost and pricing information upon request. Failure to rebid any portion of the Project, or to obtain subcontractor pricing information upon request, will be considered a lack of good faith.

(6) Negotiations will be initially undertaken with the lowest Responsive, Responsible Bidder or the best Responsive, Responsible Proposer. If the lowest Responsive, Responsible Bidder or the best Responsive, Responsible Proposer is not negotiating in good faith, the Institution may, at its sole discretion, negotiate Value Engineering and Other Options with the second lowest Responsive, Responsible Bidder or second best Responsive, Responsible Proposer. If that Offeror is not negotiating in good faith, the Institution may, at its sole discretion, negotiate Value Engineering and Other Options with the next lowest Responsive, Responsible Bidders (each in order of their Bid) or the next best Responsive, Responsible Proposers (each in order of their Proposal). Records of an Offeror used in Contract negotiations do not become public records unless they are also submitted to the Institution.

Stat. Auth.: ORS 351.060

Stats. Implemented: ORS 351.060

Hist.: OSSHE 5-2004(Temp), f. & cert. ef. 6-9-04 thru 12-5-04

### 580-050-0130

#### Bids or Proposals Are Offers

(1) Offer and Acceptance. The Bid or Proposal is the Bidder's or Proposer's offer to enter into a Contract. The Offer is a "Firm Offer," i.e., the Offer will be held open by the Offeror for the Institution's acceptance for the period specified in OAR "Time for Institution Acceptance." The Institution's award of the Contract constitutes acceptance of the Offer and binds the Offeror to the Contract.

(2) Responsive Offer. An Institution may award a Contract only to a Responsible Offeror with a Responsive Offer.

(3) Contingent Offers. Except to the extent the Proposer is authorized to propose certain terms and conditions in the Solicitation Document, a Proposer will not make its Offer contingent upon the Institution's acceptance of any terms or conditions (including Specifications) other than those contained in the Solicitation Document.

(4) Offeror's Acknowledgement. By signing and returning the Offer, the Offeror acknowledges it has read and understands the terms and conditions contained in the Solicitation Document and that it accepts and agrees to be bound by the terms and conditions of the

Solicitation Document. If the Solicitation Document permits proposal of alternative terms, the Offeror's Offer includes the non-negotiable terms and conditions and any proposed terms and conditions offered for negotiation upon and to the extent accepted by the Institution in Writing.

Stat. Auth.: ORS 351.060 & 351.070

Stats. Implemented: ORS 351.060 & 351.070

Hist.: OSSHE 5-2004(Temp), f. & cert. ef. 6-9-04 thru 12-5-04

### 580-050-0140

#### Facsimile and Electronic Offers

(1) Institution Authorization. An Institution may authorize Offerors to submit Facsimile or Electronic Offers. If the Institution determines that Bid or Proposal security is or will be required, the Institution should not authorize Facsimile or Electronic Offers unless the Institution has another method for receipt of such security. Prior to permitting Facsimile or Electronic Offers the Institution must determine whether the Institution's equipment and personnel are capable of receiving the size and volume of anticipated Offers within a short period of time and establish administrative procedures and controls:

(a) For receiving, identifying, recording, and safeguarding Facsimile and Electronic Offers; and

(b) To ensure timely delivery of Offers to the location of Opening and to preserve the "sealed" requirement of competitive procurement.

(2) Provisions To Be Included in Solicitation Document. In addition to all other requirements, if the Institution authorizes a Facsimile or Electronic Offer, the Institution will include in the Solicitation Document provisions substantially similar to the following:

(a) A Facsimile or Electronic Offer, as used in this solicitation, means an Offer, modification of an Offer, or withdrawal of an Offer that is transmitted to and received by the Institution via a Facsimile machine or the worldwide web.

(b) Offerors may submit Facsimile or Electronic Offers in response to this solicitation. The entire response must arrive at the place and by the time specified in this Solicitation Document.

(c) Offerors must Sign their Facsimile or Electronic Offers.

(d) The Institution reserves the right to award the Contract solely on the Facsimile or Electronic Offer. However, upon the Institution's request the apparently successful Offeror will promptly submit its complete original Signed Offer.

(e) The data and compatibility characteristics of the Institution's receiving Facsimile machine as follows:

(A) Telephone number;

(B) Compatibility characteristics, e.g., make and model number, receiving speed, and communications protocol.

(f) The e-mail address of the Institution to be used to receive Electronic Offers.

(g) The Institution is not responsible for any failure attributable to the transmission or receipt of the Facsimile or Electronic Offer including, but not limited to the following:

(A) Receipt of garbled or incomplete documents.

(B) Availability or condition of the receiving Facsimile machine, computer or computer system.

(C) Incompatibility between the sending and receiving Facsimile machine or between the sending and receiving computers.

(D) Delay in transmission or receipt of documents.

(E) Failure of the Offeror to properly identify the Offer documents.

(F) Illegibility of Offer documents.

(G) Security and confidentiality of data.

Stat. Auth.: ORS 351.060 & 351.070

Stats. Implemented: ORS 351.060 & 351.070

Hist.: OSSHE 5-2004(Temp), f. & cert. ef. 6-9-04 thru 12-5-04

### 580-050-0150

#### Offeror Submissions

(1) Identification of Offers.

(a) To ensure proper identification and handling, Offers will be submitted in a sealed envelope appropriately marked or in the envelope provided by the Institution, whichever is applicable. If the Institution permits Facsimile or Electronic Offers in the Solicitation Doc-

ument, the Offeror may submit and identify Facsimile or Electronic Offers in accordance with the Solicitation Document.

(b) The Institution is not responsible for Offers submitted in any manner, format or to any delivery point other than as required in the Solicitation Document.

(2) Receipt of Offers. The Offeror is responsible for ensuring the Institution receives its Offer at the required delivery point prior to the Closing, regardless of the method used to submit or transmit the Offer.

Stat. Auth.: ORS 351.060 & 351.070

Stats. Implemented: ORS 351.060 & 351.070

Hist.: OSSHE 5-2004(Temp), f. & cert. ef. 6-9-04 thru 12-5-04

#### 580-050-0160

##### Pre-Offer Conferences

(1) Purpose. An Institution may hold pre-Offer conferences with prospective Offerors prior to Closing, to explain the procurement requirements, obtain information, or to conduct site inspections.

(2) Required attendance. The Institution may require attendance at the pre-Offer conference as a condition for making an Offer.

(3) Statements Not Binding. Statements made by an Institution's representative at the pre-Offer conference do not change the Solicitation Document unless the Institution confirms such statements with a Written Addendum to the Solicitation Document.

Stat. Auth.: ORS 351.060 & 351.070

Stats. Implemented: ORS 351.060 & 351.070

Hist.: OSSHE 5-2004(Temp), f. & cert. ef. 6-9-04 thru 12-5-04

#### 580-050-0170

##### Solicitation Protest; Request for Change; Request for Clarification

(1) Protest:

(a) Delivery. An Offeror may protest Specifications or Contract terms and conditions. Unless otherwise specified in the Solicitation Document, an Offeror must deliver a Written protest to the Institution not less than 10 Days prior to Closing;

(b) Content of Protest.

(A) An Offeror's Written protest will include:

(i) A detailed statement of the legal and factual grounds for the protest;

(ii) A description of the resulting prejudice to the Offeror; and

(iii) A statement of the desired changes to the Contract terms and conditions, including Specifications.

(B) An Offeror will mark its protest as follows:

(i) Solicitation Specification or Contract Provision Protest; and

(ii) Solicitation Document Number (or Other Identification as specified in the Solicitation Document).

(2) Request for Change:

(a) Delivery. An Offeror may request in Writing a change to the Specifications or Contract terms and conditions. Unless otherwise specified in the Solicitation Document, an Offeror must deliver the Written request for change to the Institution not less than 10 Days prior to Closing;

(b) Content of Request for Change.

(A) An Offeror's Written request for change will include a statement of the requested changes to the Contract terms and conditions, including Specifications together with the reason for the requested change.

(B) An Offeror will mark its request for change as follows:

(i) Solicitation Specification or Contract Provision Request for Change; and

(ii) Solicitation Document Number (or Other Identification as specified in the Solicitation Document).

(3) Institution Response. The Institution will not consider an Offeror's request for change or protest after the deadline established for submitting such request or protest. The Institution will provide notice to the applicable Entity if it entirely rejects a protest. If the Institution agrees with the Entity's request or protest, in whole or in part, the Institution will either issue an Addendum reflecting its determination under OAR "Addenda to a Solicitation Document" or cancel the solicitation under OAR "Cancellation of Solicitation."

(4) Extension of Closing. If an Institution receives a Written request for change or protest from an Offeror in accordance with this

rule, the Institution may extend Closing if the Institution determines an extension is necessary to consider the request or protest and to issue an Addendum, if any, to the Solicitation Document.

(5) Clarification. Prior to the deadline for submitting a Written request for change or protest, an Offeror may request that the Institution clarify any provision of the Solicitation Document. The Institution's clarification to an Offeror, whether orally or in Writing, does not change the Solicitation Document and is not binding on the Institution unless the Institution amends the Solicitation Document by Addendum.

Stat. Auth.: ORS 351.060 & 351.070

Stats. Implemented: ORS 351.060 & 351.070

Hist.: OSSHE 5-2004(Temp), f. & cert. ef. 6-9-04 thru 12-5-04

#### 580-050-0180

##### Addenda to a Solicitation Document

(1) Issuance; Receipt. The Institution may change a Solicitation Document only by Written Addenda. An Offeror will provide Written acknowledgement of receipt of all issued Addenda with its Offer, unless the Institution otherwise specifies in the Addenda or Solicitation Document.

(2) Notice and Distribution. The Solicitation Document will specify how the Institution will provide notice of Addenda and how the Institution will make the Addenda available. For example, "Institution will not mail notice of Addenda, but will publish notice of any Addenda on Institution's Web site. Addenda may be downloaded off the Institution's Web site. Offerors should frequently check the Institution's Web site until Closing, i.e., at least once weekly until the week of Closing and at least once daily the week of the Closing."

(3) Timelines; Extensions. The Institution will issue Addenda within a reasonable time to allow prospective Offerors to consider the Addenda in preparing their Offers. The Institution should extend the Closing if the Institution determines prospective Offerors need additional time to review and respond to Addenda. Except to the extent required by public interest or when changes do not materially affect pricing, the Institution will not issue Addenda less than 72 hours before the Closing unless the Addendum also extends the Closing.

(4) Request for Change or Protest. Unless a different deadline is set forth in the Addendum, an Offeror may submit a Written request for change or protest to the Addendum, as provided in OAR "Solicitation Protest," by the close of the Institution's next business day after issuance of the Addendum, or up to the last Day allowed to submit a request for change or protest under OAR "Solicitation Protest," whichever date is later. The Institution will consider only an Offeror's request for change or protest to the Addendum; the Institution will not consider a request for change or protest to matters not added or modified by the Addendum.

Stat. Auth.: ORS 351.060 & 351.070

Stats. Implemented: ORS 351.060 & 351.070

Hist.: OSSHE 5-2004(Temp), f. & cert. ef. 6-9-04 thru 12-5-04

#### 580-050-0190

##### Pre-Closing Modification or Withdrawal of Offers

(1) Modifications. An Offeror may modify its Offer in Writing prior to the Closing. An Offeror will prepare and submit any modification to its Offer to the Institution in accordance with OAR "Offer or Submissions", unless otherwise specified in the Solicitation Document. Any modification must include the Offeror's statement that the modification amends and supersedes the prior Offer. The Offeror will mark the submitted modification as follows:

(a) Bid (or Proposal) Modification; and

(b) Solicitation Number (or Other Identification as specified in the Solicitation Document).

(2) Withdrawals:

(a) An Offeror may withdraw its Offer by Written notice submitted on the Offeror's letterhead, Signed by an authorized representative of the Offeror, delivered to the location specified in the Solicitation Document (or the place of Closing if no location is specified), and received by the Institution prior to the Closing. The Offeror or authorized representative of the Offeror may also withdraw its Offer in person prior to the Closing, upon presentation of appropriate identification and satisfactory evidence of authority;



(b) The Institution may release an unopened Offer withdrawn under subsection 2(a) to the Offeror or its authorized representative, after voiding any date and time stamp mark;

(c) The Offeror will mark the Written request to withdraw an Offer as follows:

(A) Bid (or Proposal) Withdrawal; and

(B) Solicitation Number (or Other Identification as specified in the Solicitation Document).

(3) Documentation. The Institution will include all documents relating to the modification or withdrawal of Offers in the appropriate solicitation file.

Stat. Auth.: ORS 351.060 & 351.070

Stats. Implemented: ORS 351.060 & 351.070

Hist.: OSSHE 5-2004(Temp), f. & cert. ef. 6-9-04 thru 12-5-04

#### 580-050-0200

##### Receipt, Opening, and Recording of Offers

(1) Receipt. An Institution will electronically or mechanically time-stamp or hand-mark each Offer and any modification upon receipt. The Institution will not open the Offer or modification, but will store it in a secure place until Opening. If the Institution inadvertently opens an Offer or a modification prior to the Opening, the Institution will reseal and store the opened Offer or modification for Opening. The Institution will document the resealing for the solicitation file (e.g., "Institution inadvertently opened the Offer due to improper identification of the Offer").

(2) Opening and recording. An Institution will publicly open Offers including any modifications made to the Offer pursuant to OAR "Pre-Closing Modification." In the case of Invitations to Bid, to the extent practicable, the Institution will read aloud the name of each Bidder, the Bid price(s), and such other information as the Institution considers appropriate. In the case of Requests for Proposals or voluminous Bids, if the Solicitation Document so provides, the Institution will not read Offers aloud.

(3) Availability. After Opening, the Institution will make the Offers available for public inspection except for those portions of an Offer that the Offeror designates as trade secrets or as confidential proprietary data in accordance with applicable law. See ORS 192.501(2); 646.461 to 646.475. To the extent the Institution determines such designation is not in accordance with applicable law, the Institution will make those portions available for public inspection. The Offeror will separate information designated as confidential from other nonconfidential information at the time of submitting its Offer. Prices, makes, model or catalog numbers of items offered, scheduled delivery dates, and terms of payment are not confidential, and will be publicly available regardless of an Offeror's designation to the contrary.

(4) Notwithstanding subsection (3) of this rule, if the Solicitation Document includes a process for interviewing Offerors, the Offers will not be made available for public inspection until after the Institution has announced the apparent successful Offeror.

Stat. Auth.: ORS 351.060 & 351.070

Stats. Implemented: ORS 351.060 & 351.070

Hist.: OSSHE 5-2004(Temp), f. & cert. ef. 6-9-04 thru 12-5-04

#### 580-050-0210

##### Late Offers, Late Withdrawals, and Late Modifications

Any Offer received after Closing is late. An Offeror's request for withdrawal or modification of an Offer received after Closing is late. An Institution will not consider late Offers. Nor will an Institution accept late withdrawals or modifications except as permitted in OAR "Mistakes."

Stat. Auth.: ORS 351.060 & 351.070

Stats. Implemented: ORS 351.060 & 351.070

Hist.: OSSHE 5-2004(Temp), f. & cert. ef. 6-9-04 thru 12-5-04

#### 580-050-0220

##### Mistakes

(1) General. To protect the integrity of the competitive solicitation process and to assure fair treatment of Offerors, an Institution should carefully consider whether to permit waiver, correction, or withdrawal for certain mistakes.

(2) Institution Treatment of Mistakes. An Institution will not allow an Offeror to correct or withdraw an Offer for an error in judgment. If the Institution discovers certain mistakes in an Offer after Opening, but before award of the Contract, the Institution may take the following action:

(a) An Institution may waive, or permit an Offeror to correct, a minor informality. A minor informality is a matter of form rather than substance that is evident on the face of the Offer, or an insignificant mistake that can be waived or corrected without prejudice to other Offerors. Examples of minor informalities include an Offeror's failure to:

(A) Return the correct number of Signed Offers or the correct number of other documents required by the Solicitation Document;

(B) Sign the Offer in the designated block, provided a Signature appears elsewhere in the Offer, evidencing an intent to be bound; and

(C) Acknowledge receipt of an Addendum to the Solicitation Document, provided: it is clear on the face of the Offer that the Offeror received the Addendum and intended to be bound by its terms; and the Addendum involved did not affect price, quantity or delivery.

(b) An Institution may correct a clerical error if the intended Offer and the error are evident on the face of the Offer, or other documents submitted with the Offer, and the Offeror confirms the Institution's correction in Writing. A clerical error is an Offeror's error in transcribing its Offer. Examples include typographical mistakes, errors in extending unit prices, transposition errors, arithmetical errors, instances in which the intended correct unit or amount is evident by simple arithmetic calculations (for example a missing unit price may be established by dividing the total price for the units by the quantity of units for that item or a missing, or incorrect total price for an item may be established by multiplying the unit price by the quantity when those figures are available in the Offer). In the event of a discrepancy, unit prices will prevail over extended prices.

(c) An Institution may permit an Offeror to withdraw an Offer based on one or more clerical errors in the Offer only if the Offeror shows with objective proof and by clear and convincing evidence:

(A) The nature of the error;

(B) That the error is not a minor informality under this subsection or an error in judgment;

(C) That the error cannot be corrected or waived under subparagraph (b) of this subsection;

(D) That the Offeror acted in good faith in submitting an Offer that contained the claimed error and in claiming that the alleged error in the Offer exists;

(E) That the Offeror acted without gross negligence in submitting an Offer that contained a claimed error;

(F) That the Offeror will suffer substantial detriment if the Institution does not grant it permission to withdraw the Offer;

(G) That the Institution's or the public's status has not changed so significantly that relief from the forfeiture will work a substantial hardship on the Institution or the public it represents; and

(H) That the Offeror promptly gave notice of the claimed error to the Institution.

(d) The criteria in subsection (2)(c) of this rule will determine whether an Institution will permit an Offeror to withdraw its Offer after Closing. These criteria also will apply to the question whether an Institution will permit an Offeror to withdraw its Offer without forfeiture of its bid bond (or other bid security), or without liability to the Institution based on the difference between the amount of the Offeror's Offer and the amount of the Contract actually awarded by the Institution, whether by award to the next lowest Responsive and Responsible Bidder or the best Responsive and Responsible Proposer, or by resort to a new solicitation.

(3) Rejection for Mistakes. The Institution will reject any Offer in which a mistake is evident on the face of the Offer and the intended correct Offer is not evident or cannot be substantiated from documents accompanying the Offer, i.e., documents submitted with the Offer.

Stat. Auth.: ORS 351.060 & 351.070

Stats. Implemented: ORS 351.060 & 351.070

Hist.: OSSHE 5-2004(Temp), f. & cert. ef. 6-9-04 thru 12-5-04

**580-050-0230****Time for Institution Acceptance**

An Offeror's Offer is a firm Offer, irrevocable, valid and binding on the Offeror for not less than 30 Days from Closing unless otherwise specified in the Solicitation Document.

Stat. Auth.: ORS 351.060 & 351.070

Stats. Implemented: ORS 351.060 & 351.070

Hist.: OSSHE 5-2004(Temp), f. & cert. ef. 6-9-04 thru 12-5-04

**580-050-0240****Extension of Time for Acceptance of Offer**

An Institution may request, orally or in Writing, that Offerors extend, in Writing, the time during which the Institution may consider their Offer(s). If an Offeror agrees to such extension, the Offer will continue as a firm Offer, irrevocable, valid and binding on the Offeror for the agreed-upon extension period.

Stat. Auth.: ORS 351.060 & 351.070

Stats. Implemented: ORS 351.060 & 351.070

Hist.: OSSHE 5-2004(Temp), f. & cert. ef. 6-9-04 thru 12-5-04

**580-050-0250****Low Tie Offers**

(1) Definition. Low Tie Offers are low tie Responsive Bids from Responsible Bidders or high tie Responsive Proposals from Responsible Proposers that are identical in price, fitness, availability, and quality.

(2) Award. If awarded, the Institution will award the Contract based on the following order of precedence:

(a) The Institution will prefer goods or services that have been manufactured or produced in Oregon.

(b) The Institution will then prefer the Offer or the Offeror whose principal offices or headquarters are located in Oregon.

(c) If a Tie Offer remains after the Institution applies subsections (2)(a) and (b), the Institution will award the Contract by drawing lots among any tied Oregon Offerors. Such Offerors will be given notice and an opportunity to be present when the lots are drawn;

(d) If a Tie Offer remains after the Institution applies subsection (2)(a) and none of the tied Offerors are located in Oregon, the Institution will award the Contract by drawing lots among any tied Offerors. Such Offerors will be given notice and an opportunity to be present when the lots are drawn.

Stat. Auth.: ORS 351.060 & 351.070

Stats. Implemented: ORS 351.060 & 351.070

Hist.: OSSHE 5-2004(Temp), f. & cert. ef. 6-9-04 thru 12-5-04

**580-050-0260****Rejection of an Offer**

(1) Rejection of an Offer.

(a) An Institution may reject any Offer upon finding that to accept the Offer may impair the integrity of the procurement process or that rejecting the Offer is in the public interest.

(b) The Institution will reject an Offer upon the Institution's finding that the Offer:

(A) Is contingent upon the Institution's acceptance of terms and conditions (including Specifications) that differ from the Solicitation Document; or

(B) Takes exception to terms and conditions (including Specifications); or

(C) Attempts to prevent public disclosure of matters in contravention of the terms and conditions of the Solicitation Document or in contravention of applicable law; or

(D) Offers Work or goods that fail to meet the Specifications of the Solicitation Document; or

(E) Is late; or

(F) Is not in substantial compliance with the Solicitation Documents; or

(G) Is not in substantial compliance with all prescribed public solicitation procedures.

(c) The Institution will reject an Offer upon the Institution's finding that the Offeror:

(A) Has not been prequalified under ORS 279.039 and the Institution required mandatory prequalification; or

(B) Has been disqualified under OAR "Disqualification of an Entity"; or

(C) Has been declared ineligible under ORS 279.361 by the Commissioner of Bureau of Labor and Industries and the Contract is for a Public Work; or

(D) Is listed as not qualified by the Construction Contractors Board, if the Contract is for a Public Improvement; or

(E) Has not submitted properly executed Bid or Proposal security as required by the Solicitation Document; or

(F) Has failed to provide the certification required under section 3 of this rule; or

(G) Is nonresponsible. Offerors are required to demonstrate their ability to perform satisfactorily under a Contract. Before awarding a Contract, the Institution must have information that indicates that the Offeror meets the applicable standards of responsibility. To be a Responsible Offeror, the Institution must determine that the Offeror:

(i) Has available the appropriate financial, material, equipment, facility and personnel resources and expertise, or ability to obtain the resources and expertise, necessary to demonstrate the capability of the Offeror to meet all contractual responsibilities;

(ii) Has a satisfactory record of contract performance. An Institution should carefully scrutinize an Offeror's record of contract performance if the Offeror is or recently has been materially deficient in contract performance. In reviewing the Offeror's performance, the Institution should determine whether the Offeror's deficient performance was expressly excused under the terms of the contract, or whether the Offeror took appropriate corrective action. The Institution may review the Offeror's performance on both private and public contracts in determining the Offeror's record of contract performance. The Institution will make its basis for determining an Offeror nonresponsible under this paragraph part of the solicitation file;

(iii) Has a satisfactory record of integrity. An Offeror may lack integrity if an Institution determines the Offeror demonstrates a lack of business ethics such as violation of state environmental laws or false certifications made to an agency. An Institution may find an Offeror nonresponsible based on the lack of integrity of any Entity having influence or control over the Offeror (such as a key employee of the Offeror that has the authority to significantly influence the Offeror's performance of the Contract or a parent company, predecessor or successor Entity). The standards for Conduct Disqualification under OAR "Disqualification of an Entity" may be used to determine an Offeror's integrity. The Institution will make its basis for determining that an Offeror is nonresponsible under this paragraph part of the solicitation file;

(iv) Has qualified legally to contract with the Institution; and

(v) Has supplied all necessary information in connection with the inquiry concerning responsibility. If the Offeror fails to promptly supply information requested by the Institution concerning responsibility, the Institution will base the determination of responsibility upon any available information, or may find the Offeror nonresponsible.

(2) Form of Business Entity. For purposes of this rule, the Institution may investigate any Entity submitting an Offer. The investigation may include that Entity's officers, directors, owners, affiliates, or any other Entity acquiring ownership of the Entity to determine application of this rule or to apply the disqualification provisions of OAR "Disqualification of an Entity."

(3) Certification of Non-Discrimination. The Offeror will certify and deliver to the Institution Written certification, as part of the Offer, that the Offeror has not discriminated against minority, women or emerging small business enterprises in obtaining any required subcontracts.

Stat. Auth.: ORS 351.060 & 351.070

Stats. Implemented: ORS 351.060 & 351.070

Hist.: OSSHE 5-2004(Temp), f. & cert. ef. 6-9-04 thru 12-5-04

**580-050-0270****Rejection of All Offers**

(1) Rejection. An Institution may reject all Offers for good cause upon the Institution's Written finding it is in the public interest to do so. The Institution will notify all Offerors of the rejection of all Offers, along with the good cause justification and finding.

(2) Criteria. The Institution may reject all Offers upon a Written finding that:

(a) The content of or an error in the Solicitation Document, or the solicitation process unnecessarily restricted competition for the Contract;

(b) The price, quality or performance presented by the Offerors is too costly or of insufficient quality to justify acceptance of the Offer;

(c) Misconduct, error, or ambiguous or misleading provisions in the Solicitation Document threaten the fairness and integrity of the competitive process;

(d) Causes other than legitimate market forces threaten the integrity of the competitive procurement process. These causes include, but are not limited to, those that tend to limit competition such as restrictions on competition, collusion, corruption, unlawful anti-competitive conduct, and inadvertent or intentional errors in the Solicitation Document;

(e) The Institution cancels the solicitation in accordance with OAR "Cancellation of Solicitation"; or

(f) Any other circumstance indicating that awarding the Contract would not be in the public interest.

Stat. Auth.: ORS 351.060 & 351.070

Stats. Implemented: ORS 351.060 & 351.070

Hist.: OSSHE 5-2004(Temp), f. & cert. ef. 6-9-04 thru 12-5-04

### 580-050-0280

#### Protest of Contractor Selection, Contract Award

(1) Purpose. An adversely affected or aggrieved Offeror must exhaust all avenues of administrative review and relief before seeking judicial review of the Institution's Contractor selection or Contract award decision.

(2) Notice of Intent to Award. Unless otherwise provided in the Solicitation Document, the Institution will provide Written notice to all Offerors of the Institution's intent to award the Contract. The Institution's award will not be final until the later of the following:

(a) 14 Days after the date of the notice, unless the Solicitation Document provided a different period for protest; or

(b) The Institution provides a Written response to all timely-filed protests that denies the protest and affirms the award.

(3) Right to Protest Award.

(a) An adversely affected or aggrieved Offeror may submit to the Institution a Written protest of the Institution's intent to award within 14 Days after issuance of the notice of intent to award the Contract, unless a different protest period is provided under the Solicitation Document.

(b) The Offeror's protest will be in Writing and must specify the grounds upon which the protest is based.

(c) An Offeror is adversely affected or aggrieved only if the Offeror is eligible for award of the Contract as the Responsible Bidder submitting the lowest Responsive Bid or the Responsible Proposer submitting the best Responsive Proposal and is next in line for award, i.e., the protesting Offeror must claim that all lower Bidders or higher-scored Proposers are ineligible for award:

(A) Because their Offers were nonresponsive; or

(B) The Institution committed a substantial violation of a provision in the Solicitation Document or of an applicable procurement statute or administrative rule, and the protesting Offeror was unfairly evaluated and would have, but for such substantial violation, been the Responsible Bidder offering the lowest Bid or the Responsible Proposer offering the highest-ranked Proposal.

(d) The Institution will not consider a protest submitted after the time period established in this rule or such different period as may be provided in the Solicitation Document.

(4) Authority to Resolve Protests. The Institution Facilities Planning Official has the authority to settle or resolve a Written protest submitted in accordance with the requirements of this rule.

(5) Decision. If a protest is not settled, the Institution Facilities Planning Official will promptly issue a Written decision on the protest. Judicial review of this decision will be available if provided by statute.

(6) Award. The successful Offeror will promptly execute the Contract after the award is final.

Stat. Auth.: ORS 351.060 & 351.070

Stats. Implemented: ORS 351.060 & 351.070

Hist.: OSSHE 5-2004(Temp), f. & cert. ef. 6-9-04 thru 12-5-04

### 580-050-0290

#### Disqualification of an Entity

(1) Authority. An Institution may disqualify an Entity from consideration of award of the Institution's Contracts or to be used as a subcontractor to other Entities that are awarded Institution's Contracts after providing the Entity with notice and a reasonable opportunity to be heard in accordance with sections (2) and (4) of this rule.

(a) Standards for Conduct Disqualification. An Institution may disqualify an Entity for:

(A) Conviction for the commission of a criminal offense as an incident in obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract.

(B) Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty that currently, seriously and directly affects the Entity's responsibility as a contractor.

(C) Conviction under state or federal antitrust statutes.

(D) Violation of a contract provision that is regarded by the Institution to be so serious as to justify Disqualification. A violation under this subsection 1(a)(D) may include but is not limited to material failure to perform the terms of a contract or an unsatisfactory performance in accordance with the terms of the contract. However, an Entity's failure to perform or unsatisfactory performance caused by acts beyond the Entity's control is not a basis for Disqualification.

(E) Having been Disqualified by the Bureau of Labor and Industries, another Institution, another state agency or another public entity.

(b) Standards for DBE Disqualification. As provided in ORS 200.065 or 200.075, an Institution may disqualify an Entity's right to submit an Offer or to participate in a Contract (e.g., subcontractors) as follows:

(A) For a DBE Disqualification under ORS 200.065, the Institution may disqualify an Entity upon finding that:

(i) The Entity fraudulently obtained or retained or attempted to obtain or retain or aided another person to fraudulently obtain or retain or attempt to obtain or retain certification as a disadvantaged, minority, women or emerging small business enterprise; or

(ii) The Entity knowingly made a false claim that any person is qualified for certification or is certified under ORS 200.055 for the purpose of gaining a Contract or subcontract or other benefit; or

(iii) The Entity has been disqualified by another agency pursuant to ORS 200.065.

(B) For a DBE Disqualification under ORS 200.075, the Institution may disqualify an Entity upon finding that:

(i) The Entity has entered into an agreement representing that a disadvantaged, minority, women, or emerging small business enterprise, certified pursuant to ORS 200.055 ("Certified Enterprise"), will perform or supply materials under a Public Improvement Contract without the knowledge and consent of the Certified Enterprise; or

(ii) The Entity exercises management and decision-making control over the internal operations, as defined by ORS 200.075(1)(b), of any Certified Enterprise; or

(iii) The Entity uses a Certified Enterprise to perform services under a contract or to provide supplies under a Public Improvement Contract to meet an established Certified Enterprise goal, and such enterprise does not perform a commercially useful function, as defined by ORS 200.075(3), in performing its obligations under the contract.

(iv) If an Entity is Disqualified for a DBE Disqualification under ORS 200.075, the affected Institution will not permit such Entity to participate in that Institution's Contracts.

(2) Notice of Intent to Disqualify. The Institution will notify the Entity in writing of a proposed Disqualification personally or by registered or certified mail, return receipt requested. This notice will:

(a) State that the Institution intends to disqualify the Entity;



(b) Set forth the reasons for the Disqualification;

(c) Include a statement of the Entity's right to a hearing if requested in Writing within the time stated in the notice and that if the Institution does not receive the Entity's Written request for a hearing within the time stated, the Entity will have waived its right to a hearing;

(d) Include a statement of the authority and jurisdiction under which the hearing will be held;

(e) Include a reference to the particular sections of the statutes and rules involved;

(f) State the proposed Disqualification period; and

(g) State that the Entity may be represented by legal counsel.

(3) Hearing. The Institution will schedule a hearing upon the Institution's receipt of the Entity's timely request. The Institution will notify the Entity of the time and place of the hearing and provide information on the procedures, right of representation and other rights related to the conduct of the hearing prior to hearing.

(4) Notice of Disqualification. The Institution will notify the Entity in Writing of its Disqualification, personally or by registered or certified mail, return receipt requested. The notice will contain:

(a) The effective date and period of Disqualification;

(b) The grounds for Disqualification; and

(c) A statement of the Entity's appeal rights and applicable appeal deadlines.

Stat. Auth.: ORS 351.060 & 351.070

Stats. Implemented: ORS 351.060 & 351.070

Hist.: OSSHE 5-2004(Temp), f. & cert. ef. 6-9-04 thru 12-5-04

#### 580-050-0300

##### Cancellation of Solicitation

(1) Cancellation in the Public Interest. An Institution may cancel a solicitation for good cause if the Institution finds that cancellation is in the public interest. The Institution's reasons for cancellation will be made part of the solicitation file.

(2) Notice of Cancellation. If the Institution cancels a solicitation prior to Opening, the Institution will provide notice of cancellation. Such notice of cancellation will:

(a) Identify the solicitation;

(b) Briefly explain the reason for cancellation; and

(c) If appropriate, explain that an opportunity will be given to compete on any resolicitation.

Stat. Auth.: ORS 351.060 & 351.070

Stats. Implemented: ORS 351.060 & 351.070

Hist.: OSSHE 5-2004(Temp), f. & cert. ef. 6-9-04 thru 12-5-04

#### 580-050-0310

##### Disposition of Offers if Solicitation Canceled

(1) Prior to Offer Opening. If the Institution cancels a solicitation prior to Offer Opening, the Institution will return all Offers it received to Offerors unopened, provided the Offeror submitted its Offer in a hard copy format with a clearly visible return address. If there is no return address on the envelope, the Institution will open the Offer to determine the source and then return it to the Offeror. If the Offeror submitted a Facsimile or Electronic Offer, the Institution will destroy all copies of the Facsimile or Electronic Offer in its possession.

(2) After Offer Opening. If the Institution rejects all Offers, the Institution will retain all such Offers as part of the Institution's solicitation file.

Stat. Auth.: ORS 351.060 & 351.070

Stats. Implemented: ORS 351.060 & 351.070

Hist.: OSSHE 5-2004(Temp), f. & cert. ef. 6-9-04 thru 12-5-04

#### 580-050-0320

##### Foreign Contractor

If the Contract Price exceeds \$10,000 and the Contractor is a Foreign Contractor, the Contractor will promptly report to the Oregon Department of Revenue on forms provided by the Department of Revenue, the Contract Price, terms of payment, Contract duration and such other information as the Department of Revenue may require before final payment can be made on the Contract. A copy of the report will be forwarded to the Institution. The Institution awarding the Contract will satisfy itself that the above requirements have been complied with before it issues final payment on the Contract.

Stat. Auth.: ORS 351.060 & 351.070

Stats. Implemented: ORS 351.060 & 351.070

Hist.: OSSHE 5-2004(Temp), f. & cert. ef. 6-9-04 thru 12-5-04

#### 580-050-0330

##### Contract Suspension; Termination Procedures

(1) Suspension of Work. In the event an Institution suspends performance of Work for any reason considered by the Institution to be in the public interest other than a labor dispute, the Contractor will be entitled to a reasonable extension of Contract time, and to reasonable compensation for all costs, including a reasonable allowance for related overhead, incurred by the Contractor as a result of the suspension.

(2) Termination of Contract by mutual agreement for reasons other than default.

(a) Reasons for termination. The parties may agree to terminate the Contract or a divisible portion thereof if:

(A) The Institution suspends Work under the Contract for any reason considered to be in the public interest (other than a labor dispute, or any judicial proceeding relating to the Work filed to resolve a labor dispute); and

(B) Circumstances or conditions are such that it is impracticable within a reasonable time to proceed with a substantial portion of the Work.

(b) Payment. When a Contract, or any divisible portion thereof, is terminated pursuant to this subsection (2), the Institution will pay the Contractor a reasonable amount of compensation for preparatory work completed, and for costs and expenses arising out of termination. The Institution will also pay for all Work completed, based on the Contract Price. Unless the Work completed is subject to unit or itemized pricing under the Contract, payment will be calculated based on percent of Contract completed. No claim for loss of anticipated profits will be allowed.

(3) Public interest termination by Institution. An Institution may include in its Contracts terms detailing the circumstances under which