

Chapter 580 Oregon University System

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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 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 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 nondiscoverable 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 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 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 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 non-resident. 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) Quinalt 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. & cert. ef. 7-22-98; OSSHE 5-2003, f. & 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. & ef. 6-5-78; HEB 4-1985, f. & ef. 7-30-85; HEB 14-1986, f. & ef. 10-27-86; 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 1-1994, f. 2-9-94, cert. ef. 2-15-94; HEB 5-1996, f. & cert. ef. 12-18-96; OSSHE 5-2003, f. & 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. & ef. 6-5-78; HEB 8-1981, f. & ef. 9-30-81; Renumbered from 580-10-025; HEB 4-1985, f. & ef. 7-30-85; HEB 14-1986, f. & ef. 10-27-86; HEB 2-1987, 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 5-1996, f. & cert. ef. 12-18-96; OSSHE 5-2003, f. & 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. & ef. 6-5-78; HEB 4-1985, f. & ef. 7-30-85; HEB 4-1988, f. & 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. & cert. ef. 2-5-93; HEB 5-1995, f. & cert. ef. 11-2-95; OSSHE 5-2003, f. & 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 pre-

ceding 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 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 eligible 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 necessary 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, provided 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 Interscholastic 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 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 appro-

priate 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 find-

ings 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 unwillingness 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; however, 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

580-020-0025

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

580-021-0026

Participation in a Voluntary FTE Reduction Program

During the period that any employee participates in a voluntary FTE reduction program authorized by OUS, leave accruals and other benefits administered under this division will be calculated based upon the employee's FTE immediately prior to program participation and will not be reduced to reflect the reduction in FTE caused by the employee's participation in the program.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: OSSHE 8-2009, f. & cert. ef. 10-12-09

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 designated 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

580-021-0029

Career Development Leave

Career development leave is available to unclassified, faculty, and classified employees of Oregon University System institutions as leave without pay, subject to the approval of the employing institution.

Stat. Auth.: ORS 351.070 & 238A.025

Stats. Implemented:

Hist.: OSSHE 3-2005(Temp), f. & cert. ef. 3-14-05 thru 9-6-05; OSSHE 4-2005, f. & cert. ef. 8-24-05

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 prorate 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 prorate 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 prorated 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 con-

sidered 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 dan-

ger 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 aca-

demetic 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 courses 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 or designee'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 of the Oregon University System, 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. Chancellor's Office employees must have approval of the Chancellor or designee before registering for courses at the staff fee rate.

(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 with 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; OSSHE 4-2006, f. & cert. ef. 6-27-06

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 applicable Internal Revenue Service (IRS) code; or

(b) A "domestic partner," as defined in the Affidavit of Domestic Partnership, or the dependent child of a domestic partner.

(2) Staff fee privileges:

(a) Are usable only by either the employee or transferee;

(b) May not be subdivided among family members or domestic partners and their dependents during a term;

(c) Are limited to one transfer per term;

(d) Are limited to no more than twelve (12) academic credits per term; and

(e) There is no fee plateau at any campus for staff members, domestic partners, or eligible dependents.

(3) Employee qualification is verified through Human Resource System Records at each institution; recipient status (spousal, depen-

dent, 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 register for courses at any Oregon University System institution, subject to policies of the 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 privileges is not available for retirees of the Oregon University System

(7) For further reference to applicable policies and procedures, see the most current edition of the Academic Year Fee Book.

[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; OSSHE 4-2006, f. & cert. ef. 6-27-06

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 immi-

ment 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 proceeding 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 pro-

vided 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 pre-employment 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 23

CRIMINAL RECORDS CHECKS

580-023-0106

Purpose

(1) This rule applies retroactively to applications submitted on or after January 1, 2008. The Oregon University System is committed to protecting the security, safety, and health of faculty, staff, students, and others as well as safeguarding the assets and resources of OUS and each of its universities. To meet these objectives, the Board delegates to the Chancellor and president of each university electing to conduct criminal records checks responsibility for adopting rules governing the conduct of criminal records checks.

(2) Any rules adopted under subsection (1) must be consistent with OAR ch. 580, division 023, applicable Oregon state laws, and federal law.

Stat. Auth.: ORS 181.534 & 352.012

Stats. Implemented: ORS 181.534 & 352.012

Hist.: OSSHE 7-2009, f. & cert. ef. 10-12-09

580-023-0111

Definitions

(1) "Criminal records check" means a fingerprint-based criminal records check.

(2) "Conviction" means that a court of law has entered a final judgment on a verdict or finding of guilt, a plea of guilty, a plea of nolo contendere (no contest), or any determination of guilt.

(3) "Fingerprint-based criminal records check" means a criminal records check using a subject individual's fingerprints. Fingerprint-based criminal record records checks may only be requested from the Oregon State Police for non-criminal justice purposes. If a nationwide criminal records check of a subject individual is necessary, the Chancellor's Office or OUS institutions may request that the Oregon State Police conduct the check, including fingerprint identification, through the Federal Bureau of Investigation.

(4) "OUS institution" means an institution of higher education in the state of Oregon under the authority of the Oregon State Board of Higher Education.

(5) "Subject individual" means a person from whom the Chancellor's Office or OUS institution may require criminal records checks as a condition to provide services as a contractor, employee, or volunteer. Subject individuals include persons currently serving as a contractor, employee, or volunteer, or persons who seek appointment as an employee, volunteer, or engagement as a contractor to a position that is designated as a critical or security-sensitive position. The categories of critical or security-sensitive positions for which the Chancellor's Office and OUS institutions may conduct criminal records checks include those in which the person:

(a) Has direct access to persons under 18 years of age or to student residence facilities because the person's work duties require the person to be present in the residence facility;

(b) Is providing information technology services and has control over, or access to, information technology systems that would allow the person to harm the information technology systems or the information contained in the systems;

(c) Has access to information, the disclosure of which is prohibited by state or federal laws, rules or regulations or information that

is defined as confidential under state or federal laws, rules or regulations;

(d) Has access to property where chemicals, hazardous materials and other items controlled by state or federal laws or regulations are located;

(e) Has access to laboratories, nuclear facilities or utility plants to which access is restricted in order to protect the health or safety of the public;

(f) Has fiscal, financial aid, payroll or purchasing responsibilities as one of the person's primary responsibilities; or

(g) Has access to personal information about employees or members of the public including Social Security numbers, dates of birth, driver license numbers, medical information, personal financial information or criminal background information.

Stat. Auth.: ORS 181.534 & 352.012

Stats. Implemented: ORS 181.534 & 352.012

Hist.: OSSHE 7-2009, f. & cert. ef. 10-12-09

580-023-0116

Criminal Records Check Process

(1) The Chancellor's Office or an OUS institution may require the subject individual to complete a criminal records request form and provide any additional information necessary to complete the criminal records check in a reasonable period of time.

(2) The Chancellor's Office of an OUS institution may conduct, or request that the Oregon State Police conduct, a criminal records check, when:

(a) an individual meets the definition of "subject individual"; or

(b) required by federal law or regulation, by state law or administrative rule, or by contract or written agreement.

(3) A determination of fitness based on a criminal records check for critical or security-sensitive positions is considered a minimum qualification of the position. The fact that a subject individual may be approved as fit on the basis of a criminal records check does not guarantee the individual a position as an employee, contractor, or vendor.

Stat. Auth.: ORS 181.534 & 352.012

Stats. Implemented: ORS 181.534 & 352.012

Hist.: OSSHE 7-2009, f. & cert. ef. 10-12-09

580-023-0121

Criminal Records Check Notice to Applicants

Application forms and solicitations for contract services must give notice to any prospective employee, contractor, or volunteer if the position requires a criminal records check as defined by these rules.

Stat. Auth.: ORS 181.534 & 352.012

Stats. Implemented: ORS 181.534 & 352.012

Hist.: OSSHE 7-2009, f. & cert. ef. 10-12-09

580-023-0126

Confidentiality of Criminal Records Checks

Any information obtained in the criminal records check is confidential. The Chancellor's Office or OUS institutions must restrict the dissemination of information obtained in the criminal records check. Only those persons, as identified by the Chancellor's Office or OUS institution, with a demonstrated and legitimate need to know the information, may have access to criminal records check records.

Stat. Auth.: ORS 181.534 & 352.012

Stats. Implemented: ORS 181.534 & 352.012

Hist.: OSSHE 7-2009, f. & cert. ef. 10-12-09

580-023-0131

Refusal to Consent to Criminal Records Check and Incomplete Fitness Determination

(1) The Chancellor's Office and OUS institutions will close a fitness determination as incomplete when:

(a) Circumstances change so that a person no longer meets the definition of a "subject individual";

(b) The subject individual does not provide materials or information under OAR 580-023-0215(1);

(c) The Chancellor's Office or OUS institution cannot locate or contact the subject individual;

(d) The Chancellor's Office or the OUS institution determine that the subject individual is not eligible or not qualified for the position of employee, contractor, or volunteer for a reason unrelated to the fitness determination process; or

(e) The position is no longer open.

(2) A subject individual does not have the right to a hearing under OAR 580-023-0146 to challenge the closing of an incomplete fitness determination.

(3) If a subject individual refuses to consent to a criminal records check, the Chancellor's Office or OUS institution shall deny the employment of the individual, or deny any applicable position, or deny any request to provide volunteer services, or deny authority to provide contracted services. A subject individual may not appeal any determination made on the basis of a refusal to consent.

Stat. Auth.: ORS 181.534 & 352.012
Stats. Implemented: ORS 181.534 & 352.012
Hist.: OSSHE 7-2009, f. & cert. ef. 10-12-09

580-023-0136

Fitness to Hold Position Based on Criminal Records Check

(1) The Chancellor's Office and OUS institutions must use these rules, and any rules adopted at the institutional level, to determine whether the subject individual is fit to hold a position, provide a service, or be employed based on the criminal records check obtained, including any additional information provide under OAR 580-023-0215(1), and on any false statement made regarding the subject individual's criminal history. In making the fitness determination, the Chancellor's Office or OUS institution must consider:

- (a) The nature of the crime;
- (b) The facts that support the conviction or pending indictment of that indicate the making of a false statement;
- (c) The relevancy, if any, of the crime or the false statement to the specific requirements of the subject individual's proposed position, services or employment; and
- (d) Intervening circumstances relevant to the responsibilities and circumstances of the position, services, or employment. Intervening circumstances include, but are not limited to:

- (A) The passage of time since the commission of the crime;
 - (B) The age of the subject individual at the time of the crime;
 - (C) The likelihood of a repetition of offenses or of the commission of another crime;
 - (D) The subsequent commission of another relevant crime;
 - (E) Whether the conviction was set aside and the legal effect of setting aside the conviction; and
 - (F) A recommendation of an employer.
- (2) Crimes Relevant to a Fitness Determination
- (a) All felonies;
 - (b) All Class A misdemeanors;
 - (c) Any United States Military crime or international crime;
 - (d) Any crime of attempt, solicitation or conspiracy to commit a crime listed in this subsection (2) pursuant to ORS 161.405, 161.435, or 161.450; and
 - (e) Any crime based on criminal liability for conduct of another pursuant to ORS 161.155, when the underlying crime is listed in this subsection (2).

(3) Evaluation Based on Oregon and Other Laws. An authorized designee shall evaluate a crime on the basis of Oregon laws and, if applicable, federal laws or the laws of any other jurisdiction in which a criminal records check indicates a subject individual may have committed a crime, as those laws are in effect at the time of the fitness determination.

(4) Notwithstanding subsections (2) and (3) of this rule or OAR 580-023-0200(2), an OUS institution may adopt rules setting forth which crimes will be considered relevant to a fitness determination.

Stat. Auth.: ORS 181.534 & 352.012
Stats. Implemented: ORS 181.534 & 352.012
Hist.: OSSHE 7-2009, f. & cert. ef. 10-12-09

580-023-0141

Notice of Adverse Fitness Determination Based on Criminal Records Check

The Chancellor's Office or OUS institution shall inform the subject individual who has been determined not to be fit on the basis of a criminal records check, via certified mail to the most current address provided by the subject individual, of such disqualification.

Stat. Auth.: ORS 181.534 & 352.012
Stats. Implemented: ORS 181.534 & 352.012
Hist.: OSSHE 7-2009, f. & cert. ef. 10-12-09

580-023-0146

Challenging a Fitness Determination

If a subject individual wishes to dispute an adverse fitness determination, the subject individual may appeal the determination by requesting a hearing.

(1) The subject individual may appeal a final fitness determination made on the basis of a criminal records check by submitting a written request for a hearing to the address specified in the notice provided under OAR 580-023-0260 within fourteen (14) calendar days of the date in the notice. The Chancellor's Office or OUS institution may extend the time to appeal if the Chancellor's Office of OUS institution determines the delay was caused by factors beyond the reasonable control of the subject individual.

(2) Challenging Criminal Offender Information. A subject individual may not use the hearing process established by this rule to challenge the accuracy, completeness or lawfulness of information provided by the Oregon State Police, the Federal Bureau of Investigation, or agencies reporting information to the Oregon State Police or the Federal Bureau of Investigation.

(3) The Chancellor's Office or OUS institution is entitled to rely on the criminal offender information supplied by the Oregon State Police, the Federal Bureau of Investigation or other entities until the Chancellor's Office or OUS institution is notified that the information has been changed or corrected.

(4) Any hearing under this rule is not open to the public.

(5) Remedy. The only remedy that may be awarded under this hearing process is a determination that the subject individual is fit. Under no circumstance shall the Chancellor's Office or OUS institution be required to place a subject individual in any position, nor shall the Chancellor's Office or OUS institution be required to accept services or enter into a contractual agreement with a subject individual.

(6) Hearing Process. Upon receiving valid notice under subsection (1) of this rule, the Chancellor or president of the university shall select an appropriate hearing officer. The role of the hearing officer is limited to conducting the hearing and developing a proposed order for the Chancellor or president or his/her designee.

(a) Prehearing Conferences. Prior to the hearing, the hearing officer may, in its discretion, conduct one or more prehearing conferences to facilitate the conduct of and resolution of the case. The hearing officer may convene the conference on its own initiative or at a party's request.

(b) The purposes of a prehearing conference may include, but are not limited to the following:

- (A) To facilitate discovery and to resolve disagreements about discovery;
- (B) To identify, simplify, and clarify issues;
- (C) To eliminate irrelevant issues;
- (D) To obtain stipulations of fact;
- (E) To provide the hearing officer and parties, in advance of the hearing, copies of all documents intended to be offered as evidence at the hearing and the names of all witnesses expected to testify;
- (F) To authenticate documents;
- (G) To decide the order of proof and other procedural matters pertaining to the conduct of the hearing;
- (H) To discuss settlement or other resolution or partial resolution of the case.

(c) Conducting the Hearing. The hearing shall be conducted, subject to the discretion of the hearing officer, so as to include the following:

- (A) The statement and evidence of the Chancellor's Office or OUS institution to support its action;
- (B) The statement and evidence of the subject individual determined to be unfit to support its position;
- (C) Any rebuttal evidence; and
- (D) Any closing arguments.

(d) The hearing officer shall have the authority to question witnesses and set reasonable time limits for oral presentation. The hearing officer may exclude cumulative, repetitious, or immaterial matter.

(e) Evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs shall be admissible.

(f) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded, and privileges afforded by Oregon law shall be recognized by the hearing officer.

(g) The hearing officer shall draft a proposed order for the consideration of the Chancellor or institution president, to include the following:

- (A) Findings of fact;
- (B) Conclusions of law;
- (C) Order.

(h) Within twenty-one (21) calendar days of receiving the proposed order from the hearing officer, the Chancellor or institution president must:

- (A) Adopt the proposed order as the final order for the case; or
- (B) Amend the proposed order as the final order for the case.

(i) The final order from the Chancellor or institution president is final. The final order shall be delivered to the subject individual in writing, via certified mail.

(j) Notwithstanding OAR 580-023-0265, an OUS institution may adopt rules outlining the hearing process required to challenge a fitness determination.

(7) Appealing a fitness determination under section (1) of this rule, or challenging criminal offender information with the agency that provided the information, will not delay or postpone the Chancellor's Office or OUS institution's hiring process or employment decisions.

Stat. Auth.: ORS 181.534 & 352.012
 Stats. Implemented: ORS 181.534 & 352.012
 Hist.: OSSHE 7-2009, f. & cert. ef. 10-12-09

580-023-0151

Fees

The Chancellor's Office or OUS institution may charge a fee for acquiring criminal offender information for use in making a fitness determination. In any particular instance, the fee shall not exceed the fee(s) charged the Chancellor's Office or OUS institution by the Oregon State Police and the Federal Bureau of Investigation to obtain criminal offender information on the subject individual.

Stat. Auth.: ORS 181.534 & 352.012
 Stats. Implemented: ORS 181.534 & 352.012
 Hist.: OSSHE 7-2009, f. & cert. ef. 10-12-09

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 5-1996, 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 intercollegiate 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 January 7, 2011, 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 there under.

[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. & ef. 3-16-88; HEB 2-1989, f. & ef. 2-14-89; HEB 3-1990, f. & ef. 2-13-90; HEB 2-1991, f. & ef. 3-12-91; HEB 1-1992, f. & ef. 2-12-92; HEB 2-1993, f. & ef. 2-5-93; HEB 2-1994, f. & ef. 2-9-94, cert. ef. 2-15-94; HEB 1-1995, f. & ef. 2-23-95; HEB 1-1996, f. & ef. 2-5-96; HEB 1-1997, f. & ef. 1-28-97; OSSHE 1-1998, f. & ef. 1-27-98; OSSHE 7-1998, f. & ef. 12-23-98; OSSHE 7-1999, f. & ef. 12-22-99; OSSHE 5-2000, f. & ef. 12-21-00; OSSHE 1-2002, f. & ef. 1-2-02; OSSHE 6-2003, f. & ef. 12-24-03; OSSHE 2-2005, f. & ef. 2-15-05; OSSHE 2-2007, f. & ef. 1-11-07; OSSHE 1-2008, f. & ef. 1-14-08; OSSHE 1-2009, f. & ef. 1-22-09; OUS 1-2010, f. & ef. 1-19-10; OUS 1-2011, f. & ef. 1-20-11

580-040-0040

Academic Year Fee Book

Through this action, the document entitled “Academic Year Fee Book” dated June 3, 2011, 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 there under. The Chancellor or designated staff are permitted to make revisions as needed to comport with any subsequent legislative actions as well as to authorize minor adjustments to the final document, if necessary.

[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. 6-30-81, 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. & ef. 8-5-88; HEB 10-1988, f. & ef. 11-16-88; HEB 3-1989, f. & ef. 11-27-89; HEB 6-1989, f. & ef. 7-28-89; HEB 7-1990, f. & ef. 6-4-90; HEB 8-1990(Temp), f. & ef. 7-26-90; HEB 12-1990, f. & ef. 10-3-90; HEB 5-1991, f. & ef. 8-15-91; HEB 8-1992, f. & ef. 7-31-92; HEB 2-1993, f. & ef. 2-5-93; HEB 5-1993, f. & ef. 8-11-93; HEB 7-1994, f. & ef. 8-4-94; HEB 3-1995, f. & ef. 8-1-95; HEB 3-1996, f. & ef. 8-8-96; HEB 5-1996, f. & ef. 12-18-96; HEB 3-1997, f. & ef. 7-24-97; OSSHE 4-1998, f. & ef. 7-22-98; OSSHE 5-1998(Temp), f. & ef. 8-21-98 thru 1-31-99; OSSHE 9-1998, f. & ef. 12-23-98; OSSHE 3-1999(Temp), f. & ef. 7-22-99 thru 1-14-00; OSSHE 4-1999, f. & ef. 9-16-99; OSSHE 3-2000, f. & ef. 7-26-00; OSSHE 4-2001, f. & ef. 7-27-01; OSSHE 8-2002, f. & ef. 8-14-02; OSSHE 2-2003, f. & ef. 8-4-03; OSSHE 6-2004, f. & ef. 6-15-04; OSSHE 2-2006, f. & ef. 6-8-06; OSSHE 3-2007, f. & ef. 6-21-07; OSSHE 6-2008(Temp), f. & ef. 3-20-08 thru 9-1-08; OSSHE 8-2008, f. & ef. 6-17-08; OSSHE 2-2009(Temp), f. & ef. 2-20-09 thru 6-30-09; OSSHE 4-2009(Temp), f. & ef. 3-13-09 thru 6-30-09; Administrative correction 7-21-09; OSSHE 5-2009(Temp), f. & ef. 7-20-09 thru 1-8-10; OSSHE 6-2009(Temp), f. & ef. 10-1-09 thru 1-8-10; Administrative correction 1-25-10; OUS 2-2010, f. & ef. 2-11-10; OUS 3-2010, f. & ef. 6-17-10; OUS 2-2011, f. & ef. 6-23-11; OUS 3-2011, f. & ef. 10-19-11

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 nonstudents; 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. & ef. 7-26-90; HEB 13-1990, f. & ef. 10-3-90; HEB 7-1992, f. & ef. 4-30-92; HEB 5-1996, f. & ef. 12-18-96

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 surplus 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. & 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. & 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. & 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 surplus 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) 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; OSSHE 4-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08

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

University Venture Development Funds

580-043-0060

Purpose; Definitions

(1) Purpose. Chapter 580, division 043, authorizes each Institution to establish one Venture Development Fund for the purpose of facilitating the commercialization of research and development. The purpose of an Institution's Fund shall be to provide qualified grant applicants with moneys to facilitate the commercialization of the Institution's research and development. Within the scope of this purpose and subject to these administrative rules, an Institution may use moneys in its Fund to provide:

- (a) Capital for university entrepreneurial programs;
- (b) Opportunities for students to gain experience in applying research to commercial activities;
- (c) Proof-of-concept funding for transforming research and development concepts into commercially viable products and services; and
- (d) Entrepreneurial opportunities for persons interested in transforming research into viable commercial ventures that create jobs in this state. Contributors to an Institution's Fund are eligible for Oregon income tax credits to the extent set forth in the Act and these rules.

(2) Definitions:

(a) Act: Oregon Laws 2005, ch. 592, as amended by Senate Bill 582 (2007).

(b) Entity: any governmental body or agency, association, partnership, corporation, limited liability company, or other organization, however described or named and regardless of legal status, other than a Person.

(c) Person: a natural person or sole proprietorship.

(d) Venture Development Fund or Fund: A fund authorized by the Act.

(e) Venture Grant Program or Program: A grant program authorized by the Act.

(f) Institution: An institution of the Oregon University System.

(g) Department of Revenue: the Oregon Department of Revenue.

(h) General Fund: the general fund of the State of Oregon.

(i) Remain in Oregon: maintaining the Entity headquarters in Oregon; or employing a majority of employees (on a full-time equivalent, head-count, or payroll basis) in Oregon.

(j) State Board of Higher Education or Board: the Board created by ORS 351.010.

(k) Tax Credit Certificate: a certificate authorized by the Act and in a form designated by the Board that evidences a contribution to a Venture Development Fund.

(L) Donor: a person or entity that makes a contribution to a Fund authorized by the Act and these rules.

(m) Taxpayer: a person or entity that makes a contribution to a Fund authorized by the Act and these rules and that applies for a tax credit certificate authorized by the Act and these rules.

(n) Gross Royalty Income: cash realized by the Board from royalties, milestone and license fee payments and from the sale of equity as a result of grants made under the Program.

Stat. Auth.: OL 2005, ch. 592, sec. 2.

Stats. Implemented: OL 2005, ch. 592, sec. 1, 2.

Hist.: OSSHE 1-2006(Temp), f. & cert. ef. 2-9-06 thru 8-8-06; OSSHE 5-2006, f. & cert. ef. 7-24-06; OSSHE 5-2007(Temp), f. & cert. ef. 7-23-07 thru 1-18-08; OSSHE 2-2008, f. & cert. ef. 1-14-08

580-043-0065

Establishment of a Venture Development Fund by an Institution

(1) An institution may establish a Fund in accordance with the Act and these rules.

(2) Each Institution that establishes a Fund shall:

(a) Notify the Board and the Department of Revenue of the establishment of the Fund;

(b) Either directly or through its affiliated foundation solicit contributions to the Fund and receive, manage, and disburse any such contributions and the earnings thereon;

(c) Subject to the Act and these rules, issue tax credit certificates to contributors to the Fund;

(d) Establish a grant program that meets the requirements for a Venture Grant Program under the Act and these rules;

(e) Subject to available moneys from the Fund, provide qualified grant applicants with moneys for the purpose of facilitating the commercialization of university research and development; and

(f) Report to the Department of Revenue the amounts of tax credit certificates issued by the Institution and maintain records of licensing and royalty revenue received by the Institution as the result of grants made from the Fund and records of amounts paid to the General Fund under the Act.

(3) An Institution may deposit moneys received for its Fund in the Higher Education Donation Fund established under ORS 351.130. Interest earned by such moneys shall be credited to the Fund. The State Treasurer, as payment for expenses, may deduct a fee pursuant to ORS 293.718 from a Fund administered by an Institution.

(4) The use of moneys donated under these rules may not be directed by a Donor. Rather, all moneys shall be available for the purposes set forth in the Act and these rules without regard to specific Donor instructions, except that an Institution or its affiliated foundation may charge its customary administrative assessment to manage the Fund as permitted by the Act. Except as authorized by law, no other fees or indirect costs may be charged against the Fund or any associated grants or other disbursements from the Fund.

(5) At the election of an Institution, moneys in a Fund may be held in the form of an endowment. An Institution may discontinue endowment treatment at any time.

Stat. Auth.: OL 2005, ch. 592, sec. 2.

Stats. Implemented: OL 2005, ch. 592, sec. 1, 2.

Hist.: OSSHE 1-2006(Temp), f. & cert. ef. 2-9-06 thru 8-8-06; OSSHE 5-2006, f. & cert. ef. 7-24-06; OSSHE 5-2007(Temp), f. & cert. ef. 7-23-07 thru 1-18-08; OSSHE 2-2008, f. & cert. ef. 1-14-08

580-043-0070

Allocation of Authority to Institutions to Raise Funds and Issue Tax Credits

(1) The Board will not allocate fundraising or tax credit certificate issuance authority to an Institution until the Institution has established a Venture Development Fund in accordance with the Act and these rules.

(2) Oregon State University, Portland State University, and University of Oregon: The Board allocates fundraising authority and commensurate authority to issue tax credit certificates among Oregon State University, Portland State University, and the University of Oregon as follows:

(a) Portland State University: \$.88 million;

(b) Oregon State University: \$.535 million;

(c) University of Oregon: \$3.27 million. Such authority shall be contingent on the establishment of a Fund in accordance with the Act and these rules and subject to the rule on redistribution of authority to raise funds and issue tax credits.

(3) Eastern Oregon University, Oregon Institute of Technology, Southern Oregon University, and Western Oregon University: The Board by order or resolution shall allocate \$500,000 in fundraising authority and commensurate authority to issue tax credit certificates among Eastern Oregon University, Oregon Institute of Technology, Southern Oregon University, and Western Oregon University. An allocation of authority shall be contingent on the establishment of a Fund in accordance with the Act and these rules and subject to the rule on redistribution of authority to raise funds and issue tax credits.

(4) Notwithstanding sections (2) and (3) of this rule, immediately upon deposit into the General Fund of amounts transferred by an Institution in repayment of tax credits previously issued, the Institution may issue new tax credits in an amount not to exceed the transferred amount.

(5) The amount owed to the General Fund by the Institutions, collectively, may not exceed \$6 million at any one time.

Stat. Auth: OL 2005, ch. 592, sec. 2.

Stats. Implemented: OL 2005, ch. 592, sec. 1, 2.

Hist: OSSHE 1-2006(Temp), f. & cert. ef. 2-9-06 thru 8-8-06; OSSHE 5-2006, f. & cert. ef. 7-24-06; OSSHE 5-2007(Temp), f. & cert. ef. 7-23-07 thru 1-18-08; OSSHE 2-2008, f. & cert. ef. 1-14-08

580-043-0075

Redistribution of Authority to Raise Funds and Issue Tax Credits

No earlier than two years from the effective date of this rule, the Board, by order or resolution, may, to further the purposes of the Act, reallocate unused fundraising authority and commensurate authority to issue tax credit certificates from one Institution to another. An Institution may receive additional authority only if it has exhausted its existing authority or can demonstrate that it would likely do so. Reallocation of authority shall not require amendment of section 0070.

Stat. Auth: OL 2005, ch. 592, sec. 2.

Stats. Implemented: OL 2005, ch. 592, sec. 1, 2.

Hist: OSSHE 1-2006(Temp), f. & cert. ef. 2-9-06 thru 8-8-06; OSSHE 5-2006, f. & cert. ef. 7-24-06; OSSHE 5-2007(Temp), f. & cert. ef. 7-23-07 thru 1-18-08; OSSHE 2-2008, f. & cert. ef. 1-14-08

580-043-0080

Eligibility to Receive Grants

(1) Subject to compliance with these rules, an Institution may make grants to itself for use by a constituent part of the Institution or to Entities but not to Persons. Each Institution shall establish criteria for the receipt of grants under the Program. Each prospective recipient shall submit an application to the Institution. Each grant shall be documented and implemented through an appropriate grant agreement and each grant agreement shall provide that the recipient, if other than a public agency, remain in Oregon for at least five years following the final disbursement of funds under the agreement or repay the grant plus compound interest at 8 percent per annum. Other criteria shall be as determined by the Institution except for the following:

(a) All grants must be used to facilitate the commercialization of an Institution's research and development;

(b) Priority should be given to applicants who can demonstrate with specificity that their efforts will result in technology with high commercial potential, that they are close to realizing economic development potential, and that proof-of-concept funding will assist them in transforming research and development concepts into commercially viable products or services.

(2) To at least some degree, a Program as a whole, but not each individual grant, must provide:

(a) Capital for university entrepreneurial programs;

(b) Opportunities for students to gain experience in applying research to commercial activities;

(c) Entrepreneurial opportunities for persons interested in transforming research into viable commercial ventures that create jobs in this state; and

(d) Proof-of-concept funding for transforming research and development concepts into commercially viable products and services.

(3) Each institution shall screen potential awards for conflicts of interest. No award shall be made if an identified conflict of interest cannot be eliminated or managed.

Stat. Auth: OL 2005, ch. 592, sec. 2.

Stats. Implemented: OL 2005, ch. 592, sec. 1, 2.

Hist: OSSHE 1-2006(Temp), f. & cert. ef. 2-9-06 thru 8-8-06; OSSHE 5-2006, f. & cert. ef. 7-24-06

580-043-0085

Issuance of Tax Credit Certificates

(1) Taxpayers making a contribution to an Institution's Fund and wishing to receive a tax credit certificate evidencing that contribution must submit the contribution, together with an application for tax credit certificate, in a form designated by the Institution, to the Institution or, if directed by the Institution, to its affiliated foundation.

(2) An Institution or its affiliated foundation may begin accepting contributions and applications after the Institution's Fund has been established in accordance with the Act and these rules.

(3) An Institution shall consider applications for tax credit certificates in the chronological order in which the applications were received.

(4) An Institution shall act on an application for a tax credit certificate within 60 days of its receipt unless unanticipated or extraordinary circumstances reasonably prevent the Institution from acting within that timeframe, in which case the Institution shall act on the application as soon as reasonably possible thereafter.

(5) Subject to section 6 of this rule, an Institution shall approve an application for a tax credit certificate if the application is complete and the Institution has verified receipt of the contribution. Within 45 days of application approval, an Institution shall issue to the Taxpayer a tax credit certificate that specifies the amount of the contribution.

(6) An Institution shall deny an application for a tax credit certificate and may not issue a tax credit certificate to the Taxpayer if:

(a) The Taxpayer's contribution to the Fund, together with the amounts specified on all tax credit certificates previously issued by the Institution less amounts transferred into the General Fund, exceeds the Institution's then-current tax credit certificate issuance authority;

(b) The Taxpayer's application is incomplete; or

(c) The Institution cannot verify receipt of the Taxpayer's contribution.

(7) If an Institution denies a Taxpayer's application for a tax credit certificate, the Institution shall notify the Taxpayer in writing within 45 days of the denial.

(8) A Taxpayer who receives a notice of denial of an application for a tax credit certificate may request, in writing and within 90 days after the receipt of the denial, a refund of its contribution to the extent the contribution was actually received. The Institution shall ensure that the refund is issued within 60 days after its receipt of the request for the refund.

(9) Eligibility for a tax credit (as distinguished from the receipt of a tax credit certificate from an Institution) shall be subject to the Act, the rules of the Department of Revenue, and other applicable law.

Stat. Auth: OL 2005, ch. 592, sec. 2.

Stats. Implemented: OL 2005, ch. 592, sec. 1, 2.

Hist: OSSHE 1-2006(Temp), f. & cert. ef. 2-9-06 thru 8-8-06; OSSHE 5-2006, f. & cert. ef. 7-24-06; OSSHE 5-2007(Temp), f. & cert. ef. 7-23-07 thru 1-18-08; OSSHE 2-2008, f. & cert. ef. 1-14-08

580-043-0090

Tax Credit Certificate and Grant Record-Keeping and Reporting

(1) Each Institution shall retain copies of all tax credit certificates that it issues. Upon every issuance of a tax credit certificate by the Institution, upon transfer of moneys into the General Fund, and promptly after Board adoption of an order or resolution establishing or modifying the Institution's allocation of tax credit certificate issuance authority, the Institution shall calculate and record in its records the amount, if any, of its fundraising and tax credit certificate issuance authority then remaining unused.

(2) As requested by the Board from time to time but not less often than annually, each Institution shall submit a written report to the Board summarizing its fundraising activity, amounts transferred to the General Fund, and issuance of tax credit certificates since its most recent report to the Board under this section and specifying its fundraising tax credit certificate issuance authority and the amount of that authority remaining unused as of the date of the report. The report shall include the number of tax credit certificates issued, the amount of funds raised by the Institution, and the amounts transferred to the

General Fund since its most recent prior report to the Board under this section.

(3) As requested by the Board from time to time but no less often than annually, each Institution shall submit a written report to the Board summarizing the grants made by the Institution under its Program and how they serve the goals of the Act and these rules.

Stat. Auth.: OL 2005, ch. 592, sec. 2.

Stats. Implemented: OL 2005, ch. 592, sec. 1, 2.

Hist: OSSHE 1-2006(Temp), f. & cert. ef. 2-9-06 thru 8-8-06; OSSHE 5-2006, f. & cert. ef. 7-24-06; OSSHE 5-2007(Temp), f. & cert. ef. 7-23-07 thru 1-18-08; OSSHE 2-2008, f. & cert. ef. 1-14-08

580-043-0095

Recoupment of Tax Credits

An Institution that has established a Fund and has made grants under a Program shall monitor the use of such grants and identify sources of Gross Royalty Income received by the Institution as the result of the use of the grants. Gross Royalty Income results from the use of a grant when it is traceable to the grant. The Institution shall cause the transfer of 20 percent of such Gross Royalty Income to the General Fund but not to exceed the amount of the tax credits issued by the Institution as a result of contributions to the Fund. This does not preclude transfers from other sources. Immediately upon deposit of the transferred amount into the General Fund, the Institution may issue new tax credits in an amount not to exceed the transferred amount. The Institution shall maintain records of all transfers to the General Fund.

Stat. Auth.: OL 2005, ch. 592, sec. 2.

Stats. Implemented: OL 2005, ch. 592, sec. 1, 2.

Hist: OSSHE 1-2006(Temp), f. & cert. ef. 2-9-06 thru 8-8-06; OSSHE 5-2006, f. & cert. ef. 7-24-06; OSSHE 5-2007(Temp), f. & cert. ef. 7-23-07 thru 1-18-08; OSSHE 2-2008, f. & cert. ef. 1-14-08

580-043-0100

Reports to the Legislative Assembly

An Institution that has established a Fund shall report annually to the Legislative Assembly or, if the Legislative Assembly is not in session, to the interim legislative committees on revenue. The report shall be at the end of the fiscal year of the Institution or of its affiliated foundation and provide information for that fiscal year. The Institution shall include in the report the following information pertaining to its Fund:

- (1) The amount of donations received for the Fund;
- (2) The amount of income received from the Fund;
- (3) The amount of disbursements and grants paid from the Fund;
- (4) The amount of income and royalties received from disbursements from the Fund; and
- (5) The amount of moneys transferred from the Fund to the General Fund.

Stat. Auth.: OL 2005, ch. 592, sec. 2.

Stats. Implemented: OL 2005, ch. 592, sec. 1, 2.

Hist: OSSHE 5-2007(Temp), f. & cert. ef. 7-23-07 thru 1-18-08; OSSHE 2-2008, f. & cert. ef. 1-14-08

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 Chan-

cellor. 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 55

OUS INFORMATION SECURITY POLICIES

580-055-0000

Executive Summary

(1) OUS has a responsibility to protect its Information Assets, business processes, and follow appropriate laws and regulation relating to information security.

(2) OUS will meet its obligations by each member institution implementing an ongoing information security program.

(3) Each Institution's President (or designee) will have overall responsibility for institution's program.

(4) Each Institution will assign Chief Information Security Officer (CISO) duties to a qualified person.

(5) Each Institution's CISO or equivalent will be responsible for the security program and for ensuring that institutional policies, procedures, and standards are developed, implemented, and maintained.

(6) Each Institution will create Information Systems Policies that cover at a minimum: Classification Standards that at least identify Essential and Highly Sensitive data, processes, and systems; security baselines commensurate with classification; and labeling and handling standards for Highly Sensitive data, processes, and systems.

(7) Each Institution will create Personal Information and User Policies that cover at a minimum: Securing Personally Identifiable Information; Acceptable Use of Computing Resources; employee

polices for security-sensitive personnel; and account management policies.

(8) Each Institution will create Security Operations policies that cover at a minimum: a notification and escalation plan for breaches of personally identifiable information, a risk assessment program; and an incident response plan.

(9) Each Institution will create Network and Telecommunications Policies that at a minimum ensure that Highly Sensitive Information Assets are in a secured zone on the network and are not transmitted outside of secured zones in clear text.

(10) Each Institution will establish physical security standards that protect Essential or Highly Sensitive Information Assets that are critical to the functioning of the institution and ensure that disposal procedures remove or render sensitive data irretrievable from hard drives, compact disks, external memory, PDAs, etc.

(11) Each Institution will establish a Disaster Recovery Plan for Essential Information Assets.

(12) Each Institution will develop awareness and training programs for all Information Asset users regarding Information Security.

(13) OUS Internal Audit will conduct periodic Information Security Policy Audits.

Stat. Auth.: ORS 351.065, 351.070
Stats. Implemented: ORS 351.070
Hist.: OSSHE 4-2007, f. & cert. ef. 7-23-07

580-055-0010

Purpose

(1) The Oregon University System and its member institutions, collectively referred hereinafter as OUS, have a responsibility to protect information entrusted to them, ensure the effective operation of business critical processes, and must abide by the security policies established by the State Board of Higher Education as well as laws and regulation at the federal, state, and local level relating to information security. OUS must meet a standard of due care regarding the protection of institutional information assets as well as those belonging to OUS students, faculty members, customers, and research partners.

(2) OUS "Information Assets" include information and systems that are owned by OUS, information that OUS is obligated to keep secure by applicable law or by contract, and information exempt from disclosure under public records laws. OUS Information Assets are found in written, spoken, electronic, printed, magnetic, optical, and other mediums.

(3) The purpose of this policy is to document OUS management's intent regarding the protection of these Information Assets. It is to be used by each OUS institutions' management to develop, document, implement, and maintain local information security policy and programs.

Stat. Auth.: ORS 351.065, 351.070
Stats. Implemented: ORS 351.070
Hist.: OSSHE 4-2007, f. & cert. ef. 7-23-07

580-055-0020

Goals

OUS member institutions will develop and implement ongoing information security programs, and assign clear and appropriate roles and responsibilities to the administration, IT personnel, and institutional community members. The basic objectives are to achieve and maintain:

(1) **TRUST** — Ensure that institutions establish a baseline of security that will serve as a basis for the ongoing trust of OUS' information systems, engender confidence between OUS and its students, faculty members, customers, research partners, and the citizens of the State of Oregon.

(2) **INTEGRITY** — Establish the concepts of due care, best practice, and security baselines as the basis for protecting the Information Assets of OUS in a manner commensurate with their sensitivity, value, and criticality to ensure they meet expectations of form, fit, and function.

(3) **ACCOUNTABILITY** — Maintain the accountability of information users, preserve management options if there is asset misuse or abuse, ensure security of OUS's physical assets, and provide for business continuity.

Stat. Auth.: ORS 351.065, 351.070
Stats. Implemented: ORS 351.070
Hist.: OSSHE 4-2007, f. & cert. ef. 7-23-07

580-055-0030

Authority and Scope

(1) This policy applies to the Oregon University System as organized and empowered by ORS chapters 351 and 352 and is specifically authorized under ORS 351.087. This policy is applicable to all OUS member institutions as well as all employees, students, contractors, consultants, agents, and vendors working on their behalf. It is applicable to all OUS Information Assets, regardless of form or media. It applies to information gathering, protection, use, processing, storage, communications, and transit.

(2) OUS Member Institution policies, procedures, standards, and work instructions are required to comply with this policy.

Stat. Auth.: ORS 351.065, 351.070

Stats. Implemented: ORS 351.070

Hist.: OSSHE 4-2007, f. & cert. ef. 7-23-07

580-055-0040

Roles and Responsibilities

(1) The OUS Chancellor shall have overall oversight responsibility for the provisions of this policy.

(2) The OUS Chief Information Security Officer (CISO) shall have responsibility to develop, implement, maintain, and monitor compliance with this policy.

(3) Each member institution's President shall have overall oversight responsibility for institutional provisions set forth in this policy.

(4) Each member institution's Chief Information Officer (CIO), or equivalent, shall be responsible for ensuring that institutional policies are developed in accordance with this policy.

(5) Each member institution shall designate a CISO or equivalent. The institutions' CISO shall be responsible for the member institution's security program and for ensuring that institutional policies, procedures, and standards are developed, implemented, and maintained.

(6) All university community members have a responsibility to help ensure security of the Institution's Information Assets.

Stat. Auth.: ORS 351.065, 351.070

Stats. Implemented: ORS 351.070

Hist.: OSSHE 4-2007, f. & cert. ef. 7-23-07

580-055-0050

Institutional Policy Requirements

(1) Security Management:

(a) Each member institution shall establish an ongoing information security program and assign clear and appropriate roles and responsibilities to their Administration, CIOs (or equivalent), CISO (or equivalent), and all local University community members. The President of each member institution (or their designee) will be responsible for establishing the program and ensuring that it is effective.

(b) Each member institution should create clear and consistent policy in accordance with their information security program, that outline general information security operations including such things as risk assessment procedures, incident response responsibilities, security testing, and day to day security compliance. The specifics of those policy requirements are outlined in the following sections.

(2) Information Systems Security:

(a) Information Systems are composed of three major components: data, applications, and infrastructure systems. All three must be addressed in order to ensure overall security of these assets. OUS Member institutions should establish policy, procedures, security controls, and standards that govern these assets. These policies should ensure that fundamental security principles, such as those documented as pervasive principles in the Generally Accepted Information Security Principles or those generally incorporated into the COBIT framework, are established and maintained.

(b) At a minimum each member institution shall establish:

(A) Information system classification standards. These standards shall ensure that Essential and/or Highly Sensitive data, applications, and infrastructure systems are identified and standards for handling them are developed. Member institutions may deem it appropriate to establish multiple levels of sensitivity or criticality.

(B) Security baselines for information systems. Security baselines are minimum set of operational guidelines that affect the relative security of an Information Asset. Baselines shall be appropriate to the level of sensitivity and criticality of the systems and ensure that the due care and best practice principles are met.

(3) User and Personal Information Security:

(a) Everyone interacting with information assets has a responsibility to ensure the security of those assets. Each member institution must create policies that articulate the rights, responsibilities, and roles of anyone interacting with Information Assets. Policies must take into account federal, state, and local laws, as well as other institutional policies. For example, FERPA requirements will require attention when dealing with student records and HIPPA requirements will require attention when dealing with health information. Policies should be made readily available to all interested parties.

(b) At a minimum, each member institution shall establish:

(A) Personal Information Policies. Member institutions are required to specifically define procedures for dealing with personally identifiable information. Information, such as social security numbers, credit card numbers, and driver's license information, is naturally sensitive and appropriate steps should be taken to protect the privacy of this type of information.

(B) Acceptable Use Policies. Member institutions are required to develop policies that define the parameters of acceptable use for all users of information resources within the organization. These policies must ensure that the use of Information Assets is consistent with standard security practices, ensures that those resources operate effectively, and that appropriate laws relating to Information Assets are followed. For example, these policies may include user resource use limitation, definitions of inappropriate behavior, copyright restrictions, commercial use restrictions, and confidentiality requirements. These policies should also include definitions of enforcement mechanisms in case of violation. Member institutions shall make it clear that prior notification is not a requirement for applicability of the policy and they shall clearly state that there should be no expectation of privacy while using institutional resources.

(C) Security Sensitive Personnel Policies. Employees that have access to essential or highly sensitive data and processes should be designated as serving in critical or security-sensitive capacities as per OAR 055.055 and be subject to the appropriate employment policies of the institution.

(D) Account management Policies. Member institutions are required to develop policies that ensure appropriate management of user accounts. These policies shall: establish and maintain accountability, timely notification of access changes and terminations, timely response to these notifications; and periodic reconciliation of accounts to active users, privileges, and separation of duty requirements. This includes students, employees, contractors, vendors.

(4) Security Operations:

(a) OUS member institutions have a responsibility to construct operational standards and policies that ensure due care is taken to secure Information Assets. These operational standards and policies should include reasonable and appropriate proactive and reactive measures to protect Information Assets from unauthorized access, disruption of normal operations, and that comply with appropriate laws and regulations. In particular, member institutions should provide anti-virus software, a system to distribute current anti-virus definitions, and a security patch management system for commonly used operating systems.

(b) At a minimum each member institution shall establish:

(A) An incident response plan. This plan shall include a threat containment strategy, an intrusion detection system, and a mechanism for tracking and reporting security breaches.

(B) A notification and escalation plan for security breaches involving personally identifiable information. This plan shall include clearly defined criteria used to determine that personally identifiable information has been exposed and has been, or it is reasonably believed to have been, obtained by an unauthorized person. This plan shall also include clear escalation and notification steps when such an event occurs and the means by which the member institution's administration, OUS' administration, appropriate law enforcement agencies, and the people that could be identified by the information in question, are notified of the breach.

(C) An ongoing risk assessment program. This program should regularly identify and track all Essential and/or Highly Sensitive Information Assets, and verify that the appropriate security baseline is in place and being followed with respect to those Information Assets.

(5) Network and Telecommunications Security:

(a) OUS member institutions have a responsibility to ensure secure management of their local networks. Member institutions should have the ability to control who connects to their networks, the ability to create secure zones with restricted access on their networks, and be able to ensure the effective operation of their networks.

(b) At a minimum each member institution shall establish:

(A) Secured Zones for Essential and Highly Sensitive Information Assets. These zones shall be created by employing standard network technology to restrict access at the network level to authorized personnel only.

(B) Policies that prohibit transmission of unencrypted Highly Sensitive data outside of secured zones.

(6) Physical and Environmental Security:

(a) Each member Institution should establish procedures for the physical protection of its Information Assets. Protection of physical equipment or of software and data residing on storage media, from theft, loss, damage, or improper use should be addressed. Particular attention must be paid where access to or function of Essential or Highly Sensitive Information Assets is concerned; however, member institutions should also consider physical security for computers and other local Information Assets housed in departmental work areas or under departmental control, such as laptop computers, PDAs, etc. Member institutions should adopt policies that only allow Highly Sensitive data to be permanently retained on portable equipment if protective measures, such as encryption, are implemented that safeguard the confidentiality and integrity of the data in the event of theft or loss of the portable equipment.

(b) At a minimum, member Institutions shall develop policies and procedures to:

(A) Protect physical areas containing Information Assets that represent Essential or Highly Sensitive information systems that are critical to the functioning of the institution.

(B) Ensure that disposal procedures remove or render sensitive data irretrievable from hard drives, compact disks, external memory, PDAs etc.

(c) In addition, physical inventories of equipment should be completed and maintained in accordance with section 55.100 of the OUS Fiscal Policy Manual.

(7) Disaster Recovery:

(a) As part of ongoing business continuity planning, member institutions are responsible for preparing, periodically updating, and regularly testing a campus Disaster Recovery Plan. This plan should address recovering from a disaster that renders Essential Information Assets unavailable for an unacceptable period of time. Such a Disaster Recovery Plan should establish the frequency of testing member institution disaster recovery procedures. Member institutions should ensure that any local operations procedures are coordinated with overall institutional disaster preparedness plans.

(8) Awareness, Education, and Training:

(a) Member institutions are required to develop methods for increasing the level of awareness of information security issues among their constituents. Awareness and training programs may be carried out using a number of different approaches, including document distribution, software distribution, web publishing, and internal or external training sessions. These programs should be carried out on a regular basis and they should be periodically reevaluated in order to assess their effectiveness.

(b) At a minimum, users should be made aware of their roles and responsibilities within the organization as they relate to the security of Information Systems. Users should also be informed of all policies and procedures that may apply to them. Contact information for central IT Security personnel, as well as department IT personnel, should be made available. Users should be informed of whom to contact and appropriate measures to take in the event of a security incident. Policies and procedures should be made readily available in accessible locations.

(c) Educational or training materials should be made available in order to educate users on standard security practices. Training on basic computer security concepts should be provided. These concepts include the following: operating system patching, built-in firewalls, anti-virus software, password management, and browser and e-mail security. Additional training should be offered in areas that are of particular concern to the institution.

Stat. Auth.: ORS 351.065, 351.070

Stats. Implemented: ORS 351.070
Hist.: OSSHE 4-2007, f. & cert. ef. 7-23-07

580-055-0060

Policy Review Process

The OUS CISO will review this policy annually to ensure that it complies with applicable law and Board Policies. Should this policy be revised, the CIOs (or equivalent) of each member institution will be notified to ensure local policies are reviewed and revised as appropriate.

Stat. Auth.: ORS 351.065, 351.070
Stats. Implemented: ORS 351.070
Hist.: OSSHE 4-2007, f. & cert. ef. 7-23-07

580-055-0070

Audit

The OUS internal audit office has the authority to conduct periodic information security policy audits using the COBIT framework or suitable substitute to ensure compliance and notify each member institution of any noted deficiencies.

Stat. Auth.: ORS 351.065, 351.070
Stats. Implemented: ORS 351.070
Hist.: OSSHE 4-2007, f. & cert. ef. 7-23-07

580-055-0080

Glossary

(1) Anti-Virus — Programs that identify malicious code installed on computers without the owner/operator's knowledge or consent.

(2) Applications — Computer programs that collect, process, or otherwise manipulate data.

(3) Best Practice — Generally accepted industry practices that have been broadly adopted and considered standard.

(4) Built-in Firewall — Functions within the local operating system of a computer that limit what other machines on the network can connect to it.

(5) Business Continuity — The ability for business processes and functions to continue and for an organization to continue to function despite emergencies, major disruptions, etc.

(6) CIO — Chief Information Officer. The executive level position in an organization that is generally in charge of the Information Technology division and is responsible for the overall IT operations of an organization.

(7) CISO — Chief Information Security Officer. Generally, the CISO function is one of being responsible for the Information Security Program.

(8) Data — Information stored electronically, or in print.

(9) Due Care — The conduct that a reasonable man or woman will exercise in a particular situation in looking out for the safety of others. If one uses due care, then an injured party cannot prove negligence. This is one of those nebulous standards by that negligence is tested. Each juror has to determine what a "reasonable" man or woman would do.

(10) Essential Information Assets — Those Information Assets that are critical to the function of the member institution and without which the normal business functions of the member institution cannot occur.

(11) FERPA — Family Educational Rights Privacy Act. This federal act protects student records, other than directory information, as private information available only to those with an educational need to know.

(12) HIPPA — Health Information Protection and Privacy Act. This federal act protects health records as private information.

(13) Highly Sensitive Information Assets — Those Information Assets that OUS is obligated by law or contract to protect or that represent obviously confidential data that, if released, would represent some actual legal liability to the member institution.

(14) Incident Response — The planned reaction to a breach of security that includes identifying the breach, closing it, and mitigating its effect.

(15) Information Assets — Information and systems that are owned by OUS, information that OUS is obligated to keep secure by applicable law or by contract, and information exempt from disclosure under public records laws. OUS Information Assets are found in written, spoken, electronic, printed, magnetic, optical, and other mediums.

(16) Information Systems — A collection of computers and processes that interact with each other to manipulate, transmit, and store data.

(17) Infrastructure Systems — Computers and network devices and the operating systems that run them.

(18) Institutional Community Members — faculty, staff, students, vendors, visitors, affiliates, courtesy faculty, etc. In short, all persons who have a relationship with the Institution and therefore may interact with Information Assets of the Institution.

(19) Intrusion Detection System — A program or series of programs that watch network traffic and other activities to identify intrusion attempts and compromised machines.

(20) Risk Assessment — In the context of information security, risk assessment is the determination of both the importance of all Information Assets and their likelihood of being accessed by an unauthorized person or of their function being intentionally impaired by someone.

(21) Security Baseline — A minimum set of operational guidelines that affect the relative security of an Information Asset. These guidelines would typically cover such things as firewall settings and network access controls, local permissions, password change policy, operating system patch management, anti-virus policy, and physical access controls.

(22) Security Breach — Theft or unauthorized acquisition of Information Assets by a person that harms or poses an actual threat to the security, confidentiality, or integrity of those assets.

(23) Security Controls — Procedures to follow that help establish and maintain Authentication, Authorization, and Access to Information Assets. These controls include such things as verifying identity, giving access to Information Assets based on job function or duties, network appliances that restrict connections coming from the Internet or unsecured zones, etc.

(24) Threat Containment — Reactive measure to ensure that a security breach is contained to affected systems and that those systems are not able to be used to launch successful intrusion attempts to other systems.

(25) Operating System — The series of programs loaded on a computer that operates it. Common operating systems include Windows, MacOS, and Unix.

(26) OUS Member Institutions — The Chancellor's Office, Eastern Oregon University, Oregon Institute of Technology, Oregon State University, Portland State University, Southern Oregon University, University of Oregon, and Western Oregon University.

(27) Password Management — The practice of creating and maintaining passwords on a system that are not easily guessed, programmatically determined, or otherwise obtained by unauthorized persons. This generally means requiring a base level of complexity in the password, and that it is changed on a regular basis.

(28) Personally Identifiable Information — A combination of name and one or more other data elements that could uniquely identify an individual for the purpose of providing restricted access. This term may be formally defined shortly in anti "ID Theft" legislation. Common data elements used in combination with name are: Social Security number, driver's license numbers, date of birth, account number (such as credit or debit card number), account passwords (including pass phrases such as mother's maiden name), identification number issued by a foreign nation, passport number, biometric data, etc.

Stat. Auth.: ORS 351.065, 351.070

Stats. Implemented: ORS 351.070

Hist.: OSSHE 4-2007, f. & cert. ef. 7-23-07

DIVISION 60

REAL PROPERTY, FACILITY, AND CAMPUS PLANNING

580-060-0000

Authority

These rules establish the procedures that will be followed by Institutions of the Oregon University System to acquire, receive, hold, control, convey, sell, manage, operate, lease, lend, improve, and develop all real property given to any of the Institutions under the control of the Board by private donors or acquired by any other method or from any source, except for any structure, or asset encumbered by a certificate of participation.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08

580-060-0005

Definitions

All capitalized terms in chapter 580, division 60 have the meanings set forth in OAR 580-061-0010 unless the context requires otherwise or except as stated.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08

580-060-0010

Comprehensive Plan Coordination

Each of the Institutions will maintain a long-range campus development plan covering approved campus boundaries, including real property that is not contiguous to the main campus. The combined Institutional plans will be known as the Oregon University System Comprehensive Plan. Institutional plans will conform to OAR chapter 660, division 30 of the Land Conservation and Development Commission, which includes, but is not limited to, conforming the Institutional plans to regulations of the applicable local jurisdiction. Institutional plans will be approved by the Institution President and by the Chancellor or designee. The Chancellor or designee will approve revisions to the campus boundaries.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08

580-060-0015

Records

The Office of Capital Construction, Planning, and Budget of the Chancellor's Office will be the official record keeper for all documents that affect real property under the control of the Board. Documents affecting real property include, but are not limited to, all instruments that acquire, transfer, sell, or alter the character of land. All documents will be provided by Institutions to the Office of Capital Construction, Planning, and Budget in a timely manner.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08

580-060-0020

Purchase of Real Property

All purchases will be in the name of the State of Oregon. All instruments acquiring title to real property must be executed by the Board President and Board Secretary in accordance with ORS 351.150. All purchases will be for the present or future development of the Institution.

(1) The Institution President has the authority to approve purchases of real property after obtaining at least one appraisal by a licensed and experienced real estate appraiser estimating the fair market value if the consideration is less than \$1,000,000. The Institution President must ensure that an environmental assessment has been completed and that any risk associated with the real property is reasonable under the circumstances and OUS Systemwide legislative expenditure limitation has been obtained prior to approving the purchase of real property.

(2) For the purchase of real property where the consideration exceeds \$1,000,000, the Institution President or designee must:

(a) Obtain at least one appraisal by a licensed and experienced real estate appraiser estimating the fair market value, and

(b) Obtain prior approval of the acquisition by the Chancellor or designee, and

(c) Complete an environmental assessment and confirm that any risk associated with the real property is reasonable under the circumstances, and

(d) Obtain Legislative limitation, if required.

(3) All purchases of real property will comply with the applicability requirements of ORS Chapter 270.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08

580-060-0025

Gifts of Real Property

The Institution President may accept gifts of real property on behalf of the Board. The Institution President must ensure that an environmental assessment has been completed prior to accepting the gift of real property and that any risk associated with the real property is reasonable under the circumstances. Legal title to all real property gifted to the Institution must be taken and held in the name of the State of Oregon and executed by the Board President and Board Secretary.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08

580-060-0030

Condemnation

Acquisition of real property by condemnation will be conducted in accordance with ORS Chapter 35 and must be approved by the Board.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08

580-060-0035

Sale of Real Property

(1) All instruments transferring title to real property must be executed by the Board President and Board Secretary.

(2) The Institution President has the authority to approve the sale of real property after obtaining at least one appraisal by a licensed and experienced real estate appraiser estimating the fair market value if the consideration is less than \$1,000,000.

(3) For the sale of real property where the consideration exceeds \$1,000,000, the Institution President must obtain at least one appraisal by a licensed and experienced real estate appraiser estimating the fair market value and must obtain prior approval of the sale by the Chancellor, or designee.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08

580-060-0040

Easements

(1) All instruments granting or acquiring an easement must be executed by the Board President and Board Secretary.

(2) Institution President or designee has the authority to approve acquisition or grant of an easement reasonably related to the operation of the Institution if the consideration does not exceed \$1,000,000.

(3) The Institution President or designee must obtain Chancellor, or designee approval for all other easement grants or acquisitions.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08

580-060-0045

Use of Facilities for Other than Institutional Purposes

Institutions normally will not make available Institutional buildings and other facilities to individuals for essentially private use or to outside organizations, unless approved in Institutional policy or required by law. Exceptions will be made only if the proposed use is consistent with Institutional policies and missions and the individual or organization fully reimburses the Institution for all appropriate costs.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08

580-060-0050

Transfers of Interests in Real Property

(1) Private Activity Limitations: If an Institution intends to execute any transfer of an interest in real property owned by the Board or the right to use Board real property, including a lease or license, and either (a) the term of the transfer exceeds 50 days in total or (b) the arrangement was not set at fair market value, then prior to the execution of that transfer of interest in real property, the Institution President or designee will confer with the OUS Controller's Division to determine compliance with bond restrictions.

(2) Authority to Execute Agreements: The Institution President or designee is authorized to execute documents transferring such interests for real property owned or controlled by the Board or real property for the use of the Institution if the term of the agreement and all extensions do not exceed ten years or the consideration for the transfer of an interest does not exceed \$5 million over the term of the agreement. The Chancellor or designee may approve transfers of interest if the term of the agreement and all extensions do not exceed 15 years or the consideration for the transfer of an interest does not exceed \$15 million over the term of the agreement. All other transfers of interests for real property will be approved by the Finance and Administration Committee of the Board.

(3)(a) Improvements to Board-Owned Property: The Institution President or designee will obtain prior approval of the Finance and Administration Committee of the Board for agreements permitting the construction on or renovation to Board-owned property if such improvements exceed \$5 million during the term of the agreement. To obtain approval from the Finance and Administration Committee of the Board, the Institution must specify where funding for operations and maintenance will come from.

(b) If the Institution permits construction on or renovation to Board-owned property, the Institution must approve all plans and specifications prior to the commencement of work and obtain record drawings upon termination of the agreement or completion of the work, whichever first occurs.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08; OUS 4-2011(Temp), f. & cert. ef. 11-10-11 thru 5-7-12

580-060-0055

Naming Buildings

An Institution President is authorized to name buildings. No building or structure of the Oregon University System will be named after a living person. However, the Chancellor, or designee 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.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08

580-060-0060

Board of Higher Education-Provided Housing

(1) Consistent with ORS 182.415 to 182.435, the Board will collect rent for housing provided to officers and employees. Each Institution will:

(a) Examine periodically, but not less frequently than once every five years, each rental unit's fair rental value. Fair rental value will be determined by a qualified appraiser certified under ORS 308.010 or licensed or certified under 674.310. The rental rate will be adjusted annually to reflect changes in community real estate values, if any.

(b) Collect rent for such housing based on the fair rental value, subject to any rental rate reductions authorized in subsection (2).

(c) Deposit such rental income in an appropriate Institution account.

(d) Provide no furnishings except as authorized by ORS 182.415(1).

(e) Determine whether to provide or to what extent the Institution will provide utilities and services for each housing unit.

(2) Each Institution providing housing for officers or employees may reduce the rent charged, by up to 100 percent from the fair rental value based on the following factors:

(a) Rental reduction for Institution need provided.

(A) If residence in the housing unit is a job requirement, as evidenced by contract or position description and not offered as an incentive or a fringe benefit to the resident state employee — 50 percent reduction; or

(B) If residence in the housing unit is not a job-related requirement but it is a distinct advantage to the Institution to have the officer or employee live near the job in case of an emergency or for general protection of Board property in the area — 20 percent reduction; or

(C) If residence in the housing unit is not a job requirement and the only advantage to the Institution is to reduce the chance of van-

dalism and deterioration to a Board-owned or controlled residence — 10 percent reduction; or

(D) If residence in the housing unit is not a job requirement nor is it for the benefit of the Institution, but is solely for the benefit of the occupant — No reduction.

(b) Rental reduction for invasion of privacy.

(A) If the housing unit or a significant part of it is used for a public office or public business or is so located that invasion of privacy by the public or by guests invited for Institution-related activities is expected or usual — 30 percent reduction; or

(B) If the public is not invited and invasion of privacy is not the usual occurrence, but the residence location or architecture plainly indicates state ownership and there is little or no restriction of public or Institution client traffic — 20 percent reduction; or

(C) Invasion of privacy is an occasional or seasonal occurrence and there is some restriction to public traffic — 10 percent reduction; or

(D) Invasion of privacy is no more than would be expected for an average privately owned residence — No reduction.

(c) Rental reduction for isolation.

(A) If the housing unit is located in an isolated area, defined as being more than 50 miles distance or 90 minutes travel by automobile from the nearest full service community, or the travel conditions are usually severe or hazardous — 20 percent reduction. A full-service community is one with a supermarket, department store, medical doctor, dentist, church, school, etc; or

(B) If the housing unit is located 30 to 50 miles distance or 60 to 90 minutes travel by automobile from the nearest full-service community or the travel conditions are seasonally severe or hazardous — 15 percent reduction; or

(C) If the housing unit is located 10 to 30 miles distance or 30 to 60 minutes travel time by automobile from the nearest full-service community, the travel conditions are only occasionally severe or hazardous — 10 percent reduction; or

(D) The housing unit is located within 10 miles and not over 30 minutes travel time by automobile from the nearest full-service community and the travel conditions are rarely severe or hazardous — No reduction.

(d) Rental reduction for unique conditions. Certain unique conditions may arise or exist in addition to those in subsections (a)–(c) above. Rent may be reduced as follows:

(A) To correct inequities between the fair rental value as determined in subsection (1) and the salary of the officer or employee occupying the residence — reduction to the extent necessary and reasonable;

(B) Because of unique conditions in the Board's title to the property (e.g., the Board's ownership is conditioned upon residence by a specified employee) — up to 100 percent of the fair rental value; and

(C) Other factors necessary for effective program management (cannot include factors reflecting only the convenience or comfort of an employee) — a reduction of up to 20 percent.

(3) At least once every five years, Institutions 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 351, 182.415, 182.425 & 351.070

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08

DIVISION 61

OUS PROCUREMENT AND CONTRACTING CODE

580-061-0000

Code of Ethics

(1) The following Code of Ethics will apply to Oregon University System employees in relation to chapter 580, divisions 60, 61, 62, and 63. Employees will:

(a) Give first consideration to the objectives and policies of the Board, OUS, and the Institution;

(b) Strive to obtain the best value for expenditures;

(c) Fairly consider prospective Contractors insofar as state or federal statutes and institutional rules and policies require;

(d) Conduct business in an atmosphere of good faith;

(e) Demand honesty in representations made by prospective Contractors;

(f) Promote competition by encouraging the participation of Oregon businesses, emerging small and minority-owned and women-owned businesses, and Qualified Rehabilitation Facilities;

(g) Comply with the applicable provisions of ORS Chapter 244 and other applicable rules and policies on conflict of interest that may be more restrictive;

(h) Refrain from having financial interests 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 the Oregon University System's Internal Management Directives and other applicable rules and policies;

(i) Receive the written consent of the originator of proprietary ideas and designs before using them; and

(j) Foster fair, ethical, and legal trade practices.

(k) Execute the OUS Conflict of Interest Statement before any person may participate in the evaluation or selection of a Contractor or vendor under a Formal Procurement process.

(1) On an annual basis, sign a statement that the employee has reviewed and will comply with the OUS Code of Ethics.

(2) This code is for the Oregon University System's internal use only and creates no obligations enforceable by Contractors, Proposers, Bidders, or other parties doing business with an Institution, nor may it be used by Contractors, Proposers, Bidders, or other parties doing business with an Institution who are challenging actions taken by an Institution or its officers, employees, or agents. This code may not be the only statement on ethics applicable to an employee.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08

580-061-0005

Applicable Model Public Contract Rules

The Attorney General's Model Public Contract Rules adopted by the Oregon Attorney General pursuant to ORS 279A.065 are generally inapplicable to the contracting activities of Institutions unless specifically referenced and adopted herein.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08

580-061-0010

Definitions

The following Definitions will apply to chapter 580, divisions 60, 61, 62, and 63, unless the context requires otherwise:

(1) "Addendum" or "Addenda" means an addition to, deletion from, a material change in, or general interest explanation of the Solicitation Document. Addenda will be labeled as such and distributed to all interested Bidders or Proposers.

(2) "Award" or "Awarding" means, as the context requires, identifying the Entity with whom the Institution intends to enter into a Contract following the resolution of any protest of the selection of that Entity and the completion of all Contract negotiations.

(3) "Bid" means an offer, binding on the Bidder and submitted in response to an ITB.

(4) "Bidder" means an Entity that submits a Bid in response to an ITB.

(5) "Board" means the Oregon State Board of Higher Education or its Finance and Administration Committee.

(6) "Change Order" or "Contract Amendment" means a written order issued by an Institution to the Contractor requiring a change in the Work within the general scope of the original Contract.

(7) "Closing" means the date and time specified in a Solicitation Document as the deadline for submitting Bids or Proposals.

(8) "Competitive Process" means the process of procuring goods and services and construction-related services by fair and open competition, under varying market conditions, with the intent of minimizing opportunities for favoritism and assuring that Contracts are award equitably and economically using various factors in determining such equitability and economy.

(9) “Contract” means a contract for sale or other disposal, or a purchase, lease, rental, or other acquisition, by an Institution of personal property, services, including personal or professional services, public improvements, public works, minor alterations, or ordinary repair or maintenance necessary to preserve a Public Improvement. “Contract” does not include grants. “Contract” may also mean a purchase order, Price Agreement, or other Contract document in addition to an Institution’s Solicitation Document and the accepted portions of a Bid or Proposal.

(10) “Contract Officer” means the Vice President for Finance and Administration or his or her designee at an Institution or the Vice Chancellor for Finance and Administration or his or her designee with the authority to negotiate and execute Contracts.

(11) “Contract Price” means, as the context requires, the maximum monetary obligation that an Institution either will or may incur under a Contract, including bonuses, incentives and contingency amounts, Addenda, Change Orders, or approved alternates, if the Contractor fully performs under the Contract.

(12) “Contractor” means the Entity awarded a Contract to furnish an Institution goods, services, or Work.

(13) “Days” means calendar days, including weekdays, weekends, and holidays, unless otherwise specified.

(14) “Disadvantaged Business Enterprise” means a small business concern as defined in ORS 200.005.

(15) “Disqualification or Disqualify” means the preclusion of an Entity from contracting with an agency of the State of Oregon in accordance with OAR 580-061-0160.

(16) “Electronic Bid or Proposal” means a response to a Solicitation Document submitted to an Institution via the World Wide Web or some other internet protocol.

(17) “Emergency” means an unexpected, serious situation that creates a significant risk of loss, damage, interruption of service, or threat to the public health or safety that requires prompt action to remedy the condition.

(18) “Emerging Small Business” means an Emerging Small Business as defined in ORS 200.005 and that maintains a current certification issued by the Oregon Department of Consumer and Business Services.

(19) “Entity” means 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.

(20) “Facsimile” means a document that has been transmitted to and received by an Institution in a format that is capable of being received via a device commonly known as a facsimile machine.

(21) “Grant” means:

(a) An agreement under which an Institution receives money, property, or other assistance, including, but not limited to, federal assistance that is characterized as a Grant by federal law or regulations, loans, loan guarantees, credit enhancements, gifts, bequests, commodities, or other assets, from a grantor for the purpose of supporting or stimulating a program or activity of the Institution and in which no substantial involvement by the grantor is anticipated in the program or activity other than involvement associated with monitoring compliance with the Grant conditions; or

(b) An agreement under which an Institution provides money, property, or other assistance, including, but not limited to, federal assistance that is characterized as a Grant by federal law or regulations, loans, commodities, or other assets, to a recipient for the purpose of supporting or stimulating a program or activity of the recipient and in which no substantial involvement by the Institution is anticipated in the program or activity other than involvement associated with monitoring compliance with the Grant conditions.

(c) “Grant” does not include a Public Improvement Contract or a Contract for Emergency work.

(22) “Institution” or “Institutional” means a university under the authority of the Board, including the Chancellor’s Office.

(23) “Invitation to Bid” (ITB) means a Solicitation Document for the solicitation of competitive, written, signed, and sealed Bids in which Specifications, price, and delivery (or project completion) are the predominant award criteria.

(24) “Minority Business Enterprise” means a Minority Business Enterprise as defined in ORS 200.005 and that maintains a current certification issued by the Oregon Department of Consumer and Business Services.

(25) “Opening” means the date, time, and place specified in the Solicitation Document for the public opening of written sealed Bids or Proposals.

(26) “Owner” means the State of Oregon acting by and through the Board, in its own right or on behalf of one of its Institutions as identified in the Solicitation Document, also known as the Oregon University System (OUS).

(27) “President” means the president of one of the Institutions and, in the case of the Chancellor’s Office, the Chancellor. Where the term “Institution President” is used, it refers to the president of the Institution at issue.

(28) “Personal or Professional Services” means a Contract with an Entity whose primary purpose is to acquire specialized skills, knowledge, and resources in the application of technical or scientific expertise, or the exercise of professional, artistic, or management discretion or judgment, including, without limitation, a Contract for the services of an accountant, physician or dentist, educator, consultant, broadcaster or artist (including a photographer, filmmaker, painter, weaver, or sculptor). “Personal or Professional Services” under this definition does not include an architect, engineer, planners, land surveyors, appraisers, construction managers, and similar professional consultants for construction work.

(29) “Price Agreement” means a nonexclusive agreement in which the Contractor agrees to provide specific items or services to an Institution at a set price during a specified period of time.

(30) “Proposal” means a binding competitive offer submitted in response to a Request for Proposals.

(31) “Proposer” means an Entity that submits a Proposal in response to a Request for Proposals.

(32) “Public Improvement” means a project for construction, reconstruction, or major renovation on real property by or for an Institution. “Public Improvement” does not include:

(a) Projects for which no funds of an Institution are directly or indirectly used, except for participation that is incidental or related primarily to project design or inspection; or

(b) Emergency work, minor alteration, ordinary repair or maintenance necessary to preserve a Public Improvement.

(33) “Public Improvement Contract” means a Contract for a Public Improvement. “Public Improvement Contract” does not include a Contract for Emergency work, minor alterations, or ordinary repair or maintenance necessary to preserve a Public Improvement.

(34) “Public Work” is defined by the Bureau of Labor and Industries (BOLI) in ORS 279C.800(6).

(35) “Qualified Rehabilitation Facility” means a nonprofit activity center or rehabilitation facility authorized by the Oregon Department of Administrative Services to provide goods or services in accordance with ORS 279.835 et seq.

(36) “Request for Information (RFI)” means a Solicitation Document seeking information regarding products or services that an Institution is interested in procuring.

(37) “Request for Proposals (RFP)” means a Solicitation Document to obtain written, competitive Proposals to be used as a basis for making an acquisition or entering into a Contract when price will not necessarily be the predominant award criteria.

(38) “Request for Qualifications (RFQ)” means a Solicitation Document issued by an Institution to which interested Contractors respond in writing by describing their experience with and qualifications to provide the services, personal services or architectural, engineering or land surveying services, or related services described in the Solicitation Document.

(39) “Responsible Bidder or Proposer” means an Entity that demonstrates their ability to perform satisfactorily under a Contract by meeting the applicable standards of responsibility outlined in OAR 580-061-0130.

(40) “Responsive Bid or Proposal” means a Bid or Proposal that has substantially complied in all material respects with the criteria outlined in a Solicitation Document.

(41) “Retainer Contract” means a Contract by which, pursuant to a Request for Proposals or Invitation to Bid, multiple Contractors are authorized to provide specific supplies or equipment to or perform

specific services for an Institution(s). Contractors on a Retainer Contract may provide goods or services on a non-exclusive and as-needed basis.

(42) "Signed or Signature" mean any Written mark, word, or symbol that is made or adopted by an Entity with the intent to be bound and that is attached to or logically associated with a Written document to which the Entity intends to be bound.

(43) "Single Seller" means the only Contractor of a particular product or service reasonably available.

(44) "Solicitation Document" means an Invitation to Bid, Request for Proposals, Request for Qualifications, Request for Information or any other written document issued or posted on the OUS procurement website by an Institution that outlines the required Specifications necessary to submit a Bid, Proposal, or other response.

(45) "Specifications" means a description of the physical or functional characteristics, or of the nature of the goods or services, including any requirement for inspecting, testing, or preparing the goods or services for delivery and the quantities or qualities of the goods or services to be furnished under a Contract. Specifications generally will state the result to be obtained and may describe the method and manner of performance.

(46) "Women Business Enterprise" means a Women Business Enterprise as defined in ORS 200.005 and that maintains a current certification issued by the Oregon Department of Consumer and Business Services.

(47) "Work" means the furnishing of all materials, equipment, labor, transportation, services, and incidentals necessary to successfully complete any individual item or the entire Contract and carrying out and completion of all duties and obligations imposed by the Contract.

(48) "Written or Writing" means letters, characters, and symbols inscribed on paper by hand, print, type, or other method of impression intended to represent or convey particular ideas or means. "Writing," when required or permitted by law, or required or permitted in a Solicitation Document, also means letters, characters, and symbols made in electronic form and intended to represent or convey particular ideas or meanings.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08; OUS 5-2011(Temp), f. & cert. ef. 11-10-11 thru 5-7-12

580-061-0015

Purchasing and Contract Records

(1) Institutions will maintain records relating to all Institutional purchasing and contracting transactions in accordance with the requirements of the Secretary of State and OUS administrative rule.

(2) Documentation of all purchasing and contracting transactions will be made available for inspection by the public as outlined in applicable public records laws.

(3) Institutions will maintain records relating to all Institutional purchasing and contracting transactions that may include:

(a) An executed Contract and any amendments or Change Orders;

(b) The record of the actions used to develop the Contract;

(c) A copy of the Solicitation Document, if any;

(d) Any required findings or statement of justification for the selection of the Contractor or the procurement method used;

(e) The record of any negotiation of the Specifications, the Work, the Contract Price and related Contract terms;

(f) All information describing how the Contractor was selected, including the basis for awarding the Contract;

(g) The names of Entities and cost estimates considered.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08

580-061-0020

Designation of Contract Officers

Each Institutional Vice President for Finance and Administration or the Vice Chancellor for Finance and Administration will designate staff authorized to enter into Contracts and Public Improvement Contracts for the Institution.

(1) Institutions will maintain a list identifying Contract Officers and describing the types and Contract Price of Contracts and Public

Improvement Contracts they are authorized to enter into. Institutions will provide an updated list annually to the Chancellor's Office. The Vice Chancellor for Finance and Administration may designate staff authorized to enter into Contracts and Public Improvement Contracts on behalf of all Institutions.

(2) Contracts or Public Improvement Contracts entered into by individuals not designated as authorized Contract Officers will be voidable at the sole discretion of the Institution. Institutions may take appropriate action in response to execution of Contracts contrary to this rule. Such actions include, but are not limited to, providing educational guidance, imposing disciplinary measures, and holding individuals personally liable for such Contracts.

(3) Authorized Contract Officers will be responsible for ensuring that the proper procedures are followed as outlined in chapter 580, divisions 60, 61, 62, and 63.

(4) Unless otherwise specified in chapter 580, divisions 60, 61, 62, and 63, the Contracting Officer will perform all the duties of the Owner on behalf of the Board.

(5) The Institution President may, by Written agreement with the President of another Institution or the Chancellor, and after notice to the Chancellor, transfer such delegation to a person at another Institution.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08

580-061-0025

Policy Governing the Acquisition of Goods and Services available from Qualified Rehabilitation Facilities

Institutions will 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:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08

580-061-0030

Affirmative Action; General Policy

(1) The general policy of OUS Institutions will be to expand economic opportunities for Minority Business Enterprises, Women Business Enterprises, and Emerging Small Businesses by offering them the contracting and subcontracting opportunities available through Institution Contracts. Notice of all Contracts over \$25,000 procured through a Competitive Process will be provided to the Advocate for Minority, Women, and Emerging Small Business, unless otherwise provided, by fully completing the information set out on the OUS procurement website. Institutions are encouraged to unbundle contracts, when appropriate, to expand contract opportunities for Minority, Women, and Emerging Small Businesses and Oregon based businesses.

(2) OUS will not knowingly contract with or procure goods or services from any Entity that discriminates on the basis of age, disability, national origin, race, marital status, religion, sex, or sexual orientation.

(3) Bidders and Proposers will certify, as part of the Bids or Proposals that such Bidder or Proposer has not discriminated against Minority, Women or Emerging Small Business Enterprises in obtaining any required subcontracts.

(4) On an annual basis, Institution Presidents will report to the Finance and Administration Committee of the Board statistical information regarding the number of Contracts awarded and the cumulative dollar amount of Contracts awarded to Minority Business Enterprises, Women Business Enterprises, Emerging Small Businesses, and Oregon-based businesses. The report will include information describing Institutional programs or initiatives to expand contracting opportunities to Minority, Women, Emerging Small Businesses, and Oregon based businesses.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08; OUS 5-2011(Temp), f. & cert. ef. 11-10-11 thru 5-7-12

580-061-0035**Emerging Small Business Program**

(1) The Board encourages participation of Emerging Small Businesses by creating an Emerging Small Business Program. The Emerging Small Business Program is limited to businesses that meet the definition in ORS 200.005(3) and that maintain a current certification issued by the Oregon Department of Consumer and Business Services. When conducting procurements, Institutions may implement the Emerging Small Business Program by methods including, but not limited to:

(a) Priority of Contract Award. In the event of a tie low Bid, when price is the sole determinative factor, give priority to a certified Emerging Small Business;

(b) Exclusive Emerging Small Business Opportunities. Institutions have the authority to create opportunities that are only open to certified Emerging Small Businesses. When an Institution issues a Solicitation Document, the Institution may determine that it is in the Institution's interest to limit the opportunity to only qualified and certified Emerging Small Businesses.

(c) Evaluation Criteria. An Institution may identify in a Solicitation Document that it will award additional evaluation points based on certified Emerging Small Business status.

(2) For Construction-Related Services where price is the determinative factor, if a Responsible Emerging Small Business' Responsive Bid is within one percent of the lowest Responsible Responsive Bid, the Institution will award the Contract to the Emerging Small Business.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08

580-061-0040**Sexual Harassment Policy**

All Entities that wish to contract with Institutions will be notified on the OUS procurement website that the Board has adopted policies applicable to Contractors that prohibit sexual harassment and that the Contractor's company and employees are required to adhere to the Institution's policy prohibiting sexual harassment in their interactions with members of the Institution's community.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08

580-061-0045**Insurance or Bond Requirements**

All Contractors will provide and maintain insurance or bonding as may be required by the Institution. Such insurance or bonding will remain in force throughout the term of the Contract, including any extensions.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08

580-061-0050**Interest on Overdue Charges**

The policy of the Board is that an Institution pay any overdue account charge, in accordance with ORS 293.462, incurred by an Institution when payment for goods and services have not been reasonably made.

(1) Overdue claims will be those that have not been paid within 45 days from the latest of the following dates: The date of the receipt of the accurate invoice, the date of the initial billing statement if no invoice is received, the date all goods have been received, or the date the claim is made certain by agreement of the parties or by operation of law. However, overdue account charges will not accrue on any purchases made by an Institution during time of civil emergency or in the event of a natural disaster that prevents the timely payment of accounts. In such instances, accounts will be paid in as timely a manner as possible.

(2) The maximum overdue charge incidental to procurement of the goods or services will be at a rate of two-thirds of one percent per month, but not more than eight percent per annum.

Stat. Auth.: ORS 351

Stats. Implemented: ORS 293.462

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08

580-061-0055**Solicitation Document Provisions**

(1) Brand-Name Specification. Institutions may specify brand names in the procurement of goods and services if that particular product or service has attributes not found in other goods and services of like kind. In addition, when specific design or performance specifications must be met for a good or service to be purchased, an Institution may specify a list of qualified goods or services by reference to the qualified goods or services of a particular contractor or potential contractor.

(2) Invitation to Bid Required Provision. If an Invitation to Bid is issued for a Contract for goods or services, the Institution will ensure that the following statement is contained in the Invitation to Bid: "Contractors will use recycled products, as defined in ORS 279A.010(1)(ii), to the maximum extent economically feasible in the performance of the Contract."

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08

580-061-0060**Basis for Awarding Contracts**

Institutions will select Contractors and award Contracts based on such factors as are identified in the Solicitation Document and such other factors as are reasonable under the circumstances.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08

580-061-0065**Contract Amendments (Including Change Orders and Extra Work) and Expired Contracts**

An amendment for additional Work or goods 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 using a Competitive Process provided that the amendment does not materially alter such a Contract. An amendment that extends the Contract past the period set out in the Solicitation Document for anything other than completion of the Work contemplated in the original Contract as extended will require a new Competitive Process, unless approved by the Vice President for Finance and Administration or Vice Chancellor for Finance and Administration for good cause. Expired Contracts may be revived and reinstated upon the approval of the Vice President for Finance and Administration or Vice Chancellor for Finance and Administration or their designees, subject to receiving all required approvals.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08

580-061-0070**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 that will be binding upon the Bidder or Proposer for thirty (30) days, unless a different time frame is specified in the Solicitation Document. An Institution's award of the Contract constitutes acceptance of the offer and binds the Bidder or Proposer.

(2) The Bid or Proposal will be a complete offer and fully responsive to the Solicitation Document, unless Bidders or Proposers are specifically authorized by the Solicitation Document to take exceptions or to leave terms open to negotiation.

(3) Unless expressly authorized by the Solicitation Document, Bidders or Proposers will not make their Bids or Proposals contingent upon the Institution's acceptance of Specifications or contract terms that conflict with or are in addition to those in the Solicitation Document.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08

580-061-0075

Facsimile and Electronic Bids and Proposals

(1) Institutions may authorize submission of Bids or Proposals through facsimile or electronic methods if:

(a) The Solicitation Document permits submission via facsimile or electronic means; and

(b) The Institution establishes methods of receiving, identifying, recording, and preserving the “sealed” requirement of the Competitive Process.

(c) Bids or Proposals submitted through facsimile and electronic methods must contain Written signatures indicating intent to be bound by the offer.

(2) Institutions may execute or open electronic submissions to verify receipt of documents prior to the Closing, but will not verify responsiveness.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08

580-061-0080

Bid or Proposal Submissions

(1) Identification of Bids or Proposals. To ensure proper identification and special handling, Bids or Proposals will be submitted in a sealed envelope appropriately marked or in the envelope provided by the Institution, whichever is applicable. The Institution will not be responsible for the proper identification and handling of Bids or Proposals not submitted in the designated manner or format as required in the Solicitation Document.

(2) Receipt of Bids or Proposals. It is the Bidder’s or Proposer’s responsibility to ensure that Bids or Proposals are received by the Institution at the required delivery point, prior to the Closing as indicated in the Solicitation Document, regardless of the method used to submit or transmit the Bid or Proposal.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08

580-061-0085

Pre-Bid and Pre-Proposal Conferences

(1) Pre-Bid or pre-Proposal conferences may be scheduled. Each pre-Bid or pre-Proposal conference will be described in the Solicitation Document as “voluntary” or “mandatory.” If such a conference is designated as “mandatory,” a Bidder or Proposer must attend in order to submit a Bid or Proposal.

(2) If the Bidder or Proposer is an individual, the Bidder or Proposer may authorize a representative other than himself/herself to attend the pre-Bid or pre-Proposal conference.

(3) Statements made by Institutional representatives at the pre-Bid or pre-Proposal conference will not be binding unless a Written Addendum to the Solicitation Document is issued.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08

580-061-0090

Bid or Proposal Security

(1) The Institution may require in the Solicitation Document submission of a Bid or Proposal security. Security includes, but is not limited to, a surety bond from a surety company authorized to do business in the state of Oregon, cashier’s check, certified check, or savings and loan secured check.

(2) The Bid or Proposal security of all unsuccessful Bidders or Proposers will be returned or released after a Contract has been executed and a performance bond provided (if such a bond is required), or after all Bids or Proposals have been rejected.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08

580-061-0095

Addenda to Solicitation Document

(1) The Institution may change a Solicitation Document by Written Addenda. Institutions will make reasonable efforts to notify potential Bidders or Proposers of such Written Addenda by methods that may include, but are not limited to, publication of the Written Addenda on the OUS procurement website or requiring submission of a notice of interest by potential Bidders or Proposers to receive Addenda.

(2) The Institution will issue the Written Addenda within a reasonable time prior to Closing to allow prospective Bidders or Proposers to consider the Addenda in preparing their Bids or Proposals. The Institution may extend the Closing if it determines prospective Bidders or Proposers need additional time to review and respond to Addenda.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08

580-061-0100

Clarification of Solicitation Document and Requests for Change

Unless a different deadline is specified in the Solicitation Document, requests for clarification or change of the Solicitation Document must be received by the Institution in writing at least ten (10) days prior to the Closing.

(1) Such request for clarification or change will include the reasons for the clarification or change, and any proposed changes to Specifications or provisions.

(2) The Institution will consider all requests for clarification or change and, if appropriate, amend the Solicitation Document by issuing Addenda.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08

580-061-0105

Pre-Closing Modifications or Withdrawal of Bids or Proposals

(1) Modifications. A Bidder or Proposer may modify its Bid or Proposal in Writing prior to the Closing. Any modification must include a statement that the modification amends and supersedes the prior Bid or Proposal.

(2) Withdrawals. A Bidder or Proposer may withdraw its Bid or Proposal by Written notice submitted on the Bidder or Proposer’s letterhead, signed by an authorized representative of the Bidder or Proposer, delivered to the individual and 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 Bidder or Proposer, or authorized representative of the Bidder or Proposer, may also withdraw its Bid or Proposal in person prior to the Closing, upon presentation of appropriate identification and evidence of authority satisfactory to the Institution.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08

580-061-0110

Receipt, Opening, and Recording of Bids and Proposals

(1) Receipt. An Institution will electronically or mechanically time-stamp or hand-mark each Bid or Proposal and any modification upon receipt. Except as provided in OAR 580-061-0075(2) the Institution will not open the Bid or Proposal or modification, but will store it in a secure place until Opening. If the Institution inadvertently opens a Bid or Proposal or a modification prior to the Opening, the Institution will reseal and store the opened Bid or Proposal or modification until the Opening. The Institution will document the resealing for the solicitation file (e.g., “Institution inadvertently opened the Bid/Proposal due to improper identification of the Bid/Proposal.”).

(2) Opening and Recording. An Institution will publicly open Bids or Proposals including any modifications made to the Bid or Proposal. Unless otherwise specified in the Solicitation Document, the name of the Entity submitting a Bid or Proposal will be the only information that may be made public until notice of the intent to Award or an Award has been issued.

Stat. Auth.: ORS 351

Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008,
f. & cert. ef. 7-21-08

580-061-0115

Late Bids and Proposals, Late Withdrawals, and Late Modifications

Any Bid or Proposal, modification, or withdrawal received after the Closing is late. An Institution will not consider late Bids, Proposals, modifications, or withdrawals except as permitted in OAR 580-061-0120.

Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008,
f. & cert. ef. 7-21-08

580-061-0120

Mistakes

(1) Generally. To protect the integrity of the Competitive Process and to assure fair treatment of Bidders and Proposers, 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 a Bidder or Proposer to correct or withdraw a Bid or Proposal for an error in judgment. If the Institution discovers certain mistakes in a Bid or Proposal after Opening, but before award of the Contract, the Institution may take the following action:

(a) An Institution, in its sole discretion, may waive or permit a Bidder or Proposer to correct a minor informality. A minor informality is a matter of form rather than substance that is evident on the face of the Bid or Proposal or an insignificant mistake that can be waived or corrected without prejudice to other Bidders or Proposers. Examples of minor informalities include a Bidder's or Proposer's failure to:

(A) Return the correct number of Signed Bids or Proposals or the correct number of other documents required by the Solicitation Document; or

(B) Sign the Bid or Proposal in the designated block, provided a Signature appears elsewhere in the Bid or Proposal, evidencing an intent to be bound; or

(C) Acknowledge receipt of an Addendum to the Solicitation Document, provided it is clear on the face of the Bid or Proposal that the Bidder or Proposer received the Addendum and intended to be bound by its terms, or the Addendum involved did not affect price, quality, or delivery.

(b) An Institution may correct a clerical error if the error is evident on the face of the Bid or Proposal or other documents submitted with the Bid or Proposal and the Bidder or Proposer confirms the Institution's correction in Writing. A clerical error is a Bidder's or Proposer's error in transcribing its Bid or Proposal. Examples include, but are not limited to, typographical mistakes, errors in extending unit prices, transposition errors, and arithmetical errors, instances in which the intended correct unit or amount is evident by simple arithmetic calculations. In the event of a discrepancy, unit prices will prevail over extended prices.

(c) An Institution may permit a Bidder or Proposer to withdraw a Bid or Proposal after Closing based on one or more clerical errors in the Bid or Proposal only if the Bidder or Proposer 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 under subsection (b) of this subsection;

(D) That the Bidder or Proposer acted in good faith in submitting a Bid or Proposal that contained the claimed error and in claiming that the alleged error in the Bid or Proposal exists;

(E) That the Bidder or Proposer acted without gross negligence in submitting a Bid or Proposal that contained a claimed error;

(F) That the Bidder or Proposer will suffer substantial detriment if the Institution does not grant it permission to withdraw the Bid or Proposal;

(G) That the Institution's or the public's status has not changed so significantly that withdrawal of the Bid or Proposal will work a substantial hardship on the Institution or the public it represents; and

(H) That the Bidder or Proposer promptly gave notice of the claimed error to the Institution.

(d) The criteria in subsection (2)(a) of this rule will determine whether an Institution will permit a Bidder or Proposer to withdraw its Bid or Proposal after Closing. These criteria also will apply to the question whether an Institution will permit a Bidder or Proposer to withdraw its Bid or Proposal 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 Bidder's or Proposer's Bid or Proposal 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 Bidder or Proposer in which a mistake is evident on the face of the Bid or Proposal and the intended correct Bid or Proposal is not evident or cannot be substantiated from documents submitted with the Bid or Proposal.

Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008,
f. & cert. ef. 7-21-08

580-061-0125

Low Tie Bids

(1) Definition. Low Tie Bids are low tied Responsive Bids from Responsible Bidders that are identical in price, fitness, availability, and quality and that meet all the requirements and criteria set forth in the Solicitation Document.

(2) Award. In the event of a Low Tie Bid, the Institution will award the Contract based on the following order of precedence:

(a) An Emerging Small Business that meets the definition in ORS 200.005(3) and that maintains a current certification issued by the Oregon Department of Consumer and Business Services;

(b) An Entity whose principal offices or headquarters are located in Oregon;

(c) If neither subsection (a) or (b) apply, award of the Contract will be made by drawing lots.

Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008,
f. & cert. ef. 7-21-08

580-061-0130

Rejection of Individual Bids or Proposals and Bidders or Proposers

(1) An Institution may reject, in whole or in part, any Bid or Proposal not in compliance with all prescribed Bid or Proposal procedures, Contract provisions, and Specifications contained in the Solicitation Document or upon a Written finding by the Institution that it is in the public interest to do so.

(2) Reasons for rejection. An Institution may reject a Bid or Proposal upon the Institution's findings that include, but are not limited to, the Bid or Proposal:

(a) Is contingent upon the Institution's acceptance of terms and conditions that differ from the Solicitation Document; or

(b) Takes exception to the terms and conditions (including Specifications) set forth in the Solicitation Document; 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 goods or services that fail to meet the Specifications of the Solicitation Document; or

(e) Is late; or

(f) Is not in substantial compliance with the Solicitation Document; or

(g) Is not in substantial compliance with all prescribed solicitation procedures; or

(h) Does not include the Bid or Proposal security as required by the Solicitation Document; or

(i) Does not include an executed certification of non-discrimination in compliance with 580-061-00305 and compliance with Oregon tax laws.

(3) An Institution may reject a Bidder or Proposer upon the Institution's findings that include, but are not limited to, the Bidder or Proposer:

- (a) Has not met any required mandatory prequalification;
- (b) Has been disqualified pursuant to OAR 137-046-0210(3) (Disadvantaged Business Enterprise Disqualification);
- (c) Has not met the requirements of the Emerging Small Business Program created in OAR 580-061-0035, if required in the Solicitation Document.

(d) That has been debarred in accordance with ORS 279B130 or 279C.440;

(e) Has been declared ineligible by the Commissioner of Bureau of Labor and Industries under ORS 279C.860;

(f) Has within the last five years 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;

(g) Is non-Responsible. Bidders or Proposers 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 Bidder or Proposer meets the applicable standards of Responsibility. To be a Responsible Bidder or Proposer, the Institution may consider:

(A) If the Bidder or Proposer has appropriate financial, material, equipment, facility, and personnel resources and expertise, or ability to obtain the resources and expertise, necessary to indicate the capability of the Bidder or Proposer to meet all contractual responsibilities;

(B) If the Bidder or Proposer has a satisfactory record of contract performance. The Institution may consider both private and public contracts in determining responsible performance under a contract;

(C) If the Bidder or Proposer has a satisfactory record of integrity. A Bidder or Proposer may lack integrity if an Institution determines the Bidder or Proposer demonstrates a lack of business ethics such as violation of state environmental laws or false certifications made to a state agency. An Institution may find a Bidder or Proposer non-Responsible based on the lack of integrity of any person having influence or control over the Bidder or Proposer (such as a key employee of the Bidder or Proposer that has the authority to significantly influence the Bidder's or Proposer's performance of the Contract or a parent company, predecessor or successor person);

(D) If the Bidder or Proposer is qualified legally to Contract with the Institution;

(E) If the Bidder or Proposer has supplied all necessary information in connection with the inquiry concerning Responsibility. If the Bidder or Proposer fails to promptly supply information requested by the Institution concerning responsibility, the Institution may base the determination of responsibility upon any available information or may find the Bidder or Proposer non-Responsible.

(4) Form of Business Entity. For purposes of this rule, the Institution may investigate any Entity submitting a Bid or Proposal. The investigation may include the Entity's officers, directors, owners, affiliates, or any other person acquiring ownership of the Entity to determine application of this rule.

(5)(a) Notice. If a Bidder or Proposer or a Bid or Proposal is rejected in accordance with this rule, the Institution will provide written notice of such rejection to the Bidder or Proposer. The notice will include the grounds for rejection and a statement of the Bidder's or Proposer's appeal rights and applicable appeal deadlines.

(b) If a Bidder or Proposer wishes to appeal the decision to reject the Bidder or Proposer or Bid or Proposal, the Bidder or Proposer must notify the Institution, in Writing, within three Days after receipt of the notification.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08

580-061-0135

Rejection of All Bids or Proposals

(1) Rejection. An Institution may reject all Bids or Proposals for good cause upon a Written finding that it is in the public interest to do so. Notification of rejection of all Bids or Proposals, along with the good cause justification and finding of public interest, will be sent to all who submitted a Bid or Proposal.

(2) Criteria. The Institution may reject all Bids or Proposals based upon the following criteria:

(a) The content of or an error in the Solicitation Document or the procurement process unnecessarily restricted competition for the Contract;

(b) The price is too costly or the quality, or performance presented by the Bidders or Proposers is insufficient to justify acceptance of any Bid or Proposal;

(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 Process. These causes may include, without limitation, 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) Any other circumstance indicating that Awarding the Contract would not be in the public interest.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08

580-061-0140

Disposition of Bids or Proposals if Solicitation Cancelled

(1) Prior to Bid or Proposal Opening. When a solicitation is cancelled prior to Opening, all Bids or Proposals received will be returned to Bidders or Proposers unopened if submitted in a hard copy format with a clearly visible return address. If there is no return address on the envelope, the Bid or Proposal will be opened to determine the source and then returned to the sender.

(2) After Bid or Proposal Opening. When all Bids or Proposals are rejected, the Bids or Proposals received will be retained and become part of the Institution's permanent solicitation file.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08

580-061-0145

Protest of Contractor Selection, Contract Award, and Protest of Solicitation Document

(1) The purpose of this rule is to require adversely affected or aggrieved Bidders or Proposers on an Institution solicitation to exhaust all avenues of administrative review and relief before seeking judicial review of the Institution's selection or Award decision.

(2) Types of Protests. The following matters may be protested:

(a) A determination of responsibility or lack thereof;

(b) A determination of responsiveness or lack thereof;

(c) The rejection of a Bid or Proposal, unless notice of rejection has been previously provided under OAR 580-061-0130(5);

(d) The content of a Solicitation Document;

(e) The selection of one or more Contractors. A protest may be submitted only by an Entity that can demonstrate that it has been or is being adversely affected by an Institution decision or the content of a Solicitation Document.

(3) Delivery. Unless otherwise specified in the Solicitation Document, a Bidder or Proposer must deliver a Written protest to the Institution within seven (7) Days after the Award of a Contract or issuance of the notice of intent to Award the Contract, whichever occurs first. Protests must be clearly marked on the outside of the envelope with the title or the number of the Bid or Proposal and that it is a protest to ensure that it is recognized and recorded.

(4) Content of Protest. A Bidder's or Proposer's protest must fully specify the grounds for the protest and include all evidence that the protestor wishes the Vice Chancellor for Finance and Administration, Institution Vice President for Finance and Administration, or designee to consider. Failure to include any ground for the protest or any evidence in support of it will constitute a final, knowing, and voluntary waiver of the right to assert such ground or evidence. A protest must include a conspicuous marking identifying the type and nature of the protest.

(5) A protest of a Solicitation Document may be made only if a term or condition of the Solicitation Document, including, but not limited to, Specifications or Contract terms violates applicable law. The Institution will (upon altering the Solicitation Document in response to a protest) promptly transmit the revised Solicitation Document to

all Bidders and Proposers and extend the Closing where appropriate. The Institution may choose, in its sole discretion, to close the procurement process without making an Award and begin a new procurement process.

(6) A protest of the selection of one or more Contractors requires the protestor to demonstrate, as applicable;

(a) That all higher-ranked Bidders or Proposers were ineligible for selection or that the protestor would have been "next in line" to receive the Award and was eligible for selection; and

(b) That the Bidder or Proposer selected was ineligible.

(c) In the case of a sole source procurement, that the Single Seller selected is not the only Contractor or consultant reasonably available to provide the personal or professional services, goods, services, Professional Consultant services as defined in OAR 580-061-0010, Construction-Related Services as defined in OAR 580-061-0010, or combination of Professional Consultant services and Construction-Related Services.

(7) A protest of the rejection of a Bid or Proposal must demonstrate that the Institution's decision was materially in error or that the Institution committed a material procedural error and that any such error, alone or in combination with other errors, was a "but for" cause of the rejection.

(8) Response. The Vice Chancellor for Finance and Administration or the Institution Vice President for Finance and Administration, or their designee, will have the authority to settle or resolve a Written protest. A protest received after the time set out in the Solicitation Document will not be considered. The Vice Chancellor for Finance and Administration, or Vice President for Finance and Administration, or designee will issue a Written final agency order of the protest in a timely manner. If the protest is upheld, in whole or in part, the Institution may, in its sole discretion, either Award the Contract to the successful protestor or cancel the procurement or solicitation. Contract Award may be made prior to issuance of the final agency order if authorized by the Vice Chancellor for Finance and Administration, Vice President for Finance and Administration, or their designee.

(9) Judicial Review. Judicial review of the Institution's decision relating to a Contract Award protest will be available pursuant to the provisions of ORS 183.480 et seq.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 7-2008(Temp), f. & cert. ef. 6-5-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08

580-061-0150

Right to Inspect Plant

The Institution may, at reasonable times, inspect the part of the plant or place of business of a Contractor or any subcontractor that is related to the performance of any prospective Contract or Awarded Contract.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08

580-061-0155

Negotiations

(1) The Institution may negotiate with the lowest-cost Bidders after determining that the Bids are Responsive and from Responsive Bidders.

(2) The Institution may, if it has given notice in the Solicitation Document, commence negotiations in accordance with sections (3) and (4) of this rule with Proposers in the competitive range. For purposes of this rule "competitive range" means the highest-ranked Proposers based on evaluating all Responsive Proposals in accordance with the evaluation criteria set forth in the Solicitation Document.

(3) If the Institution chooses to enter into discussions with and receive best and final Proposals, the Institution will proceed as follows:

(a) The Institution will initiate oral or written discussions with all Proposers submitting Responsive Proposals or all Proposers in the competitive range regarding their Proposals with respect to the provisions of the Solicitation Document that the Institution identified in the Solicitation Document as the subject of discussions.

(b) The Institution may conduct discussions with each eligible Proposer necessary to fulfill the purposes of this section (3), but need not conduct the same amount of discussions with each eligible Pro-

poser. The Institution may terminate discussions with any eligible Proposer at any time. However, the Institution will offer all eligible Proposers the same opportunity to discuss their Proposals with the Institution before the Institution notifies eligible Proposers of the date and time pursuant to subsection (d) that best and final Proposals will be due.

(c) The Institution may adjust the evaluation of a Proposal as a result of a discussion under this section. The conditions, terms, or price of the Proposal may be altered or otherwise changed during the course of the discussions provided the changes are within the scope of the Solicitation Document.

(d) If best and final Proposals are required, the Institution will establish a common date and time by which Proposers must submit best and final Proposals. Best and final Proposals will be submitted only once, provided, however, the Institution may make a written determination that it is in the Institution's best interest to conduct additional discussions, negotiations, or change the Institution's requirements and require another submission of best and final Proposals. The Institution will evaluate Proposals as modified.

(4) Negotiations.

(a) The Institution may commence serial negotiations with the highest-ranked eligible Proposer or commence simultaneous negotiations with all eligible Proposers.

(b) The Institution may negotiate:

(A) The statement of Work;

(B) The Contract Price as it is affected by negotiating the statement of Work; and

(C) Any other terms and conditions reasonably related to those expressly authorized for negotiation in the Solicitation Document. Accordingly, Proposers will not submit and the Institution will not accept for negotiation, any alternative terms and conditions that are not reasonably related to those expressly authorized for negotiation in the Solicitation Document.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08

580-061-0160

Disqualification from Consideration for Award of Contracts

(1) An Institution may disqualify an Entity from consideration for award of Institution Contracts for the reasons listed in subsection (2) of this section after providing the Entity with notice and a reasonable opportunity to be heard.

(a) All OUS Institutions may rely upon a disqualification of an Entity by another Institution. The Chancellor's Office will maintain a current roster for Entities that have been disqualified.

(b) In lieu of the disqualification process described in this rule, an Institution contracting for a Public Improvement may petition the Construction Contractors Board to disqualify an Entity from consideration for award of the Institution's Public Improvement Contracts for the reasons listed in subsection (2) of this rule.

(2) An Entity may be disqualified from consideration for Award of a Contract for any of the following reasons:

(a) A primary employee of the Entity has been convicted of a criminal offense as an incident of obtaining or attempting to obtain a public or private contract or subcontract or in the performance of such contract or subcontract;

(b) A primary employee of the Entity has been convicted 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 person's responsibility for the Entity;

(c) A primary employee of the Entity has been convicted under state or federal antitrust statutes;

(d) A primary employee of the Entity has committed a violation of a contract provision that is regarded by an Institution or the Construction Contractors Board to be so serious as to justify disqualification. A violation may include, but is not limited to, a failure to perform the terms of a contract or an unsatisfactory performance in accordance with the terms of the contract. However, a failure to perform or an unsatisfactory performance caused by acts beyond the control of the Entity may not be considered to be a basis for disqualification;

(e) The Entity does not carry workers' compensation or unemployment insurance as required by statute.

(3) An Institution will issue a Written decision to disqualify an Entity under this section. The decision will:

(a) State the reasons for the action taken; and

(b) Inform the disqualified Entity of the appeal rights of the Entity under ORS 279C.445 and 279C.450.

(4) A copy of the decision issued under subsection (3) of this section must be mailed or otherwise furnished immediately to the disqualified Entity.

(5) Appeal of Disqualification. An Entity who wishes to appeal disqualification will, within three (3) business days after receipt of notice of disqualification, notify the Institution in Writing that the Entity appeals the disqualification. Immediately upon receipt of the notice of appeal, the Institution will notify the Director of the Oregon Department of Administrative Services, or designee.

(6) The Oregon Department of Administrative Services will conduct the appeal in accordance with ORS 279C.450.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08

DIVISION 62

PURCHASING AND CONTRACTS FOR PERSONAL OR PROFESSIONAL SERVICES AND GOODS AND SERVICES

580-062-0000

Definitions

All capitalized terms in chapter 580, division 62 have the meanings set forth in OAR 580-061-0010 unless the context requires otherwise or except as stated.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08

580-062-0005

Procurement and Contracting Procedures

The procedures set out in OAR 580-061-0000 through 580-061-0160 will be used for the procurement of personal or professional services or goods and services.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08

580-062-0010

Procurement Card

The Chancellor's Office may maintain procurement card services for the benefit of the Institutions. The Controller's Office of the Chancellor's Office will publish policies governing use of the procurement card.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08

580-062-0015

Personal/Professional Services, Goods, and Services Contract Procurement Thresholds

(1) When procuring personal or professional services, goods, or services, not including services from Professional Consultants as defined in chapter 580, division 63, Institutions will conduct the procurement in accordance with the Direct Procurement, Informal Procurement, or Formal Procurement method, unless another method is applicable, based on the anticipated contract price, including consultant fees, reimbursable expenses, and all amendments contemplated by the parties. Multiple Contracts, purchase orders, or purchasing requisitions will not be issued separately with the intent to circumvent these rules.

(a) \$25,000 or less — Direct Procurement or other method of procurement that the Institution deems beneficial to the procurement.

(b) \$25,000.01 to \$100,000 — Informal Procurement, Formal Procurement, or other method of procurement, except the Direct Pro-

curement method, that the Institution deems beneficial to the procurement.

(c) Greater than \$100,000 — Formal Procurement or other method of procurement, except the Direct Procurement or Informal Procurement methods, that the Institution deems beneficial to the procurement.

(2) Notwithstanding subsection (1), if the source of the funding for the procurement requires a different procurement method, the Institution may comply with the procurement method required by the funding source.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08

580-062-0020

Methods of Procurement

Institutions will use the following methods of procurement when procuring personal or professional services or goods and services.

(1) Direct Procurement. A process where the Institution negotiates directly with a single Entity to provide personal or professional services or goods and services.

(2) Informal Procurement. A Competitive Process where the Institution posts an advertisement of the opportunity on the OUS procurement website for a reasonable time necessary to obtain at least three Bids or Proposals. The Institution may also directly contact prospective Bidders or Proposers. If the notice has been posted for a reasonable time period and fewer than three Bids or Proposals have been submitted, the Institution may enter into a Contract with a Responsible Bidder or Proposer based on the Specifications contained in the Solicitation Document.

(3) Formal Procurement. A Competitive Process where the Institution:

(a) Creates a Solicitation Document that contains the procurement procedures and necessary Specifications.

(b) Publishes a notice of the procurement on the OUS procurement website and, if beneficial to the procurement, in a trade periodical, newspaper of general circulation, or other minority, women, and emerging small business targeted periodicals, Institution website, or other medium for advertising. The notice must specify when and where the Solicitation Document may be obtained and the Closing Date/Time. The notice must be published for a duration reasonable under the circumstances for the procurement.

(c) Conducts the procurement in accordance with chapter 580, division 61, section 0000 through 0160.

(4) Emergency Procurement. The Institution President, Chancellor, or designee may declare an Emergency when such a declaration is deemed appropriate. The reasons for the declaration will be documented and will include justifications for the procedure used to select the Entity for a Contract within the scope of the Emergency declaration. After the Institution President, Chancellor, or designee has declared an Emergency, the Institution may negotiate a Contract with any qualified Entity for services included in the scope of the Emergency. The Institution will maintain appropriate records of negotiations carried out as part of the contracting process.

(5) Retainer. Institutions may conduct a Formal Procurement to enter into Retainer Contracts with multiple Entities to provide personal or professional services or goods and services at contracted rates of compensation or based on pre-qualifications.

(6) Alternative Processes. Notwithstanding the foregoing procedures, the Institution Contract Officer may authorize alternative procurement methods that provide a Competitive Process to two or more Entities to contract with the Institution and meet the following objectives:

(a) Responds to innovative business and market methods; or
(b) Contributes to Institution productivity improvement and process redesign; or

(c) Results in comprehensive cost-effectiveness and productivity for the Institution.

(7) Exempt. Institutions need not follow, regardless of value, a Competitive Process when seeking or acquiring or paying for the following goods and services:

(a) Educational services.

(b) Advertising and media services, excluding consulting services.

(c) Price-regulated goods and services, including utilities, where the rate or price for the goods or services being purchased is established by federal, state, or local regulatory authority.

(d) Goods or services 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, Institutions may purchase the goods and services in accordance with the federal contract. In addition, Institutions may purchase specific equipment that is only available from one source or use specific Entities that are expressly required under the terms of the contract.

(e) Copyrighted materials. Copyrighted materials covered by this exemption may include, but are not limited to, textbooks, workbooks, curriculum kits, reference materials, software, periodicals, library books, library materials, and audio, visual, and electronic media.

(f) Investment contracts and retirement plan services, excluding consulting services.

(g) Food and food-related products.

(h) Maintenance services directly from the contractor providing the goods.

(i) Used personal property.

(j) Goods purchased for resale to outside entities.

(k) Goods or services related to intercollegiate athletic programs.

(l) Cadavers or cadaveric organs.

(m) Hotel sites for large conferences and workshops.

(n) Dues, registrations, and membership fees.

(o) Gasoline, diesel fuel, heating oil, lubricants, natural gas, electricity, and similar commodities and products and the transportation thereof.

(p) Supplies, maintenance, and services for ocean-going vessels when they are in other than home port.

(q) Repair and overhaul of goods or equipment.

(r) Goods or services purchased in foreign countries.

(s) Insurance and service contracts as provided for under ORS 414.115, 414.125, 414.135, and 414.145 for purposes of source selection.

(t) Grants, including Grant applications and proposals.

(u) Contracts for professional or expert witnesses or consultants to provide services or testimony relating to existing or potential litigation or legal matters in which an Institution is or may become interested.

(v) Contracts entered into, issued, or established in connection with:

(A) The incurring of debt by an Institution, including but not limited to the issuance of bonds, certificates of participation, and other debt repayment obligations, and any associated Contracts, regardless of whether the obligations that the Contracts establish are general, special, or limited;

(B) The making of program loans and similar extensions or advances of funds, aid, or assistance by an Institution to a public or private body for the purpose of carrying out, promoting, or sustaining activities or programs authorized by law; or

(C) The investment of funds by an Institution as authorized by law and other financial transactions of an Institution that by their character cannot practically be established under the Competitive Process.

(w) Contracts for employee benefit plans as authorized by law.

(x) Services provided by those in the medical community including, but not limited to, doctors, physicians, psychologists, nurses, veterinarians, and those with specific license to administer treatments for the health and well-being of people or animals.

(y) Artists, performers, photographers, graphic designers, web-site design, and speakers.

(z) Sponsorship agreements for Institution events or facilities.

(8) Sole Source. A process where the Institutional President, the Chancellor or designee has made a Written determination that due to special needs or qualifications, only a Single Seller is reasonably available to provide such personal or professional services or goods or services. Sole source procurement will be avoided except when no reasonably available alternative source exists.

(a) Each Institution will provide public notice of its determination that the person or professional services or goods or services are only available from a Single Seller. Public notice may be provided on the OUS procurement website. The public notice will describe the personal or professional services or goods or services to be acquired from the Single Seller, identify the prospective Contractor, and include the

date, time and place that protests are due. The Institution shall give Entities at least seven (7) Days from the date of notice publication to protest the sole source determination.

(b) An Entity may protest the Institution's determination that the personal or professional services or goods or services are available from a Single Seller in accordance with OAR 580-061-0145.

(c) On an annual basis, Institution Presidents, or their designees will submit a report to the Finance and Administration Committee of the Board summarizing approved sole source procurements for the Institution for the prior fiscal year. The report will be made available for public inspection.

(9) Special Entity. Institutions may enter into Contracts without using a Competitive Process when the contracting Entity is a federal, state, or local governmental agency, or a state Qualified Rehabilitation Facility certified by the Oregon Department of Human Services or the Oregon State Procurement Office. Institutions may participate in cooperative procurements with other contracting agencies if it is determined, in Writing, that the solicitation and award process for the Contract is reasonably equivalent to the respective process established in these rules and that the solicitation was advertised in Oregon.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08; OUS 6-2011(Temp), f. & cert. ef. 11-10-11 thru 5-7-12

DIVISION 63

CAPITAL CONSTRUCTION AND CONTRACTING

580-063-0000

Authority

These rules establish the procedures that will be followed by the Institutions to erect, improve, repair, maintain, equip, and furnish buildings and structures under the control of the Board.

Stat. Auth.: ORS 351.060

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08

580-063-0005

Authorization to Undertake Capital Construction Projects

Before an Institution contracts for Capital Construction on land owned or controlled by the Board, or prepares other than conceptual plans or preconstruction design, the Institution will obtain approval as set out in this rule, regardless of the source of funds or method by which the project is to be financed. To obtain approval, the Institution will describe the project, the financing plan for design and construction, and the operation and maintenance cost of the proposed project.

(1) If appropriate Systemwide limitation exists for a Capital Construction project that totals \$500,000 or more but less than \$5 million, inclusive of all fund sources, the Chancellor or designee may approve the allocation of the existing expenditure authority to the Institution.

(2) Any Capital Construction project that does not meet the criteria in subsection (1) of this section shall be approved by the Finance and Administration Committee of the Board and submitted to the Legislature.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08; OUS 7-2011(Temp), f. & cert. ef. 11-10-11 thru 5-7-12

580-063-0010

Definitions

All capitalized terms in chapter 580, division 63, have the meanings set forth in OAR 580-061-0010 unless set forth below, or unless the context requires otherwise or except as stated.

(1) "Construction-Related Services" means one or more related services, which includes, but is not limited to: finance, design, preconstruction, and construction services. The project delivery methods that use Construction-Related Services include, but are not limited to: conventional construction services, design-build, construction manager at risk, agency construction management, and performance contracting.

(2) "Professional Consultant" means architects, engineers, planners, land surveyors, appraisers, construction managers, and similar professional consultants.

(3) “Capital Construction” means any construction or facility improvement that costs \$500,000 or more and is not considered maintenance or repair.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 7-2008(Temp), f. & cert. ef. 6-5-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08

580-063-0015

Procurement and Contracting Procedures

The procedures set out in OAR 580-061-0000 through 580-061-0160 will be used for the procurement of Construction-Related Services and Professional Consultants.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08

580-063-0020

Methods of Procurement

Institutions will use the following methods of procurement when procuring Professional Consultant services, Construction-Related Services, or a combination of Professional Consultant services and Construction-Related Services.

(1) Direct Procurement. A process where the Institution negotiates directly with a single Entity to provide Professional Consultant services, Construction-Related Services, or a combination of Professional Consultant services and Construction-Related Services.

(2) Informal Procurement. A competitive process where the Institution posts an advertisement of the opportunity on the OUS procurement website for a reasonable time necessary to obtain at least three Bids or Proposals. The Institution may also directly contact prospective Bidders or Proposers. If the notice has been posted for a reasonable time period and fewer than three Bids or Proposals have been submitted, the Institution may enter into a Contract with a Responsible Bidder or Proposer based on the Specifications contained in the Solicitation Document.

(3) Formal Procurement. A Competitive Process where the Institution:

(a) Creates a Solicitation Document that contains the procurement procedures and necessary Specifications.

(b) Publishes a notice of the procurement on the OUS procurement website and, if beneficial to the procurement, in a trade periodical, newspaper of general circulation, or other minority, women, and emerging small business targeted periodicals, institutional website, or other medium for advertising. The notice must specify when and where the Solicitation Document may be obtained and the Closing Date/Time. The notice must be published for a duration reasonable under the circumstances for the procurement.

(c) Conducts the procurement in accordance with chapter 580, division 61, section 0000 through 0160.

(4) Emergency Procurement. The Institution President, Chancellor, or designee may declare an Emergency when such a declaration is deemed appropriate. The reasons for the declaration will be documented and will include justifications for the procedure used to select the Contractor or Professional Consultant for a Contract or Public Improvement Contract within the scope of the Emergency declaration. After the Institution President, Chancellor, or designee has declared an Emergency, the Institution may negotiate a Contract or Public Improvement Contract with any qualified Entity or Professional Consultant for services included in the scope of the Emergency declaration. The Institution will maintain appropriate records of negotiations carried out as part of the contracting process.

(5) OUS Retainer Contract Program.

(a) The OUS Capital Construction and Planning Office will maintain Retainer Contracts for Professional Consultants, Construction-Related Services, and any other service that may from time to time benefit Institutions. The Retainer Contracts will be established in accordance with this subsection.

(A) Periodically, but no less often than every two years, the OUS Capital Construction and Planning Office will invite interested Contractors to submit business information that meets minimum qualifications as described in a Solicitation Document. Contractors that meet the minimum qualifications and have not been disbarred or disqualified by an agency of the State of Oregon as outlined in OAR 580-061-

0160, may be offered a Retainer Contract to be listed on the respective retainer program to provide services in a non-exclusive and on an as-needed basis.

(B) Notice of the procurement will be published on the OUS procurement website and, if beneficial to the procurement, in a trade periodical, newspaper of general circulation, or other minority, women, and emerging small business targeted periodicals, Institution website, or other medium for advertisement.

(b) The OUS Capital Construction and Planning Office may enter into interagency agreements to permit other public agencies to utilize the services offered by Entities that have entered into Retainer Contracts if the public agency agrees to conditions, including but not limited to:

(A) Follow the procurement processes established in these rules.

(B) Use the contract templates associated with each retainer program.

(C) Any service procured will be the sole financial responsibility of the public agency.

(D) The public agency will be solely liable to resolve all disputes that may arise from breach of contract.

(E) The OUS Capital Construction, Planning, and Budget Office may impose a reasonable administrative fee on the public agency using the Retainer Contracts based on the compensation for services procured to recover administrative costs, legal review fees, and to improve or expand retainer programs.

(c) The OUS Capital Construction, Planning, and Budget Office will maintain an electronic roster of all Professional Consultants and Contractors who have entered into Retainer Contracts. Institutions that utilize retainer programs will follow the procedures established in these rules and will only execute contracts from templates that have been approved for each respective retainer program.

(6) Sole Source. A process where the Institution President, the Chancellor or designee has made a Written determination that due to special needs, experience, or qualifications, only a Single Seller is reasonably available to provide certain Professional Consultant services, Construction-Related Services, or a combination of Professional Consultant services and Construction-Related Services. Sole source procurement will be avoided except when no reasonably available alternative source exists.

(a) Authority. Institutions may authorize sole source procurements up to \$1,000,000 cumulative for all Institution projects throughout a fiscal year. The Chancellor or designee may authorize sole source procurements up to \$5,000,000 cumulative for each Institution's projects throughout a fiscal year. The Finance and Administration Committee of the Board will approve all other sole source procurements.

(b) Each Institution will provide public notice of its determination that the Professional Consultant services, Construction-Related Services, or combination of Professional Consultant services and Construction-Related Services are only available from a Single Seller. Public notice may be provided on the OUS procurement website. The public notice will describe the Professional Consultant services, Construction-Related Services, or combination of Professional Consultant services and Construction-Related Services to be acquired from the Single Seller, identify the prospective Professional Consultant or Contractor, and include the date, time and place that protests are due. The Institution shall give Entities at least seven (7) Days from the date of notice publication to protest the sole source determination.

(c) On an annual basis, Institution Presidents, or their designees will submit a report to the Finance and Administration Committee of the Board summarizing approved sole source procurements for the Institution for the prior fiscal year. The report will be made available for public inspection.

(7)(a) Special Procurement.

(b) A special procurement is an exemption from competitive procedures that the Finance and Administration Committee of the Board determines is appropriate because it:

(A) Is reasonably expected to result in substantial cost savings to the Institution or to the public; or

(B) Otherwise substantially promotes the public interest in a manner that could not practicably be realized by complying with others processes described in this rule.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 7-2008(Temp), f. & cert. ef. 6-5-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08; OUS 7-2011(Temp), f. & cert. ef. 11-10-11 thru 5-7-12

580-063-0025

Contracts for Professional Consultants

Institutions will use one of the following two procedures when contracting for Professional Consultant services:

(1) OUS Capital Construction Retainer Program for Professional Consultants.

(a) For Professional Consultant service contracts where the anticipated Contract Price, including consultant fees, reimbursable expenses, and all amendments contemplated by the parties is \$100,000 or less, the Institution may select a Professional Consultant that has entered into a Retainer Contract.

(b) For Professional Consultant service contracts where the anticipated Contract Price, including consultant fees, reimbursable expenses, and all amendments contemplated by the parties is \$100,000.01 to \$250,000, the Institution must select at least three Professional Consultants who have entered into Retainer Contracts to provide proposals for the service. Selection of a Professional Consultant from submitted proposals will be based on the criteria set forth in the Solicitation Document. In the event that fewer than three Professional Consultants are on the retainer that can provide the required service, the Institution may proceed with fewer than three Bids or Proposals.

(c) For Professional Consultant service contracts where the anticipated Contract Price, including consultant fees, reimbursable expenses, and all amendments contemplated by the parties is \$250,000.01 to \$1,000,000, the Institution will post an advertisement of the opportunity on the OUS procurement website. All eligible Professional Consultants that have entered into Retainer Contracts will have an opportunity to submit a proposal in response to the opportunity. Selection of a Professional Consultant from submitted proposals will be based on the criteria set forth in the Solicitation Document.

(2) Standard Procurement. Except in cases of Emergency, Special Procurement, or when only a Single Seller is reasonably available, when procuring Professional Consultant services, Institutions will conduct the procurement in accordance with the Direct Procurement, Informal Procurement, or Formal Procurement method, unless another method is applicable, based on the anticipated Contract Price, including consultant fees, reimbursable expenses, and all amendments contemplated by the parties. Multiple Contracts, purchase orders, or purchasing requisitions will not be issued separately with the intent to circumvent these rules.

(a) \$25,000 or less — Direct Procurement or other method of procurement that the Institution deems beneficial to the procurement.

(b) \$25,000.01 to \$100,000 — Informal Procurement, Formal Procurement, or other method of procurement, except the Direct Procurement method, that the Institution deems beneficial to the procurement.

(c) Greater than \$100,000 — Formal Procurement or other method of procurement, except the Direct Procurement or Informal Procurement methods, that the Institution deems beneficial to the procurement.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08

580-063-0030

Contracts for Construction-Related Services

Institutions will use one of the following procedures when procuring Construction-Related Services for a Contract or Public Improvement Contract:

(1) OUS Capital Construction Retainer Program for Construction-Related Services.

(a) For Construction-Related Services Contracts or Public Improvement Contracts where the anticipated Contract Price, including reimbursable expenses and all Change Orders contemplated by the parties is \$50,000 or less, the Institution may select a Contractor that has entered into a Retainer Contract.

(b) For Construction-Related Services Contracts or Public Improvement Contracts where the anticipated Contract Price, including reimbursable expenses and all Change Orders contemplated by the parties is \$50,000.01 to \$500,000, the Institution must select at least

three Contractors that have entered into Retainer Contracts to provide Bids or Proposals for the service. Selection of a Contractor from submitted Bids or Proposals will be based on the criteria set forth in the Solicitation Document. In the event that fewer than three Contractors are on the retainer that can provide the required service, the Institution may proceed with fewer than three Bids or Proposals.

(c) For Construction-Related Services Contracts or Public Improvement Contracts where the anticipated Contract Price, including reimbursable expenses and all Change Orders contemplated by the parties is \$500,000.01 to \$1,000,000, the Institution will post an advertisement of the opportunity on the OUS procurement website. All eligible Contractors that have entered into Retainer Contracts will have an opportunity to submit a Bid or Proposal in response to the opportunity. Selection of a Contractor from submitted Bids or Proposals will be based on the criteria set forth in the Solicitation Document.

(2) Standard Procurement. Except in cases of Emergency, Special Procurement, or when only a Single Seller is reasonably available, when procuring Construction-Related Services, Institutions will conduct the procurement in accordance with the Direct Procurement, Informal Procurement, or Formal Procurement method, unless another method is applicable, based on the anticipated Contract Price, including reimbursable expenses and all Change Orders contemplated by the parties. Multiple Contracts, purchase orders, or purchasing requisitions will not be issued separately with the intent to circumvent these rules.

(a) \$25,000 or less — Direct Procurement or other method of procurement that the Institution deems beneficial to the procurement.

(b) \$25,000.01 to \$100,000 — Informal Procurement, Formal Procurement, or other method of procurement, except the Direct Procurement method, that the Institution deems beneficial to the procurement.

(c) Greater than \$100,000 — Formal Procurement or other method of procurement, except the Direct Procurement or Informal Procurement methods, that the Institution deems beneficial to the procurement.

(3) In accordance with ORS 279C.800 et seq, projects having a total Contract Price more than \$50,000, or on a project where the combined Contract Price of all contracts awarded on the project is more than \$50,000, will be subject to the Bureau of Labor and Industries Prevailing Wage Laws. Projects may not be divided into more than one Contract to avoid the application of this subsection. Projects funded in part or wholly by federal funds will comply with the higher of the state or federal prevailing rate of wage.

(4) No Contract will be awarded to any construction firm that is not licensed to do business in the State of Oregon, not registered or licensed by the appropriate state licensing boards, or listed as ineligible to enter into Contracts or Public Improvement Contracts by the Bureau of Labor and Industries.

(5) Contractors will post and maintain performance and payment bonds as required in the Solicitation Document. For Public Improvement Contracts with a total Contract Price in excess of \$100,000, one hundred percent performance and payment bonds will be required.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08

580-063-0035

Oregon's Percent for Art

The "Percent for Art" legislation governed by ORS 276.073 through 276.090, guides the acquisition of Oregon's state art collection. For acquisition of art work in applicable state buildings, this program sets aside no less than 1 percent of the construction funds of buildings with a construction budget of \$100,000 or more. The Institution will be responsible to ensure compliance with the "Percent for Art" for applicable projects.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08

580-063-0040

Design Standards

All major facility projects will be planned, designed, constructed, and renovated to meet high performance building standards for

energy efficiency and environmental sustainability as defined by the Department of Energy and the State of Oregon.

(1) State Energy Efficiency Design is the policy of the State of Oregon that facilities to be constructed or purchased by authorized state agencies be designed, constructed, renovated, and operated so as to minimize the use of nonrenewable energy resources and to serve as models of energy efficiency per ORS 276.900 through 276.915.

(2) Green building design and construction is an integral part of OUS Capital Construction. Institution projects should consider design standards that incorporate the 'Leadership in Energy & Environmental Design' (LEED) Silver standards or higher standards, which promote buildings that significantly reduce or eliminate the negative impact of buildings on the environment and occupants.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08

580-063-0045

Retainage Processing Charges

(1) The Institution may require a retainage for Construction-Related Services Contracts under \$1,000,000. For Construction-Related Services Contracts over \$1,000,000, the Institution will withhold a retainage.

(2) An Institution will not retain an amount in excess of five percent (5 percent) of the Contract Price for Work completed. If the Contractor has performed at least fifty percent (50 percent) of the 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 Work is ninety-seven and a half percent (97.5 percent) completed, the Institution may, at its discretion and without application by the Contractor, reduce the retained amount to one hundred percent (100 percent) of the value of the remaining unperformed Work. An Institution may at any time reinstate retainage. Retainage will be included in the final payment of the Contract Price.

(3) For Construction-Related Services Contracts over \$1,000,000 the Contractor may request that the retainage be deposited in an interest-bearing account at a financial institution. Title to such funds will

remain with the Board until the Work is complete and accepted by the Institution. Interest on deposited retainage accrues to the benefit of the Contractor and will remain in the retainage account until the Work is accepted. The Institution may deduct fees necessary to open and maintain an interest-bearing account.

(4) Alternatives to cash retainage. In lieu of cash retainage to be held by the Institution or financial 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 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.

(5) An Institution will recover from the Contractor all costs incurred in the proper handling of cash retainage and securities, by reduction of the final Contract payment.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08