

**Docket Item:**

Temporary Administrative Rule Relating to the Clinical Legal Education 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. Clinical Legal Education Program is one such program. The Clinical Legal Education Program relies on an application and 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)<sup>1</sup>. 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:**

Clinical Legal Education Program Overview:

ORS 21.007(5) states the legislature will provide funding to the HECC for

*Clinical legal education programs at accredited institutions of higher education that provide civil legal services to victims of domestic violence, stalking or sexual assault.*

Codifying past practices and establishing eligibility criteria for the distribution of Clinical Legal Education Program funds this rule establishes an application process.. In order to verify that they are eligible to receive the funds, institutions must certify the following<sup>2</sup>:

1. That they are an accredited institution of higher education and have an ABA-approved law school<sup>3</sup>.
2. That the institution has a Clinical Legal Education Program that includes civil legal services.
3. That that the Clinical Legal Education Program represents clients of domestic violence, stalking or sexual assault.

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<sup>1</sup> 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."

<sup>2</sup> The following OAR is based upon what had been OUS Fiscal Policy #56.200, available at <  
[http://leadership.oregonstate.edu/sites/leadership.oregonstate.edu/files/policies/FiscalManual/07\\_GenOps/56-200\\_distrib\\_moneys.pdf](http://leadership.oregonstate.edu/sites/leadership.oregonstate.edu/files/policies/FiscalManual/07_GenOps/56-200_distrib_moneys.pdf)>.

<sup>3</sup> All three law schools in Oregon (Lewis and Clark, the University and Oregon and Willamette) are ABA-approved. <  
[http://www.americanbar.org/groups/legal\\_education/resources/aba\\_approved\\_law\\_schools/official-guide-to-aba-approved-law-schools.html](http://www.americanbar.org/groups/legal_education/resources/aba_approved_law_schools/official-guide-to-aba-approved-law-schools.html)>

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4. That the Clinical Legal Education Program operates in concert with at least one nonprofit service provider that provides advocacy services such as counseling, safety-planning and/or shelter to victims of domestic violence, stalking or sexual assault and that this provider performs victims counseling services and provides student training.

As the HECC is a new entity, it will require the above certification for all eligible institutions.

Once institutions certify that they are eligible under this program, they must submit a report containing the following information to the HECC on an annual basis:

1. Number of clients served that are victims of domestic violence, stalking or sexual assault.
2. Nature of legal issues involved.
3. Outcomes of the legal issues.
4. Categorization of victim service between, sexual assault, stalking and domestic violence.
5. Relationship of the client to the offender.
6. Whether advocacy services were provided.

The HECC will then distribute funds to institutions based on the percentage of total eligible clients served by each institution. Historically, both Lewis and Clark and the University of Oregon have applied for and received funds while Willamette University has chosen not to participate<sup>4</sup>. However, Lewis and Clark has recently closed its Lewis and Clark Legal Clinic<sup>5</sup>, which, among other things, provided services to victims of domestic violence, and therefore is no longer able to meet eligibility requirements for the Clinical Legal Education program<sup>6</sup>. Hence, the University of Oregon Law School is anticipated to receive all available funds, provided it continues to certify program eligibility requirements and fulfills the annual reporting requirement of the program<sup>7</sup>. Because the program requires the HECC to certify eligibility of institutions, and to allocate funds, an OAR is required for distribution.

The Legislature has allocated \$348,077 for the Clinical Legal Education Program 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

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<sup>4</sup> Willamette has indicated that it may choose to apply for funds in the future according to the OUS-HECC transition brief on the Clinical Legal Education Program.

<sup>5</sup> Other Lewis and Clark-sponsored legal clinics such as the Animal Law Clinic, the Low-Income Taxpayer Clinic and the Small Business Legal Clinic remain open, however none of them serve the population targeted by this funding. <<https://law.lclark.edu/clinics/>>.

<sup>6</sup> For more information see <[http://lawprofessors.typepad.com/clinic\\_prof/2015/01/the-death-of-a-clinic.html](http://lawprofessors.typepad.com/clinic_prof/2015/01/the-death-of-a-clinic.html)>.

<sup>7</sup> Information on the University of Oregon's clinical legal education programs is available at <<https://law.uoregon.edu/explore/clinics>>.

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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.

**HIGHER EDUCATION COORDINATING COMMISSION  
DIVISION 13  
UNIVERSITY PROGRAMS AND FINANCE**

715-013-xxxx

1. Definitions
  - a. “ABA-Approved Law School” is a law school approved by the American Bar Association (ABA) to confer Juris Doctor (JD) Degrees.
  - b. “Accredited Institution of Higher Education” is an institution of higher education that is accredited by an accrediting institution authorized by the US Department of Education.
  - c. “Civil Legal Services” are services provided to individuals for non-criminal civil matters and operated in concert with regulations adopted by the Oregon State Bar pursuant to ORS 9.572.
  - d. “Clinical Legal Education Program” is the program authorized by ORS 21.007 and provided by an ABA-Approved Law School at and Accredited Institution of Higher Education granting law students an opportunity to practice law in a particular area during their legal education. Clinical Legal Education Program funds are designated by the legislature on a biennial basis.
  - e. “Eligible Accredited Institution of Higher Education” is an Accredited Institution of Higher Education for which the HECC has certified its compliance with Section 5 of this OAR to receive Civil Legal Education Program funds.
  - f. The “Higher Education Coordinating Commission” or “HECC” is the body established by ORS 351.715 and appointed by the Governor.
  - g. “Oregon State Bar” is a public corporation established by ORS 9.010 to license and discipline lawyers, regulate the practice of law, and provide a variety of services to bar members and the public.
2. This rule allocates Civil Legal Education Program funds to Eligible Accredited Institutions of Higher Education.
3. Allocations in the first year of any biennium shall be 49% of the total appropriated to the Domestic Violence Clinical Legal Education Account. The remainder shall be allocated in the second year of the biennium.
4. Civil Legal Education Program funds are distributed in order to provide civil legal services to victims of stalking, domestic violence and assault.
5. In order to be eligible for funding under this program, institutions must meet the following conditions;
  - a. Be an accredited institution of higher education and have an ABA-approved law school.
  - b. Certify that the institution has a clinical legal education program that includes Civil Legal Services.
  - c. Certify that the Clinical Legal Education Program represents clients of domestic violence, stalking or sexual assault.
  - d. Certify that the Clinical Legal Education Program operates in concert with at least one nonprofit service provider that provides advocacy services such as counseling, safety-

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- planning and/or shelter to victims of domestic violence, stalking or sexual assault and that this provider performs victims counseling services and provides student training.
6. Once an institution certifies to the HECC their compliance with Section 5 they need not apply every year but must recertify their eligibility on an annual basis.
  7. All institutions certified as eligible and seeking funds shall submit an annual report including the following:
    - a. Number of clients that are victims of domestic violence, stalking or sexual assault.
    - b. Nature of legal issues involved.
    - c. Outcomes of the legal issues.
    - d. Categorization of victim service between, sexual assault, stalking and domestic violence.
    - e. Relationship of the client to the offender.
    - f. Whether advocacy services were provided.
  8. The HECC shall award funds to institutions on a proportional basis in relation to the number of victims served.
    - a. Proportions shall be calculated on an annual basis.
    - b. If only one institution is eligible to receive funds in a given fiscal year, it shall receive all available funds in a given fiscal year.
  9. The HECC will give deference to any legislative designation of specific resources or policy decisions when making determinations on allocation of funds.
  10. 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),

Statutes Implemented: ORS 351.735(3b), ORS 21.007, Chapter 642 Oregon Laws 2015