

**Docket Item:**

Summary of Permanent Administrative Rules relating to student complaints against public universities, community colleges, private non-profit institutions, and private career schools.

**Summary:**

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

Prompted by:

- State law changes
- Federal law changes
- Other

Federal regulations (34 CFR §600.9) requires that all states have a state level process to receive and act upon student complaints against post-secondary institutions that receive federal funds and Oregon regulations (ORS 350.075(4)(a)) requires the HECC to receive and “resolve student complaints against any school operating in this state.”

The proposed administrative rule changes detail the HECC’s role in receiving, processing, and acting on student complaints against post-secondary institutions in Oregon via adopting new rules, amending existing rules, and repealing one rule (Table 1). Specifically, the proposed administrative rule changes prohibit against discrimination with regards to providing courses and financial assistance; admissions; housing; health insurance benefits and insurance; recruitment; employment; providing education programs, services, or activities. Additionally, the proposed rules:

- emphasize academic freedom of faculty with textbooks and course materials;
- prohibit retaliation;

- require post-secondary education programs and careers schools to adopt, publicize, and maintain written procedures for resolution of complaints of discrimination or retaliation;
- outline the HECC’s investigation process upon receiving written complaints of career schools;
- specify the types of complaints;
- require students to exhaust all available institutional processes and remedies for complaints and describe when HECC can receive complaints; and,
- outline the HECC process for receiving complaints, making determinations, and holding hearings.

**Table 1: Student Complaint Proposed Administrative Rule Actions**

New Rule	Amend Existing Rule	Repeal Rule
<ul style="list-style-type: none"> <li>• 715-011-0005</li> <li>• 715-011-0010</li> <li>• 715-011-0015</li> <li>• 715-011-0020</li> <li>• 715-011-0025</li> <li>• 715-011-0030</li> <li>• 715-011-0035</li> <li>• 715-011-0040</li> <li>• 715-011-0045</li> <li>• 715-011-0050</li> <li>• 715-011-0055</li> <li>• 715-011-0060</li> <li>• 715-011-0065</li> <li>• 715-011-0070</li> <li>• 715-011-0075</li> <li>• 715-011-0080</li> <li>• 715-011-0085</li> <li>• 715-011-0090</li> </ul>	<ul style="list-style-type: none"> <li>• 583-030-0020</li> <li>• 715-045-0023</li> </ul>	<ul style="list-style-type: none"> <li>• 589-010-0100</li> </ul>

**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 changes relating to student complaints against public universities, community colleges, private non-profit institutions, and private career schools as presented in the docket material.

Appendix A:

Hearing Officer's Report



October 30, 2017

**To:** Neil Bryant, Chair  
Ben Cannon, Executive Director

**From:** Kelly Zinck, HECC Rules Coordinator  
Sean Pollack, HECC University Academic Policy Specialist

**RE:** Presiding Officer's Report on Rulemaking Hearing

**Date of Rulemaking Hearings:** March 22, 2017 and October 17, 2017

**Location of Rulemaking Hearings:** HECC Offices, Public Service Building  
255 Capitol Street NE, Salem, OR 97301

### **Summary of Proposed Rules:**

The proposed administrative rule changes detail the HECC's role in receiving, processing, and acting on student complaints against post-secondary institutions.

### **Summary of Rulemaking Hearings:**

At the March 2017 rulemaking hearing, there were no major procedural changes contemplated in these rules affecting private career schools. In the intervening months, however, House Bill 2701 was introduced and passed, and it triggered some important changes in how HECC interacts with private career schools in responding to student complaints.

#### *715-045-0023, Complaints Made Against Private Career Schools*

- Complaints must be in writing
- Schools must be notified that they are the subject of a complaint

#### *715-011-0070, Investigation of Career Schools*

- The rules now reflect that HECC only investigates complaints formally submitted in writing. HECC must "engage" with both the school that is the subject of the complaint and any affected students before pursuing an official investigation. A school may also request an administrative hearing under this rule upon receiving the results of an investigation.
- While HECC may still levy a civil penalty for a violation of an applicable statute or rule, HECC may also issue what is now referred to as a "notice of corrective action" in which HECC states what violation was found, how it must be remedied, and the timeframe for that remedy. HECC no longer refers to this process as "probation." The



- notice for corrective action does not require the school to cease or suspend operations.
- HECC may not suspend or revoke a private career school license without an administrative hearing, and not without a finding of proper cause by an administrative hearing officer.

*The draft rules also reflect changes that affect other educational sectors, such as the private non-profit colleges and universities (known as "Alliance" institutions) pursuant to HB 2457 (2017).*

- HECC will only take complaints from Alliance institution student regarding state financial aid. All other complaints will be referred out to other agencies, authorities, or back to the institutions as appropriate.
- All student complaints, regardless of type of institution, public or private, are now shielded from disclosure under public record laws.

#### *715-011-0080 and 715-011-0085, Complaints of discrimination against public institutions*

In March 2017, the state's public institutions shared a number of concerns surrounding rules pertaining to student complaints of discrimination and retaliation in education. HECC worked in August and September of 2017 with representatives of the state's public institutions (universities, community colleges, and OHSU) on rules pertaining to ORS 659.850-659.855. ORS 659.850 requires HECC to make rules "necessary to establish compliance" with the prohibition on discrimination in education. ORS 659.852 prohibits retaliation against students, including suspension, expulsion, and disenrollment for a good faith reporting that an institution is in violation of a state or federal regulation. ORS 659.855 charges HECC with the levying sanctions against public institutions for violations of ORS 659.850. University and OCCA representatives came to agree upon a new process for HECC review of institutional process of claims of discrimination, with the possibility of referral to an appropriate agency for further investigation as warranted. These revisions bring the process for complaints against public institutions more into line with the process of complaints against private career schools, and with previous rules pertaining to complaints against community colleges.

There was a second public hearing on October 17, 2017 on these rule changes. There were several public comments expressing support for the revision process to date; there were no substantive concerns about the rules expressed at that time from any post-secondary sector.

These rule changes, once implemented will require HECC agency units (Private Career, CCWD, University Coordination) to work closely together (along with stakeholders) to align intake, review, and referral processes as appropriate.



# Oregon

Kate Brown, Governor

**Higher Education Coordinating Commission**  
Office of the Executive Director, Policy & Communications  
255 Capitol Street NE, Third Floor  
Salem, OR 97310  
[www.oregon.gov/HigherEd](http://www.oregon.gov/HigherEd)

## Written Comments Received between October 17<sup>th</sup> and November 30<sup>th</sup> 2017.

HECC received substantive written comments on the process and content surrounding these administrative rules from several commenters.

### Private Career Schools:

One commenter expressed concern over the timing of the PCS Advisory Board consideration of the rule changes. PCS reviewed the rules and the underlying legislation on September 11<sup>th</sup> and December 12<sup>th</sup>, 2017.

One commenter expressed concern over the use of HECC authority to investigate private career schools, which could affect the ability of such schools to continue to recruit, operate, and get access to loans and other capital.

### Public Universities and Community Colleges

Individual students and the Oregon Student Association (OSA) expressed the desire to see the HECC complaint review process for discrimination have real “teeth” i.e. consequences for those institutions found to be in violation of the relevant statutes or rules.

OSA made a number of substantive recommendations, including clarification of how financial aid might be determined, the meaning of “sex” and “sexual orientation” include Trans and other non-binary gender expressions, and the inclusion of immigration status under the protected category of “national origin.” These comments are appended to this report to the Commission.



# Oregon Student Association Rule Recommendation

Higher Education Coordinating Commission

Division 011

Discrimination, Student Complaint, and Retaliation

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To the Higher Education Coordinating Commission:

Please allow this document to serve as a formal recommendation in regard to the Higher Education Coordinating Commission's (HECC) drafted complaint rules. After reviewing the proposed Division 011 - Discrimination, Student Complaint, and Retaliation rules, our organization identified sections that require further analysis and amendments:

- I. 715-011-0005(3) - Discrimination or discriminate is defined as any act that unreasonably differentiates treatment, intended or unintended, or any act that is fair in form but discriminatory in orientation, **either of which is based on race, color, national origin, religion, sex, age, disability, veterans' status, sexual orientation, or marital status.**
  - a. Students throughout the state of Oregon have expressed two major concerns when addressing orientation of sex and nationality. The Oregon Student Association respectfully requests that "sex" be amended to "gender expression". Furthermore, as our undocumented Oregonians benefiting from Deferred Action for Childhood Arrivals (DACA) continue to face uncertainty in regard to their higher education future, the Oregon Student Association respectfully requests that "immigration status" be added to this rule.
  
- II. 715-011-0020(1)(a) - In providing financial assistance to applicants or students, post-secondary education programs shall not unreasonably differentiate on a prohibited basis, except as provided below: **In determining the total amount or types of assistance to be granted.**
  - a. The Oregon Student Association is concern on the vagueness of this section regarding financial assistance. It's unclear the type of criteria an institution must use in order to differentiate amounts of financial aid that would be awarded. We respectfully request that the HECC provide a detailed rule on what an institution must base the level of financial assistance granted to a student.

- III. 715-011-0030 – Post-secondary education programs 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
- a. Similar to the previous, the Oregon Student Association believes the bolded portion of the rule lacks further definition in order to understand what an “unreasonable differentiation” would be. We respectfully request that the bolded portion of this rule be further defined, either within the text or in 715-011-0005.
- IV. 715-011-0030(1), 715-011-0030(2), and 715-011-0030(3) – (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**.
- a. The Oregon Student Association believes that the bolded text within this rule specifically protects a binary set of gender expressions. Many Oregonian students do not identify within the sex of women or men. We respectfully request that the bolded text be amended to express recognition for those who may not identify as men or women, but rather have a different gender expression.
- V. 715-011-0055 – 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 post-secondary education programs and divisions shall make a reasonable effort to make available supplemental alternative nondiscriminatory materials.
- a. This rule fails to provide a criteria, or reference to a criteria, in regard to conducting an investigation, as stated by the bolded text. The Oregon Student Association respectfully requests that this rule be amended to either state a criteria for the investigative process or provide a reference for procedural guidance.

VI. 715-011-0085(3)(d) - (3) Upon a finding that the institution has engaged in prohibited discrimination or retaliation, the Commission will issue a final order requiring compliance within 30 days. If the institution does not comply within 30 days, the Commission shall order appropriate remedies that may include: (d) **Full or partial restitution to the complainant.**

- a. The Oregon Student Association believes that the bolded section of this rule is an essential part for a student's direct relief. The organization strongly believes, however, that this portion of the rule should give further guidance on types of restitution that the HECC may afford. Furthermore, if a student is referred to another state or federal government entity and returns to the HECC with a final judgement finding the respondent in violation, the organization strongly believes that such judgement should warrant action by the HECC in the form of a sanction. The Oregon Student Association respectfully requests that: 1) full and partial restitution be further defined, and 2) final judgements from other state or federal government entities finding respondents in violation of such rules should warrant action by the HECC in the form of sanctions.

Thank you for your consideration towards these recommendations. The Oregon Student Association and its student membership looks forward to providing further input towards this matter in the upcoming months. Do not hesitate to contact me should you have any questions.

Sincerely,

Ricardo Lujan-Valerio  
Legislative Director  
Oregon Student Association

Appendix B:  
Rule Text

## 583-030-0020

### Exercise of Office of Degree Authorization Authority

(1) A school that intends to offer to anyone from within Oregon or offer to Oregon residents from outside the state any form of instruction, lecture, training, tutoring, seminar, workshop, examination, evaluation, or other service represented as contributing credit or otherwise leading toward a specified or unspecified degree or certificate that will or might be conferred anywhere shall notify the Commission at least 6 months in advance and then promptly supply all information the Commission requests. Failure to notify the Commission in advance, or to provide information as directed, may result in the permanent denial of approval for the school to offer any services in or from Oregon, as well as administrative action, up to and including assessment of civil penalties.

(2) Schools that offer no degrees in Oregon but want to offer a certificate are subject to the requirements of ORS chapter 345 and OAR chapter 715, division 45.

(3) Schools intending to apply for authorization or exemption from the Commission shall provide the Commission with information about the school's ownership and structure, proposed programs, and relationships to other institutions, if any. On the basis of this preliminary information, the Commission's executive director will determine whether the school:

(a) Must apply for state authorization to offer instruction or related services leading to one or more degrees under the standards of OAR 583-030-0035 or 583-083-0036;

(b) Is exempt for other than religious reasons under ORS 348.597;

(c) Is eligible for exemption under ORS 348.604 and therefore has a choice of standard state approval or religious exemption.

(4) A school that applies for degree authorization or exemption shall use forms and follow procedures determined by the Commission. Failure to comply constitutes good reason to reject an application. Such school shall be open to inspection and may be inspected at any time to verify its statements and to examine facilities. Inspection of a school and evaluation of its application will be performed by state officials or consultants at the Executive Director's discretion, and results will be utilized as the Commission consider appropriate. Information from other examiners, such as accreditors or professional licensing agencies, may accompany materials submitted by the school and may be used by the Commission at its discretion.

(5) Authorization to offer instruction or related services leading to a degree applies to specific curricula and services for specific periods:

(a) Authorization is normally given for the state as a whole, but may be limited by the Commission in order to ensure program quality or operational stability.

(b) The Commission, on the basis of judgment about the relationship between a curriculum and a degree title, may require revision of title. Degree titles may not contain the name of organizations, companies or products.

(c) Authorization is given for a specific degree for a fixed period of not less than two or more than four calendar years. The executive director may vary the length of approval periods by up to one year subject to the four-year limit in order to consolidate applications or renewals for the convenience of the school or the Commission.

(6) Authorization to offer instruction or related services leading to a degree expires at the end of the period for which it is given, without right or presumption of renewal, except that an

authorized school having submitted to a complete and timely application for renewal continues to be authorized until such time as a review or revocation procedure may determine otherwise. After discontinuing its offer of an authorized degree before the end of the period of authorization, a school shall not reinstate the degree without permission from the Commission. A program shall be deemed discontinued if a period of two academic years passes without any students being enrolled in the program.

(7) Authorization to offer instruction or related services leading to a degree is subject at all times to supplemental review if the school appears to be at risk or approaching probation, suspension or revocation for proper cause according to procedures described in OAR 583-030-0045.

(8) Approval of a degree by the commission does not constitute approval of the program as training for professional practice when the state licenses or otherwise regulates professional practice. Applicants must also seek approval from the appropriate state licensing entity.

(9) The Commission or its designee may enter into agreements and assess fees to cover costs of any proceeding relating to complaints as allowed by statute, including conducting an investigation, contracting with outside entity to conduct an investigation, or holding an administrative hearing, brought pursuant to 715-011-0090.

Stat. Auth.: ORS 348.606, 350.075

Stats. Implemented: ORS 348.597, 348.603,-648.606, 350.075

## DIVISION 011

### DISCRIMINATION, STUDENT COMPLAINTS, AND RETALIATION

#### 715-011-0005

##### Definitions

For the purposes of this rule, unless otherwise indicated by context:

(1) Commission means the Higher Education Coordinating Commission or its designee.

(2) Career schools are those that are licensed under ORS Chapter 345 and:

(a) Admit as regular students, or maintain as a majority of their enrollment, those students who have earned a recognized high school diploma, the equivalent of a recognized high school diploma, or a GED certificate, or who are beyond the age of compulsory education in the State of Oregon; and

(b) Are authorized by the Commission to offer one or more educational programs beyond secondary education.

(3) Discrimination or discriminate is defined as any act that unreasonably differentiates treatment, intended or unintended, or any act that is fair in form but discriminatory in operation, either of which is based on race, color, national origin, religion, sex, age, disability, veterans' status, sexual orientation, or marital status.

(4) Post-secondary education programs include:

(a) Community colleges operated under ORS Chapter 341; and

(b) Public universities listed in ORS 352.002.

(c) The Oregon Health Sciences University

(5) Private non-profit colleges and universities are schools or their separately accredited campuses that:

(a) Have conferred degrees in this state under the same control for at least ten consecutive years; and

(b) Are accredited by a regional accrediting association or its national successor.

(6) Private colleges or universities include:

(a) Private independent colleges and universities; and

(b) Private schools, colleges or universities that are otherwise authorized by the Commission to offer degrees in Oregon under ORS 350.075(3)(i).

(7) Prohibited discrimination means any act that either in form or operation, whether intended or unintended, differentiates among persons on the basis of age, veterans' status disability, national origin, race, color, marital status, religion, sex or sexual orientation.

(a) The definition of discrimination is applicable to post-secondary programs that receive direct appropriations from the Legislative Assembly and private career schools licensed under ORS 345.010 to 345.450.

(8) Retaliation means suspension, expulsion, disenrollment, grade reduction, denial of academic or employment opportunities, exclusion from academic or extracurricular activities, denial of access to transcripts, threats, harassment or other adverse action that substantially disadvantages a student in academic, employment or extracurricular activities.

(9) Student means a person who is enrolled or accepted for enrollment at a school for the purpose of obtaining a degree, certificate or other recognized educational credential offered by that school.

Stat. Auth.: ORS 345.240, 350.075, 659.850, 659.852

Stats. Implemented: ORS 659.850, 659.860

**715-011-0010**

**Discrimination Prohibition**

No person in Oregon shall be subjected to discrimination in any post-secondary education 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.

Stat. Auth.: ORS 345.240, 659.850

Stats. Implemented: ORS 659.850, 659.860

**715-011-0015**

**Prohibition in Providing Courses**

A post-secondary education or career school program shall not discriminate when providing access to classes, courses of study or other educational programs or activities, or requiring or refusing participation therein by any of its students:

(1) This section does not prohibit grouping of students in any educational program or activity by ability as assessed by objective standards of individual performance;

(2) This section does not prohibit separating students by sex within physical education courses or activities by objectively measured ability, or during participation in sports in which the purpose or major activity involves bodily contact.

Stat. Auth.: ORS 345.240, 659.850

Stats. Implemented: ORS 659.850

**715-011-0020**

**Prohibition in Providing Financial Assistance**

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

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

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

(c) In the application of criteria.

(2) Post-secondary education programs may not assist any person, organization or group in the administration of financial aid on a prohibited basis.

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

(4) Post-secondary education programs that award athletic scholarships must ensure that reasonable opportunities exist for members of each sex to participate on athletic teams.

Stat. Auth.: ORS 659.850

Stats. Implemented: ORS 659.850

**715-011-0025**

**Prohibition in Admission**

(1) No person shall, on a prohibited basis, be denied admission or be subject to discrimination in admission to a post-secondary education program or career school.

(2) Each school, department or college in any post-secondary education program or career school that has an independent admissions process, or one supplementary to the programs 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, veterans' status).

(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 of proportion of persons to be admitted may not be established on a prohibited basis.

(6) In making admissions decisions, a post-secondary education program or school:

(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 application for admission, including whether such applicant is "Miss" or "Mrs."

Stat. Auth.: ORS 345.240, 659.850

Stats. Implemented: ORS 345.240, 659.850

**715-011-0030**

**Prohibition in Housing**

Post-secondary education programs 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 659.850

Stats. Implemented: ORS 659.850

**715-011-0035**

**Prohibition in Health Insurance Benefits and Services**

(1) A post-secondary education program or its constituent parts, including student groups, may not offer to applicants or students a medical, hospital or accident policy, plan, benefit or service that unreasonably discriminates on a prohibited basis.

(2) Post-secondary education programs 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 659.850

Stats. Implemented: ORS 659.850

**715-011-0040**

**Prohibition in Recruitment**

(1) In recruiting students, post-secondary education programs shall not unreasonably differentiate among individuals on a prohibited basis.

(2) A post-secondary education program shall not recruit primarily or exclusively from schools or other educational institutions that admit applicants or students predominately on a prohibited basis, if such actions result in discriminatory enrollment.

Stat. Auth.: ORS 659.850

Stats. Implemented: ORS 659.850

**715-011-0045**

**Prohibition in Employment**

(1) Post-secondary education programs shall assure that nondiscriminatory policies are followed in student employment.

(2) Post-secondary education programs that actively assist any agency, organization, or person in making employment available to any of its students shall not assist prospective employers known by the post-secondary education program to discriminate in their recruitment, hiring, or employment practices.

Stat. Auth.: ORS 659.850

Stats. Implemented: ORS 659.850

**715-011-0050**

**Prohibition in Providing Education Programs, Services or Activities**

To the extent a program, service or activity is not covered by OAR 715-11-0010 through 715-11-0045 this rule applies.

In providing education programs, service or activities to students, a post-secondary education program or career school shall not discriminate by:

(1) Treating one student differently from another in determining whether such person satisfies any requirement or condition for the provision of such aid, benefit, or service;

(2) Providing different aid, benefits or services; or providing such aids, benefits, or services in a different manner;

(3) Denying any student such aid benefit, or service;

(4) Subjecting any student to separate or different rules or behaviors, sanctions, or other treatment;

(5) Excluding students from participating in or denying the benefits of any academic, extracurricular, research, occupational training, or other educational program or activity provided or, if not operated by the post-secondary education program, is required of students;

(6) Providing assistance in making educational or career choices, or in the counseling and guidance services offered, nor among applicants for admission if such services are offered;

(7) Aiding or perpetuating discrimination by joining or remaining a member of agency or organization that discriminates in providing any aid, benefit, or service to students or employees;

(8) Otherwise limiting any student in the enjoyment of a right, privilege, advantage, or opportunity.

Stat. Auth.: ORS 345.240, 659.850

Stats. Implemented: ORS 345.240, 659.850

**715-011-0055**

**Textbooks and Curricular Materials**

Nothing herein either prohibits or requires the use of any particular textbook or curricular materials, nor infringes upon academic freedom of faculty to create a syllabus or select materials for a course. 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 post-secondary education programs and divisions shall make a reasonable effort to make available supplemental alternative nondiscriminatory materials.

Stat. Auth.: ORS 659.850

Stats. Implemented: ORS 659.850

**715-011-0060**

**Retaliation Prohibited**

A student of a career school, a post-secondary education program or a private college or university may not be subjected to retaliation for the reason that the student has in good faith reported information that the student believes is evidence of a violation of a state or federal law, rule or regulation.

Stat. Auth.: ORS 659.852

Stats. Implemented: ORS 659.852

**715-011-0065**

**Requirements of Post-Secondary Education Programs**

Each post-secondary education program and career school shall promptly adopt and publicize, and shall maintain, written procedures for resolution of complaints of discrimination or retaliation.

Stat. Auth.: ORS 345.240, 659.850, 659.860

Stats. Implemented: ORS 345.120, 659.850, 659.852

**715-011-0070**

**Investigation of Career Schools**

(1) Upon the written complaint of any person or pursuant to the Commission's own motion, the Commission or its delegate may investigate the actions of any career school or agent or any person who assumes to act in either capacity within this state.

(2) Upon receipt of any written complaint filed under this rule or ORS 345.120(1), the commission shall notify the career school that it is the subject of an investigation.

(a) When conducting an investigation, the Commission shall engage with both the career school under investigation and any affected students.

(b) The Commission may impose penalties as defined in OAR 715-045-0190 if the school is found to be in violation of any standard or applicable rule. A school may also request a contested case hearing under ORS 183.310(2) upon receipt of the results of an investigation made under this rule.

(c) In addition to any penalties, the Commission may also issue a notice for corrective action. If a school has been issued a notice of corrective action, that notice must include specified deficiencies that must be corrected within a specific time frame.

(d) A school may request a contested case hearing under 183.310(2) upon the notice of a suspension or revocation of its license based upon an investigation conducted by the Commission finding the school has engaged in conduct described in ORS 345.120 (3)(a) through (d).

(e) If a school requests a contested case hearing under 183.310(2), the school may not have its license suspended or revoked unless or until a public hearings officer determines there is proper cause.

(f) Sections (a) and (b) of this rule do not limit the statutory authority of the commission to investigate schools regardless of receiving allegations from the public.

(g) If the complaint alleges a violation of Oregon Revised statutes 345.010 to 345.070 or standards of OAR 715-045-0006 through 715-045-0220, the complainant may complain directly to the Commission or its delegate under OAR 715-011-0075.

Stat. Auth.: ORS 345.120, 348.603, 350.075

Stats. Implemented: ORS 345.120, 348.603, 350.075

**715-011-0075**

**Types of Complaints**

(1) Students may file formal written complaints to the Commission of prohibited discrimination in post-secondary education programs that receive direct appropriations from the Legislative Assembly.

(2) Students may file formal written complaints to the Commission of prohibited discrimination in admission or instruction at career schools.

(3) A formal written complaint may be made to the Commission of retaliation by:

(a) Post-secondary education programs and

(b) Career schools.

(4) Students of private non-profit independent colleges may file formal complaints to the Commission that relate to state financial aid.

(a) The Commission shall refer other complaints regarding private non-profit independent colleges to appropriate state or federal authorities.

Stat. Auth.: ORS 345.240, 348.603, 350.075, 659.850, 659.852

Stats. Implemented: ORS 345.120, 648.596, 350.075, 659.850, 659.852

## **715-011-0080**

### **Institutional Processes and Complaints to the Commission**

(1) It is the policy of the Commission that students should exhaust all available institutional processes and remedies for complaints against any school or post-secondary institution before filing a formal written complaint with the Commission.

(2) If the Commission or its delegate determines that the person filing the complaint has not exhausted all institutional grievance procedures, the Commission or its delegate shall notify the complaining party and the institution that no action will be taken unless and until institutional appeals have been exhausted. If the Commission or its delegate determines that the person filing the complaint has exhausted institutional grievance procedures or that the institution has issued a final decision, the student may then file a formal written complaint with the Commission.

(3) If a grievant demonstrates an objectively reasonable basis for not exhausting the available process, the Commission or its designee may receive the complaint.

(4) The Commission may only receive written complaints from students of post-secondary programs, private independent non-profit colleges and universities, and private career schools for matters where the Commission's authority is ~~is as defined~~ designated by statute and administrative rule. All other complaints will be referred back to the institution of origin or to appropriate state agencies or federal authorities.

(5) The complaint shall be submitted in writing to the Commission or its designee and shall contain:

(a) The complainant's name, address, phone number, email address and signature;

(b) School name, address, and phone number;

(c) A brief statement indicating what the violation is, including facts detailing dates of enrollment, attendance, termination date, date of occurrence(s), names, addresses and positions of school officials contacted, financial loss, if any, and any other pertinent information;

(d) An explanation of what efforts have been taken to resolve the problem with the school; and

(e) Copies of pertinent documents.

(6) The Commission or its designee may resolve complaints with the assistance of other parties such as the Oregon Department of Justice, the U.S. Department of Education, and other appropriate organizations and/or individuals.

(7) The Commission may delegate authority or contract with outside parties to investigate the complaint, and to hold any necessary proceedings.

(8) On receiving a written complaint, the Commission or its delegate shall send a copy of the complaint(s) to the President or other executive of the institution to which the complaint applies. The Commission or its delegate shall request the institution to provide the information listed below, and the institution shall provide such information within ten days unless prohibited by federal law. To the extent federal law prohibits or limits disclosure of the requested information, the institution will endeavor to provide de-identified or redacted copies of the information:

(a) A copy of the institution's grievance procedures for hearing complaints of discrimination;

(b) A copy of all documents concerning the complaint and the institution's record of the grievance proceeding;

(c) A copy of the institution's written decision;

(d) The institution's position concerning any issues raised by the complaint; and

(e) Any other information the institution considers relevant.

(9) Records and other information pertaining to student complaints are not subject to disclosure under Oregon public record law, ORS 192.410 to ORS 192.565.

Stat. Auth.: ORS 345.240, 348.603, 350.075, 659.850

Stats. Implemented: ORS 345.120, 348.596, 350.075, 659.850, 659.852

**715-011-0085**

**Determination**

(1) The Commission or its delegate shall review the written record to determine the following:

(a) Whether the institution has sufficient policies and procedures in place to prohibit the type of discrimination alleged in the complaint, prevent its reoccurrence and redress its effects;

(b) Whether the institution followed those policies and procedures appropriately;

(2) Following review of the record, the Commission or its delegate shall take one or more of the following actions:

(a) Issue a dismissal of the complaint upon a finding that the institution properly followed its policies and procedures;

(b) Recommend mediation if both parties are willing to participate in mediation;

(c) Remand the complaint to the institution for prompt resolution upon a finding that the institution has not followed its policies and procedures appropriately;

(d) Issue an order with findings that the institution has failed to implement adequate policies or procedures necessary to prevent, redress and remediate the type of discrimination alleged in the complaint. In that event, the Commission may issue a finding immediately or may require the institution to submit a corrective action plan that addresses the identified deficiencies within 30 days of the issuance of the order.

(3) Upon a finding that the institution has failed to adopt and effectively implement policies and procedures to prevent discrimination and retaliation, prevent its reoccurrence and redress its effects, the Commission will issue a final order requiring compliance within 30 days. If the institution does not comply within 30 days, the Commission shall order appropriate remedies that may include:

(a) Prescribing the adoption and implementation of appropriate policies and procedures and a plan for monitoring compliance for a period of time not to exceed one year;

(b) Withholding all or part of each quarterly payment of state funding;

(c) Daily fines assessed against the institution;

(d) Full or partial restitution to the complainant;

(e) Other appropriate remedies as authorized by rule or statute.

(f) 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 Commission.

(4) The Commission or its delegate shall enter a final order in writing within 30 days of the filing of the complaint to the Commission unless both parties agree to extend the time or the Commission or its delegate finds there is good cause for an extension of time. Should the Commission or its delegate find that an extension of time is warranted, written notice of the allowed extension of time shall be delivered to all the parties within 30 days after the complaint was filed.

(5) The Commission's delegate shall keep the full Commission informed of the number and type of formal complaints that are pending or have been resolved on a regular basis. The delegate shall report any final orders issued at the next regular Commission meeting following issuance of the order.

(6) In addition to any penalty or remedy described in this section, the Commission may refer any complaint to another agency or authority as appropriate.

Stat. Auth.: ORS 345.240, 348.603, 350.075, 659.855, 659.860  
Stats. Implemented: ORS 345.120, 348.596, 350.075, 659.850

**715-011-0090**

**Hearing**

(1) The Model Rules of Procedure under the Administrative Procedure Act as amended and most recently adopted by the Attorney General and filed with the Secretary of State are adopted as the rules of practice and procedure of the Commission for the purpose of hearings within this section. The hearing will be conducted as a contested case hearing under the procedures set forth in ORS 183.413 to 183.497.

(2) If mediation as described in 715-011-0085(2)(b) fails to resolve the parties' differences within 30 days or the Commission or its delegate determines it is appropriate, or either party disagrees with the Commission's final order, the Commission or its delegate shall promptly establish a date for a hearing on the complaint. Unless both parties agree to an extension of the period, the hearing shall be conducted within 30 days of:

(a) Failure of mediation;

(b) The date of determination by the Commission or its delegate if mediation is inappropriate;  
or

(c) Notice to the Commission of disagreement with the final order.

(3) The hearing shall be conducted in accordance with provisions of Oregon's Administrative Procedures Act.

(4) The hearing shall be conducted by the Office of Administrative Hearings.

Stat. Auth.: ORS 183.341, 350.075

Stats. Implemented: ORS 183.341

**715-045-0023**

**Appeals and Complaints against Private Career Schools**

- (1) Each school shall implement a process for the prompt resolution of a written -complaint by a student of the school. Unless specifically provided by state or federal law or administrative rule, the decision of the school shall be final.
- (2) Complaints filed on behalf of or by a student against a school must be postmarked within one year of the student's last date of attendance.
- (3) If the complaint alleges a violation of Oregon Revised Statutes, ORS 345-010 to 345-070 or standards of OAR 715-045-0006 through 715-045-02~~2010~~, the complainant may submit a written complaint ~~direct an appeal~~ to the Higher Education Coordinating Commission, after exhausting the school's procedures or after 45 days from filing a written complaint with the school, whichever occurs first. The complaint-appeal shall be in writing and shall contain:
  - (a) The complainant's name, address, phone number, and signature;
  - (b) School name, address, and phone number;
  - (c) A brief statement indicating which statute or rule the school is alleged to have violated and how the school is alleged to have violated it, e.g., failure to refund tuition, failure to provide a portion of the program described in the enrollment agreement;
  - (d) Facts detailing dates of attendance, termination date, date of occurrence, names, addresses and positions of school officials contacted, financial loss, if any, and any other pertinent information;
  - (e) An explanation of what efforts have been taken to resolve the problem with the school, if any; and
  - (f) Copies of pertinent documents, such as the enrollment agreement, catalog and advertisements.
- (4) After receipt of a complaint or other allegation that a school has failed or is failing to comply with the provisions of any laws or rules, the commission's executive director or designee shall investigate the facts surrounding the allegations.
  - (a) The investigation conducted by the commission shall be conducted in the manner prescribed by OAR 715-011-0070
- (5) The executive director or designee shall notify the complainant and the school of the findings resulting from the investigation.
- (6) The Commission may impose penalties as defined in OAR 581-045-0190 if the school is found to be in violation of any standard or rules.
- (7) Sections (1) and (2) of this rule do not limit the statutory authority of the commission to investigate schools regardless or receiving allegations from the public.
- (8) At the request of the executive director, complaints may be resolved with the assistance of such other parties as the ~~Oregon Student Assistance Commission~~, Oregon Department of Justice, U.S. Department of Education, and other appropriate organizations and/or individuals.

Stat. Auth.: ORS 345.120

Stats. Implemented: ORS 345.120