HIGHER EDUCATION COORDINATING COMMISSION

FUDNING AND ACHIEVEMENT SUBCOMMITTEE
September 3, 2015

Docket Item:
Temporary Administrative Rule Relating to the Dispute Resolution Program Funding Allocation

Summary:
The HECC is charged through ORS 351.735(3)(d) to:

> *Adopt rules governing the distribution of appropriations from the Legislative Assembly to community colleges, public universities listed in ORS 352.002 and student access programs. These rules must be based on allocation formulas developed in consultation with the state's community colleges and public universities, as appropriate.*

As part of this responsibility, there are several items within the Public University State Programs that require specific allocation formulas be developed in order to distribute funds. Dispute Resolution Program is one such program. The Dispute Resolution Program relies on an allocation process to disburse funds. The following temporary OAR is intended to allow for allocation of funds continuing previous methodologies. A temporary rule is allowed to remain in operation for 180 days under ORS 183.335(5-6a)[1]. HECC Staff will, upon adoption by the Commission of the temporary rule, begin the process for permanent rule adoption to supersede the temporary rule in order to distribute funds for this program.

Docket Material:
<u>Dispute Resolution Program Overview</u>

ORS 36.100 states:

> *It is the policy and purpose of ORS 36.100 to 36.238 that, when two or more persons cannot settle a dispute directly between themselves, it is preferable that the disputants be encouraged and assisted to resolve their dispute with the assistance of a trusted and competent third party mediator, whenever possible, rather than the dispute remaining unresolved or resulting in litigation.*

This is further clarified by ORS 36.105, which states:

> *The Legislative Assembly declares that it is the purpose of ORS 36.100 to 36.238 to:*
> *(1) Foster the development of community-based programs that will assist citizens in resolving disputes and developing skills in conflict resolution;*
> *(2) Allow flexible and diverse programs to be developed in this state, to meet specific needs in local areas and to benefit this state as a whole through experiments using a variety of models of peaceful dispute resolution;*
> *(3) Find alternative methods for addressing the needs of crime victims in criminal cases when those cases are either not prosecuted for lack of funds or can be more efficiently handled outside the courts;*
> *(4) Provide a method to evaluate the effect of dispute resolution programs on communities, local governments, the justice system and state agencies;*

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[1] ORS 183.335 (6a) "A rule adopted, amended or suspended under subsection (5) of this section is temporary and may be effective for a period of not longer than 180 days."

(5) Encourage the development and use of mediation panels for resolution of civil litigation disputes;
(6) Foster the development or expansion of integrated, flexible and diverse state agency programs that involve state and local agencies and the public and that provide for use of alternative means of dispute resolution pursuant to ORS 183.502; and
(7) Foster efforts to integrate community, judicial and state agency dispute resolution programs

ORS 36.145 then creates the Dispute Resolution Account which authorizes either the University of Oregon or Portland State University to expend funds on Dispute Resolution Programs.

These programs are then authorized by different laws in addition to those discussed above. The University of Oregon's programs are authorized by ORS 36.135 and ORS 36.155 and Portland State University's programs are authorized by ORS 36.179. Each is examined below.

ORS 36.135 states:

The Dean of the University of Oregon School of Law shall periodically review dispute resolution programs in this state.

ORS 36.135 is referring to dispute resolution services in counties, a program run by the University of Oregon as part of its Oregon Office for Community Dispute Resolution (OOCDR) [2]. In addition to this grant program, OOCDR provides mediation services and conflict resolution training to private parties.

The standards under which OOCDR operates its grant program had been OAR 517-100 prior to the passage of SB 270 in 2013. OAR 517-100 has been adopted as official University of Oregon policy[3] pursuant to ORS 36.155, which authorizes the University of Oregon's Board of Trustees to "adopt standards for the operation of the grant program.[4]" These standards set basic guidelines for Dispute Resolution Programs, including application requirements, evaluation and performance standards and basic qualification and training standards for community dispute programs and mediators.

Portland State University's Dispute Resolution Program is authorized by ORS 36.179, which states:

The Mark O. Hatfield School of Government shall establish and operate a program to provide mediation and other alternative dispute resolution services to public bodies, as defined by ORS 174.109[5], and to persons who have disputes with public bodies, as defined by ORS 174.109.

ORS 36.179 has led to the creation of the Oregon Consensus Program[6], within the National Policy Consensus Center. Oregon Consensus mediates disputes involving public bodies or public lands.

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[2] <https://law.uoregon.edu/explore/OOCDR>
[3]<https://policies.uoregon.edu/sites/policies2.uoregon.edu/files/uploads/OAR%20571%20-%20Division%20100.pdf>
[4] ORS 36.155.
[5] ORS 174.109 defines public bodies to include " state government bodies, local government bodies and special government bodies."

Historically the University of Oregon has received 65% of all available Dispute Resolution Program funds each biennium, with Portland State University receiving 35%[7]. The proposed temporary OAR maintains this proportional distribution.

The Legislature has allocated $2,516,149 for the Dispute Resolution Programs within Section 1 (10) Chapter 642 Oregon Laws 2015 for the 2015-17 biennium.

The proposed temporary OAR is appended to the end of this document.

STAFF RECCOMENDATION:

Report is for informational purposes only. In September, Commission staff will file a temporary rule to govern the allocation of funds through the regularly scheduled second quarter allotment. Within 180 days to follow, Commission will need to consider and adopt a permanent administrative rule.

[6] < http://oregonconsensus.org/>
[7] 2012-13 OUS Budget Report, Pages 26-27.

HIGHER EDUCATION COORDINATING COMMISSION

DIVISION 13

UNIVERSITY PROGRAMS AND FINANCE

715-013-xxxx

1. Definitions
    a. "Dispute Resolution Account" is an account established in the state treasury by ORS 36.145 to appropriate funds for the purposes outlined in ORS 36.135, ORS 36.175 and ORS 36.179 to the University of Oregon and Portland State University.
    b. "Dispute Resolution Programs" are programs authorized by ORS 36.100, ORS 36.135, ORS 36.155 and ORS 36.179 for the purposes indicated in ORS 36.105. Dispute Resolution Program funds are designated by the legislature.
    c. "Dispute Resolution Services in Counties" are established under standards adopted by the Board of Trustees of the University of Oregon pursuant to ORS 36.155.
    d. The "Higher Education Coordinating Commission" or "HECC" is the body established by ORS 351.715 and appointed by the Governor.
    e. "Mediation and Alternative Means of Dispute Resolution" is the program authorized by ORS 36.179 providing mediation and other alternative dispute resolution services to public bodies at the Mark O Hatfield School of Government at Portland State University.
    f. A "Public University" is any institution as defined in ORS 352.002, including; Eastern Oregon University (EOU), Oregon Institute of Technology (OIT), Oregon State University (OSU), Portland State University (PSU), Southern Oregon University (SOU), University of Oregon (UO) and Western Oregon University (WOU).
2. This rule allocates Dispute Resolution Program funds to Public Universities.
3. Allocations in the first year of any biennium shall be 49% of the total appropriated to Dispute Resolution Programs. The remainder shall be allocated in the second year of the biennium.
4. Dispute Resolution Program funds for the University of Oregon are to be spent in compliance with standards adopted pursuant to ORS 36.155 and in compliance with state policy pursuant to ORS 36.100 and ORS 36.105.
5. Dispute Resolution Program funds for Portland State University are to operate the program authorized in ORS 36.179 and in compliance with state policy pursuant to ORS 36.100 and ORS 36.105.

6. The University of Oregon shall receive 65% of Dispute Resolution Program funds each biennium and Portland State University shall receive 35% of Dispute Resolution Program funds.
7. The HECC will give deference to any legislative designation of specific resources or policy decisions when making determinations on allocation of funds.
8. This temporary rule shall take effect immediately upon its adoption by the HECC and will expire 180 days from its adoption or when a permanent rule is adopted, whichever is sooner.

Statutory Authority: ORS 351.735(5), ORS 36.100, ORS 36.135, ORS 36.145, ORS 36.155, ORS 36.179
Statutes Implemented: ORS 36.105, ORS 36.145, Chapter 642 Oregon Laws 2015