



Spring 2017
Ad Hoc Report
Addressing Recommendations 1 and 2

from
Spring 2016 Year Seven Evaluation
Mission Fulfillment and Sustainability

Submitted to
Northwest Commission on Colleges and Universities
February 21, 2017

Introduction

The Oregon Institute of Technology (OIT) regional accreditation was reaffirmed by Northwest Commission on Colleges and Universities based on the Spring 2016 Year Seven *Mission Fulfillment and Sustainability* Evaluation, however, with Recommendations.

The NW Commission letter, dated July 5, 2016, addresses areas where OIT is not in compliance with the Commission's criteria for accreditation as follows:

Recommendation 1. "The evaluation committee recommends that Oregon Institute of Technology (OIT) complete, approve, and execute an agreement between the institution and the Foundation that clearly refines the relationship between the organizations (Standard 2.F.8.)"

Recommendation 2. "The evaluation committee recommends that OIT develop, enforce and document enforcement of a policy for credit for prior learning assessment that clearly meets the criteria of Standard 2.C.7. and particularly paragraph (b)."

Upon request of the Commission, Oregon Tech has been asked to submit a Spring 2017 Ad Hoc Report, addressing Recommendations 1 and 2 of the Spring 2016 Year Seven Self-Evaluation Report.

Response to Recommendation 1.

"The evaluation committee recommends that Oregon Institute of Technology (OIT) complete, approve, and execute an agreement between the institution and the Foundation that clearly refines the relationship between the organizations (Standard 2.F.8.)"

Oregon Institute of Technology and the Foundation completed, approved and executed an agreement between the organizations, effective July 1, 2016.

Progress: Oregon Institute of Technology became a separate legal entity July 1, 2015, which also allowed the Institution to operate under its own Board of Trustees. Due to the timing of onboarding of the Board and adoption of policy and procedure, to include a draft agreement between the Board of Trustees and the Foundation, timing did not allow execution of such agreement until after the Peer-Evaluation visit in April 2016. The completed agreement was presented to The Commission during the June meeting in Redmond, Washington, and is included herein.

Response to Recommendation 2.

"The evaluation committee recommends that OIT develop, enforce and document enforcement of a policy for credit for prior learning assessment that clearly meets the criteria of Standard 2.C.7. and particularly paragraph (b)."

Oregon Tech recognizes the importance of enforcement of Institutional policies. While a newly revised policy is planned for implementation around CPL, we also realize that current practice in awarding credit for prior learning is out of compliance with our current policy, and thus Standard 2.C.7.

Progress: As a result of recent conversations with members of the Higher Education Coordinating Commission's Credit for Prior Learning Advisory Committee, Oregon Tech is planning further revisions of the current Credit for Prior Learning policy.

AGREEMENT TO EXCHANGE SERVICES AND SUPPORT

This Agreement to Exchange Services and Support (this "Agreement") is by and between the Oregon Institute of Technology ("Oregon Tech") and the Oregon Institute of Technology Foundation ("Foundation") and is dated as of July 1, 2016 (the "Effective Date"). Oregon Tech and the Foundation may be referred to herein collectively as the "Parties" or individually as a "Party".

RECITALS

- A. Heretofore, the Parties entered into that certain Restated Oregon Institute of Technology and Oregon Tech Foundation Contract to Exchange Services and Support with a term from December 13, 2002 to December 13, 2003 and which may have been extended and amended from time to time (the original contract and any extensions and amendments thereto are collectively referred to herein as the "Prior Contract").
- B. The Prior Contract has expired and is no longer of any force and effect.
- C. As of July 1, 2015, Oregon Tech is a public institution of higher education that, in accordance with ORS 352.025 et. Seq., is governed by a Board of Trustees appointed by the Governor of Oregon ("Board of Trustees"). The daily operations of Oregon Tech are conducted by the President of Oregon Tech.
- D. Prior to July 1, 2015, certain Oregon Administrative Rules applied to Oregon Tech. After July 1, 2015, the Oregon Administrative Rules became irrelevant; however, the Board of Trustees adopted the previously applicable Oregon Administrative Rules as "University Policies". The University Policies retain the same numbering protocol as the previously applicable Oregon Administrative Rules which are attached to this Agreement for reference (Attachment #1).
- E. The Foundation is a public benefit corporation incorporated and existing under Oregon laws ORS Chapter 65 established for the sole purpose of aiding and promoting the educational purposes of Oregon Tech; furthermore, the Foundation has the status of a non-profit, tax-exempt, organization, pursuant to Section 501(C)(3) of the U.S. Internal Revenue Code.
- F. Oregon Tech has recognized the Foundation as satisfying the requirements set forth in University Policy 580-46-0005 and the Foundation has confirmed that it continues to meet those requirements, has accepted Oregon Tech's recognition as provided in University Policy 580-46-0010, and has provided Oregon Tech's president with the reaffirmation required under 580-046-0010(3).

- G. It is the desire of the Parties to set forth the manner in which Oregon Tech is to provide support to the Foundation and in which the Foundation is to provide support to Oregon Tech.

AGREEMENT

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged by Oregon Tech and the Foundation, the Parties agree as follows:

- 1.0 Support Provided by the Foundation to Oregon Tech.** The Foundation's sole purpose is to provide support to Oregon Tech. Support includes, but is not limited to:
- 1.1 Raising, receiving, investing and administering funds for Oregon Tech to use for its charitable, scientific, cultural and educational purposes;
 - 1.2 Assisting Oregon Tech's Office of Development and Alumni Relations in its fund raising activities and development programs with individuals, corporations, foundations, and other organizations;
 - 1.3 Soliciting funds for the purchase of equipment, supplies, faculty and staff development, faculty chairs, student projects and scholarships, and supporting any other lawful purpose of Oregon Tech so long as all such solicitations are conducted in compliance with the Foundation's Bylaws, Articles of Incorporation, and the Foundation's nonprofit and tax exempt status;
 - 1.4 Participating in the development of and conducting its activities in a manner that support strategic plans, goals, and priorities for fundraising that have been adopted by Oregon Tech;
 - 1.5 Funding wholly or in part, including other payroll expenses, Oregon Tech employee positions that are not funded by Oregon Tech but do provide services to the Foundation and indirectly to Oregon Tech;
 - 1.6 Unless otherwise specifically designated by the Foundation, assigning to Oregon Tech any and all rights to claims the Foundation may have acquired or may acquire in the future to publications, inventions, and all other forms of intellectual property evolving directly or indirectly from research and related activities conducted by employees of Oregon Tech with funds provided to Oregon Tech by the Foundation;
 - 1.7 Performing other activities deemed appropriate by the Foundation's Board of Directors in carrying out the stated purposes of Oregon Tech and the Foundation.
- 2.0 Support Provided by Oregon Tech to the Foundation.** Oregon Tech agrees to provide services and support to the Foundation as described below.
- 2.1 Office space including office furniture, equipment, utilities and janitorial services that are sufficient to accommodate people working on behalf of the Foundation

to be provided on such terms and at such location(s) as are mutually acceptable to the Parties;

- 2.2 Student employees to perform miscellaneous services to the Foundation, including but not limited to telethons, administrative duties, data entry and receipt of gifts;
- 2.3 Assistance in arranging Foundation meetings and events, including arranging catering and meeting spaces;
- 2.4 Developing and producing publicity (a) to be used by the Foundation to promote Oregon Tech, (b) about Foundation-sponsored events to increase public awareness about Oregon Tech, and (c) to promote development of donor relations and donations to the Foundation (additionally, the Foundation may use marketing materials produced by Oregon Tech's Marketing, Communication and Public Affairs Department with the prior approval of the Marketing Department);
- 2.5 General office services including but not limited to typing, filing, reception and telephone communication, recording gifts (but not payment card information), processing disbursement documents, recording transfers between accounts and maintaining other fiscal records and reports as may be required;
- 2.6 Use of Oregon Tech's Information Technology Office services including all telephone related services, data and/or network services, and computer systems services, including internet access and central web services, provided that the Foundation is not authorized to access or use personal information (as that term is defined by applicable law) through such Information Technology Office services. The Foundation agrees to comply with all applicable federal and State regulations and Oregon Tech policies on use and security of such services and information that may be accessed through such services;
- 2.7 Use of Oregon Tech's Printing Department that includes printing, duplicating, mailing services, campus mail and campus freight;
- 2.8 Oregon Tech may provide other support to the Foundation that is consistent with the support described above as funding is available.

3.0 Relationship between Oregon Tech and the Foundation.

- 3.1 The Parties agree to acknowledge and respect each other's independence, to act at all times so as not to jeopardize that independence, and to actively seek and encourage a cooperative relationship between Oregon Tech and the Foundation.
- 3.2 The Board of Directors of the Foundation is responsible to control, manage and invest all assets of the Foundation, and to delegate management authority, including the prudent management of all gifts and donations consistent with donor intent and applicable federal and state laws.
- 3.3 No employee of Oregon Tech may be a voting member of the Foundation's board of directors, see University Policy 580-046-0025(3).

- 3.4 Oregon Tech employees that are also ex-officio non-voting members of the Foundation Board of Directors include:
 - 3.4.1 The President of Oregon Tech or his/her designee;
 - 3.4.2 The Vice President for Development and Alumni Relations; and
 - 3.4.3 The Vice President for Finance and Administration.
- 3.5 The Foundation shall cooperate with the President of Oregon Tech to permit compliance with University Policy 580-046-0030(2).
- 3.6 Should a conflict of interest arise with respect to employees of Oregon Tech that serve on the Foundation's Board of Directors, any such conflict shall be resolved solely by the independent officers, the President of Oregon Tech, and the Board of Directors of the Foundation who are not directly or indirectly involved in the conflict situation.
- 3.7 Should any third party claim be asserted against a Party (the "First Party"), the other Party will cooperate with the First Party and the First Party's representatives in connection with the defense of such claim.

4.0 Financial Arrangements.

- 4.1 The Foundation shall reimburse Oregon Tech for the cost of providing its personnel, services and supplies at the same rate as Oregon Tech charges its departments and schools, the amount(s) to be determined on an annual basis.
- 4.2 Oregon Tech agrees to employ, compensate, and evaluate designated employees in the Development and Alumni Relations Department.
- 4.3 Oregon Tech agrees to provide annual financial support to the Foundation in an amount to be determined each fiscal year for personnel, services, and supplies as follows:
 - 4.3.1 The amount shall be determined annually between Oregon Tech and the Foundation;
 - 4.3.2 The annual support shall reflect prior support of Foundation activities by Oregon Tech; and
 - 4.3.3 Annual support shall reflect non-operating activities of the Foundation, committed to by the Foundation in support of and at the request of Oregon Tech, that require use of operating funds to meet financial obligations (i.e., loans or leases for the benefit of Oregon Tech).
- 4.4 The Foundation shall not make any payments to an employee of Oregon Tech except as permitted by University Policy 580-046-0035(6); furthermore, Oregon Tech agrees to provide the President's approval required by University Policy 580-046-0035(6)(b) so long as Oregon Tech's interests will not be jeopardized thereby.

- 4.5 The Foundation shall provide Oregon Tech's President and Board of Trustees with an annual report summarizing gifts received by the Foundation.

5.0 Goal Setting and Fundraising

- 5.1 The Foundation shall participate in the development of strategic goals, priorities and plans for fundraising for the benefit of Oregon Tech;
- 5.2 Oregon Tech shall provide to the Foundation on an annual basis, its priorities for the Foundation's fundraising efforts;
- 5.3 The President of Oregon Tech shall assume a prominent role in the fundraising activities of the Foundation; and
- 5.4 The Foundation agrees to coordinate all fundraising goals programs, campaigns and activities with personnel in Oregon Tech's Office of Development and Alumni Relations or others designated by Oregon Tech.

6.0 Data Base(s), Student Records, Alumni Records, and Donor Information.

- 6.1 The Foundation shall operate and maintain the Foundation's data processing equipment including but not limited to the following:
 - 6.1.1 Peripheral hardware and software;
 - 6.1.2 Hardware and software systems programs to provide accounting, development, and alumni record keeping.
- 6.2 Except as may be limited by State or Federal law, Oregon Tech shall provide the Foundation with access to those student and alumni records necessary for the Foundation to grant scholarships, engage and solicit gifts from alumni, and other purposes consistent with the Foundation's Bylaws relating to support of Oregon Tech and furthering Oregon Tech's educational mission. For these purposes, the Foundation is a school official with a legitimate education interest within the meaning of FERPA (20 U.S.C. §1232g; 34 CFR Part 99).
- 6.3 As required by the Family Educational Rights and Privacy Act, 20 U.S.C. §1232g ("FERPA") and ORS 326.565, the Foundation shall not disclose any information or records regarding students or their families that the Foundation may learn or obtain in the course and scope of its performance of this Agreement. The parties recognize that FERPA imposes strict penalties for improper disclosure or re-disclosure of confidential student information, including but not limited to denial of access to personally identifiable information from education records for at least five years (34 CFR § 99.67). Therefore, consistent with FERPA's requirements, personally identifiable information obtained by the Foundation in the performance of this Agreement may not be re-disclosed to third parties without the written consent of the student's parent/guardian and must be used only for the purposes identified in this Agreement.
- 6.4 Oregon Tech will not share personal information (as that term is defined by applicable law) with the Foundation. To the extent the Foundation has received

such information in the past, it will comply with the administrative, physical, and technical safeguards set forth in ORS 646A.622.

- 6.5 The Foundation is solely responsible for acquiring, storing, transmitting, processing, and otherwise using donor and potential donor information, including without limitation payment card data. The Foundation shall use their best efforts (and in no event less than reasonable efforts) to protect the confidentiality of donor and potential donor information and shall not, without the prior written consent of the donor or potential donor, acquire, store, transmit, process or otherwise use the names, addresses, telephone numbers, payment card data, or other personal information of donors or potential donors, regardless of when collected, to anyone other than its board of directors, officers, employees, lawyers, accountants, affinity partners, and other professional advisors, who need to know such information, except pursuant to a court order or an opinion of counsel to the effect that such disclosure is required by applicable law. The Foundation's accounting, development, and alumni records shall be on processing equipment that is compatible with Oregon Tech's processing equipment.

7.0 Foundation to be Primary Recipient of Gifts, Certain Restrictions Apply.

- 7.1 Oregon Tech acknowledges that the Foundation shall receive most charitable contributions, gifts and grants that benefit Oregon Tech and the Foundation; additionally, the Foundation shall administer all charitable contributions, gifts and grants it receives in accordance with applicable restrictions and preferences and in compliance with this Section.
- 7.2 The Foundation shall consult with and gain the prior approval of Oregon Tech's Vice President of Development and Alumni Relations, or its designee or successor, regarding any restrictive terms and conditions placed on potential gifts by donors.
- 7.3 Prior to accepting any gift of real or tangible personal property that is to be utilized by Oregon Tech, the Foundation shall obtain the written approval of Oregon Tech's Vice President of Finance and Administration and/or any other approvals required by Oregon Tech.
- 7.4 Notwithstanding sections 7.1-7.3, the Foundation acknowledges that revenues received from Oregon Tech activities, shall not be deposited in a Foundation account. Oregon Tech and the Foundation agree that if either of them receives funds intended for the other, such funds shall be handled as follows:
- 7.4.1 If Oregon Tech receives funds intended for the Foundation, then such funds shall be identified, deposited in a state account and promptly transferred to the Foundation after receipt of supporting documents showing that the Foundation was the intended recipient; and

7.4.2 If the Foundation receives funds intended for Oregon Tech, the Foundation shall identify and isolate such funds in its accounting records and promptly transfer such funds to Oregon Tech after receipt of supporting documents showing that Oregon Tech was the intended recipient.

7.5 Oregon Tech shall follow all donor designations of gifts and applicable law governing the use of such gifts made to the Foundation:

7.5.1 When cash, or assets converted to cash, are made available for use by Oregon Tech, Oregon Tech must follow any donor restrictions or designations related to the gift.

7.5.2 When tangible personal property, such as equipment, is donated to the Foundation and ownership is subsequently transferred to Oregon Tech, Oregon Tech must follow any donor restrictions or designations related to the gift. In all circumstances, however, the useful life of such property will be deemed to end and the property can be disposed of when it becomes obsolete, requires extensive repairs, or outlives its relevance or intent. The Foundation will make clear to prospective donors of such property, in writing, that the terms of this section 7.5.2 apply to all donations of tangible personal property. Unless the Foundation retained ownership of any such donated tangible personal property, proceeds from any disposition must:

7.5.2.1 Be used towards the replacement of the disposed of asset;

7.5.2.2 If it is not possible to replace the gifted asset, then proceeds shall go to the same program to be used for other needed assets; if there are no other equipment needs, then the proceeds shall go to the same program for general use; or

7.5.2.3 If the program no longer exists, then the proceeds shall go to a general endowed equipment fund.

8.0 Foundation Audits and Reporting

8.1 The Foundation shall select an independent certified public accounting firm to serve as the Foundation's auditor and shall enter into a contract for a full and complete annual audit of its financial statements in accordance with auditing standards generally accepted in the United States of America.

8.2 The Foundation shall notify the President of Oregon Tech within 30 days if the Foundation selects a new certified public accounting firm to perform the Foundation's annual audits and the reason(s) for the change.

8.3 The Foundation shall provide the President of Oregon Tech with the following information on an annual basis or more often if reasonably requested by the President:

- 8.3.1 The complete Audit Report;
 - 8.3.2 A list of Foundation officers, directors, and ex-officio members of the board of directors and their respective contact information; and
 - 8.3.3 The names of the officers, directors or trustees of all entities to which University Policy 580-046-0020 (4) and (5) apply.
- 8.4 The Foundation, in accordance with University Policy 580-046-0040(2)(b) shall permit the President of Oregon Tech or their designee to inspect and audit all reports of and information on its financial status and operations to assure compliance with these rules. Confidentiality of records and reports shall be maintained consistent with applicable law.

9.0 Foundation's Use of Oregon Tech's Name

- 9.1 The Foundation may, solely in furtherance of the transactions contemplated by this Agreement, use the name of Oregon Tech (including Oregon Institute of Technology) and Oregon Tech's logo(s), informal seal and other symbols and marks of Oregon Tech.
- 9.2 The Foundation shall not delegate the permissions granted in 9.1 to any person or entity without the prior written approval of the President of Oregon Tech.
- 9.3 The Foundation shall cease the uses permitted in 9.1 upon (i) the termination of this Agreement, (ii) the dissolution of the Foundation, (iii) the withdrawal of recognition of the Foundation pursuant to University Policy 580-046-0045, or (iv) when the Foundation ceases to be a non-profit corporation or otherwise fails to comply with University Policy 580-046-0020 (1), (2), or (3).

10.0 Affiliates and Associates of the Foundation

10.1 Affiliates:

10.1.1 The Foundation shall comply with University Policy 580-046-0020(4) regarding its affiliates that are part of the Foundation's organization and that support a particular unit or activity of Oregon Tech but are not separately incorporated.

10.1.2 The Foundation's affiliates are:

10.1.2.1 Oregon Tech Alumni Association; and

10.1.2.2 Shaw Historical Library.

- 10.2 Associate: The Foundation shall comply with University policy 580-046-0020(5) regarding entities with which the Foundation may form relationships or associations.
- 10.3 Oregon Tech's President has approved the affiliates identified in 10.1.2 and agrees to inform the Board of Trustees of such affiliates;

- 10.4 Oregon Tech may recommend that the Foundation include a previously unrecognized affiliate or associate to which the Foundation agrees to give due consideration so long as any such recommended affiliate or associate complies with University Policies 580-046-0020(4) and (5).
- 10.5 The Foundation acknowledges that all official affiliates and associates shall be permitted one ex-officio representative to the Foundation Board of Directors and shall receive advance notice of meetings of the Foundation Board of Directors and activities of the Foundation.

11.0 Compliance with Laws and Indemnification

- 11.1 Oregon Tech and the Foundation agree to comply with all laws applicable to each of them.
- 11.2 Except as otherwise limited by applicable Oregon law, ORS 30.260 – 30.300, and the Oregon Constitution, Article XI, Section 7, Oregon Tech and the Foundation shall each and independently be responsible for tortious acts committed by it and those of its directors, trustees, officers, employees, consultants, or agents arising out of, or in any way connected with, the acts of each of them under this Agreement.

12.0 Indemnification

- 12.1 The Foundation will indemnify, defend, and hold harmless Oregon Tech from and against all Claims (defined as any and all damages, costs, expenses, suits, claims, and liabilities of any kind or nature, including without limitation reasonable attorney fees and costs) suffered or incurred by or brought against Oregon Tech that arise out of or related to any breach of this Agreement by the Foundation or any unauthorized access or use of personal information (as that term is defined by applicable law) by the Foundation.
- 12.2 Oregon Tech will indemnify, defend, and hold harmless the Foundation from and against all Claims (defined as any and all damages, costs, expenses, suits, claims, and liabilities of any kind or nature, including without limitation reasonable attorney fees and costs) suffered or incurred by or brought against the Foundation that arise out of or related to any breach of this Agreement by Oregon Tech or any unauthorized access or use of personal information (as that term is defined by applicable law) by Oregon Tech.

13.0 Term, Extensions, Termination, Amendments

- 13.1 The term of this Agreement shall be one year beginning on July 1, 2016 and expiring on June 30, 2017 (the "Initial Term"). This Agreement shall be extended for sequential one year terms beginning on July 1, 2017 ("Subsequent Terms") except to the extent either Party provides a notice of termination of this Agreement to the other Party within 30 days in advance of the expiration of the Initial Term or Subsequent Term.

- 13.2 If the Oregon Legislature fails to provide funds in a sufficient amount to permit Oregon Tech to continue the operations and activities set forth in this Agreement, then Oregon Tech may terminate this Agreement by providing written notice to the Foundation at least 30 days in advance of any such termination and the Parties shall negotiate the terms of a new agreement with respect to the exchange of services and support between them.
- 13.3 If Oregon Tech terminates this Agreement pursuant to 13.2, the Foundation may demand that Oregon Tech pay, within 180 days of written notice, all debt(s) incurred by the Foundation on behalf of Oregon Tech including, but not limited to, lease payments, advanced funds, and funds borrowed for specific initiatives. If the Foundation terminates this Agreement, Oregon Tech may demand that the Foundation pay debt it holds on behalf of the Foundation.
- 13.4 This Agreement may be amended only by mutual written consent of the Parties.

14.0 Entire Agreement.

- 14.1 This Agreement represents the entire agreement between Oregon Tech and the Foundation covering the exchange of services and support between them. This Agreement supersedes all previous communication, either oral or written, between the Parties with respect to the subject matter hereof.

SO AGREED:

OREGON TECH

FOUNDATION

By



By



Its

PRESIDENT

Its

President of the Board

ATTACHMENT #1

Effective July 1, 2015, Oregon Institute of Technology (Oregon Tech) became a separate legal entity from the Oregon University System and now operates under its own Board of Trustees. With the dissolution of the OUS System many of the Oregon Administrative Rules (OARs) specific to Oregon Tech and higher education in general were repealed.

Chapter 580 of the OARs, previously promulgated by the State Board of Higher Education, were effectively readopted as University Policies in substantially identical form on July 1, 2015. They are incorporated into the University Policies, retaining their previous OAR numbers without the "OAR" designator.

To interpret the Policies during this transition period, note that "Board" or "State Board of Higher Education" now refers to Oregon Tech's Board of Trustees; "Chancellor" means "University President;" "Institution" means Oregon Tech; and so on.

University Policy

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;
 - 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.

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 a 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.

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 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.

580-046-0025 Foundation Independent 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.

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 PAR 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(3) and (4)(c); 580-046-0020(4)(d), (5)(a), and (5)(c); 580-046-0030(2) and (3); 580-046-0035(3), (6)(b), (6)(c), and (7)(b); 580-046-0040(2)(a); and 580-0046-0045(1).

580-046-0035

- (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 approved 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) Institutional 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.

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 Chancellor. 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.

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 of 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 or 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 decisions but shall not reverse that decisions 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.

