



Docket Item:

Administrative Rule Summary of Permanent Chapter 715 relating to Sexual Orientation Data.

Summary:

- | | | | |
|-------------------------------------|---------------------|-------------------------------------|-----------|
| <input checked="" type="checkbox"/> | New Rule | <input type="checkbox"/> | Temporary |
| <input type="checkbox"/> | Amend Existing Rule | <input checked="" type="checkbox"/> | Permanent |
| <input type="checkbox"/> | Repeal Rule | | |

Prompted by:

- | | |
|-------------------------------------|---------------------|
| <input checked="" type="checkbox"/> | State law changes |
| <input type="checkbox"/> | Federal law changes |
| <input type="checkbox"/> | Other |

This rule, pursuant to ORS 352.274, establishes the format and time frame that public universities listed in ORS 352.002 must follow in order to collect, report, and retain voluntarily submitted data on sexual orientation, gender and gender identity, and legal sex of students, faculty, and staff in a manner established by the Higher Education Coordinating Commission (Commission). Universities shall report this data to the Commission Office of Research and Data by June of every year.

Docket Material:

Hearing Officer's Report and Rule Text attached in Appendices A and B, respectively.

Staff Recommendation:

Staff recommends approval of the permanent administrative rule 715-015-0005 relating to the collection, reporting, and retention of sexual orientation data and Oregon's public universities as presented in the docket material.

Appendix A:

Hearing Officer's Report



Oregon

Kate Brown, Governor

Higher Education Coordinating Commission

775 Court Street NE

Salem, OR 97301

www.oregon.gov/HigherEd

May 19, 2016

Neil Bryant, Chair
Ben Cannon, Executive Director

Re: Presiding Officer's Report on Rulemaking Hearing

Date of Rulemaking Hearing: May 17, 2016

Location of Rulemaking Hearing: HECC Offices Somerville Building
775 Court Street NE
Salem, OR 97301

Summary of Proposed Rules:

This rule, pursuant to ORS 352.274, establishes the format and time frame that public universities listed in ORS 352.002 must follow in order to collect, report, and retain voluntarily submitted data on sexual orientation, gender and gender identity, and legal sex of students, faculty, and staff in a manner established by the Higher Education Coordinating Commission (Commission). Universities shall report this data to the Commission Office of Research and Data by June of every year.

The rulemaking hearing on the proposed rule convened at 1:30 p.m. Opening statements regarding instructions for making comments on the proposed rules and a brief summary of the proposed rules were read into the record.

Summary of Oral Comments:

The hearing adjourned at 2:30 p.m. No one was in attendance at the hearing to submit oral or written comments. Two individuals submitted written comments before the close of the public comment period and the agency responses are included in the hearing officer's report.

Kelly Dickinson
Rules Coordinator
Higher Education Coordinating Commission



Oregon

Kate Brown, Governor

Higher Education Coordinating Commission

775 Court Street NE

Salem, OR 97301

www.oregon.gov/HigherEd

1. A. Under rule as proposed there is no statutory sunset date for record retention. 30 years, 50 years, 100 years, eternally? Best to define the time period for the agency's responsibility for archiving, and the transfer of archives if agency ceases to operate.

HECC Comment: Division 475 of the Secretary of State Archives Division establishes the retention periods for university records. Specifically, 166-475-0095 (1) establishes a 75-year retention period for Academic and Unclassified Employee Personnel Records. Subsection 11 also establishes a 75-year retention period for Classified Employee Personnel Records. Also 166-475-0010 (26) establishes a 10-year retention period for Institutional Survey and Reporting Records. Sexual orientation may be found in either of these records and therefore should align with the already established retention schedules.

With regards to students, 166-475-0110 (7) requires universities to retain Enrollment Report Records, which may contain demographic data about students, permanently. Also, 166-475-0110 (22) further establishes a 5-year retention period beyond degree completion or last enrollment for all name changes for students. This is relevant to SB 473 due to the requirement to allow students and employees to use a preferred name.

1. B. Access to archived data: is there any place where there is definition of which state or national agencies have legal access to the data? 352.274 doesn't address these issues...perhaps they are spelled out elsewhere.

HECC Comment: The Federal Education Rights and Privacy Act (FERPA) protects the privacy of student records and limits the ability to release non-directory information, such as sexual orientation, without express consent of the student. One exception is for organizations conducting educational studies. Under 20 U.S. Code § 1232g(b)(1)(F) such organizations are permitted access to non-directory information, but only in a manner that will not permit the personal identification of the student. Currently, the HECC does not have express policies outlining data sharing agreements with outside agencies. However, it is our intention to ensure that identifiable data is not accessible to parties outside HECC and we are working to develop policies to govern this.

Since the elimination of the Oregon University System, Oregon Administrative Rules have been developed for each university to govern the security and confidentiality of employee records, limiting the release of any personnel records without express consent of the employee. The policies that the HECC develops regarding data sharing will apply to employees as well as students.



Oregon

Kate Brown, Governor

Higher Education Coordinating Commission

775 Court Street NE

Salem, OR 97301

www.oregon.gov/HigherEd

2. To Whom it May Concern: As a University of Oregon student, I am immensely proud and so pleased to learn that the state of Oregon is making a change on the admissions application that will be more inclusive of all students. I am very excited that through including a question of sexual and gender identity, the University of Oregon will be able to have a greater understanding about the students on our campus. Thank you for taking this important step towards increasing visibility of our LGBTQIA student population. However, I would also love to see space for inclusion of those who identify as intersex - all identities should be seen and heard! Thank you again for making the push towards this act of inclusion.

After much discussion among the SB 473 work group, it was decided that there was simply no best place to address the issue of intersex because it does not belong in the sexual orientation question, nor in the gender identity question. It should be included in the legal sex designation question, however, unfortunately that question was included for the sole purpose of aligning with the federal reporting requirements that are currently limited strictly to the binary male, female responses. Should the federal reporting requirements change to include intersex, then under the HECC policy for SB 473, the reporting options at the universities should change as well to match.

Appendix B:

Rule Text

Division 015
Institutional Reporting Requirements

715-015-0005

Collection and Reporting of Sexual Orientation Data

Public universities listed in ORS 352.002 shall collect, report, and retain voluntarily submitted information on the sexual orientation, gender and gender identity, and legal sex of students and employees in a manner established by the Commission. Universities shall report this data to the Higher Education Coordinating Commission, Office of Research and Data by June of every year.