

Policy Concept Form

All policy proposals including new policy concepts, recommendations to revise, or requests to repeal must be submitted via this form to the University Secretary. The Secretary will forward completed concept forms to the President's Policy Advisory Council for consideration pursuant to I.03.01 Policy on University Policies. When submitting a policy concept form, please keep the following university definition of "policy" in mind:

A University Policy ("Policy") is a policy that (1) has broad application or impact throughout the University community, (2) must be implemented to ensure compliance with state or federal law, (3) is necessary to enhance the University's mission, to ensure institutional consistency and operational efficiency, or to mitigate institutional risks; or (4) is otherwise designated by the Board or the President as a University Policy subject to the Policy- Making Process authorized in section 4. A policy establishes rights, requirements or responsibilities. Excluded from this definition are things such as, but not limited to, implementation guides, operating guidelines, internal procedures, and similar management controls and tools.

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Policy Subject Matter (please included existing policy number(s) if available)

Former OUS Policy 35 ("Legal Services"), which governed legal services in the Chancellor's office and at the State Board of Higher Education (both of which no longer exist).

Statement of Need and Desired Result (please describe what we accomplish with the proposed action)

This policy predates statutory changes with respect to independent governance. The policy's components are outdated and unnecessary due to the facts that the SBHE/OUS don't exist and all relevant matters are governed by more modern statutes and UO-specific governing documents (e.g. bylaws, delegation of authority). See ORS 352.087(o) (grants all authority for hiring or retaining attorneys to the governing board), the University of Oregon Bylaws (outlining the role of GC as an officer), and the Policy on the Retention and Delegation of Authority (which articulates the president's delegated authorities regarding legal matters).

Affected Policy Stakeholders (please list all known impacted stakeholders and the nature of those impacts)

No one is affected by the repeal of this policy since it is inapplicable as is.

Proposed Action (i.e., new, revision, repeal)

Repeal



REASON FOR POLICY

Senate Bill 242 (2011) authorizes the State Board of Higher Education to hire and retain attorneys for legal services and removes the Oregon Department of Justice’s authority to serve as legal counsel for the Board and Oregon University System. As the State Board of Higher Education and the Oregon University System are now responsible for the provision of their own legal services, this Board policy outlines requirements to ensure, to the extent practicable, that competent legal advice and services are provided to the Board, the Chancellor’s Office and each of the seven OUS institutions in the most efficient, cost-effective, accountable, and risk-conscious manner possible.

While OUS attorneys authorized to provide legal services to the Board and the Oregon University System, including the Chancellor’s Office and seven OUS institutions, may participate in policy discussions and discharge various administrative duties in the course and scope of their employment, the primary responsibility of OUS attorneys is to provide legal advice to the directors, officers, employees, and authorized representatives of the Oregon University System. As a general matter, attorneys provide advice in order to permit directors, officers, employees, and authorized representatives to make informed decisions regarding courses of action necessary for the operations of the organization.

ENTITIES AFFECTED BY THIS POLICY

WEB SITE ADDRESS FOR THIS POLICY

<http://policies.uoregon.edu/legal-services>

RESPONSIBLE OFFICE

For questions about this policy, please contact the Office of the General Counsel at (541)346-3082 / gcounsel@uoregon.edu).

ENACTMENT & REVISION HISTORY

Senate Bill 242 (2011), including ORS Chapter 351 and its amendments
Board Policy on Executive Leadership and Management
(1) Approved by the Finance and Administration Committee, November 4, 2011.

POLICY

PRINCIPLES/GUIDELINES/PROCEDURES:

(A) *Delegation*

(1) Notwithstanding the Board's Policy on Executive Leadership and Management, the Board delegates to the Chancellor or designee the exclusive authority to hire in-house attorneys or retain outside counsel to provide legal services to the State Board of Higher Education, the Chancellor's Office and each of the seven OUS institutions.

(2) Consistent with, and subject to, this policy, the Chancellor or designee may delegate to any OUS institution the authority to hire in-house counsel or retain outside counsel to provide legal services to the OUS institution, as appropriate. Such delegation may permit the OUS institution to designate an in-house counsel, subject to this policy, the general counsel of that institution.

(3) Consistent with the Board's Policy on Executive Leadership and Management and this policy, the Chancellor shall hire the OUS general counsel. The OUS general counsel is the chief legal officer of the State Board of Higher Education and the Oregon University System. As chief legal officer, the OUS general counsel is responsible to the Board and the Chancellor for, among other duties, legal advice concerning issues of organization-wide impact and the management of consistent legal advice.

(B) *Organization as a Client*

(1) Oregon Rule of Professional Conduct 1.13—***Organization as a Client***—informs attorneys licensed in the State of Oregon of ethical obligations when representing an organization, such as the Oregon University System governed by the State Board of Higher Education. Under this ethical rule, attorneys authorized to provide legal services to the State Board of Higher Education and the Oregon University System under this policy may:

(a) Represent the organization through directors, officers, employees, and authorized representatives acting for the State Board of Higher Education and the Oregon University System, including the Chancellor's Office and the seven OUS institutions;

(b) Represent any of the officers, directors, employees or authorized representatives of the organization, except where a prohibited conflict of interest exists; and;

(c) Explain the identity of the organizational client when the attorney knows or reasonably should know that the organization's interests are adverse to those of the officer, director, employee or authorized representative with whom the attorney is dealing.

(2) Each attorney authorized to provide legal services to the State Board of Higher Education and Oregon University System, including its institutions, is charged to exercise independent and professional judgment on behalf of the organization— the State Board of Higher Education. While the organization acts, in some circumstances, directly through the State Board of Higher Education, most often it acts through the Chancellor, the OUS presidents, its officers, employees, and other authorized representatives. When rendering

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legal advice to the organization, an attorney must, ordinarily, accept the decisions made by the officers, directors, employees, and authorized representatives of the organization. Decisions concerning policy and operations, including decisions entailing serious risk, are not, as such, in the attorney's province.

(C) *Role and Authority of Legal Counsel*

(1) The State Board of Higher Education, the Chancellor's Office, and seven OUS institutions may receive legal representation, services, and opinions only from attorneys authorized to provide legal services to the Board, Chancellor's Office, or OUS institution. The receipt of legal services, including pro bono or no-cost legal services, from anyone other than attorneys authorized to provide legal services to the Board, Chancellor's Office, or OUS institution is prohibited.

(2) Legal advice and opinions rendered by anyone other than an attorney to provide legal services to the Board, Chancellor's Office, or OUS institution is ineffective except to the extent declared by the OUS general counsel, or, as appropriate, any institutional general counsel authorized by Section (A)(2) of this policy.

(3) Consistent with this policy and any other relevant Board rule, policy, procedure, internal management directive, action, or directive, the OUS general counsel and any institutional general counsel authorized by Section (A)(2) of this policy is authorized, for the benefit of the applicable employing institution:

(a) To issue legal opinions and provide legal advice;

(b) To retain outside counsel and authorize other in-house attorneys to retain outside counsel; and

(c) To accept service of process, including subpoenas, and to designate others to accept service of process, including subpoenas.

(4) No director, officer, employee or authorized representative may request a legal opinion or seek legal advice from the Oregon Attorney General or the Oregon Department of Justice.

(5) No attorney employed by the Board, Chancellor's Office, or OUS institution as in-house counsel may provide personal legal advice in the course and scope of his/her employment, nor may such an attorney provide legal advice to a student unless that student is acting in his/her capacity as an employee or authorized volunteer.

(6) As appropriate and necessary, depending on the relevant risk management mechanism, the OUS general counsel or any institutional general counsel authorized by Section (A)(2) of this policy will work collaboratively with insurance carriers and risk managers to manage litigation.

(D) *In-House Legal Counsel*

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(1) The OUS general counsel may hire in-house attorneys to advise the Board, the Chancellor's Office, and any OUS institution without delegated authority to hire in-house counsel or retain outside counsel.

(2) Because the State Board of Higher Education is an "organization," as described in this policy, under *Organization as a Client*, each in-house attorney, whether employed by the Chancellor's Office or an OUS institution, is available to consult with any other in-house attorney regarding any legal matter without compromising the attorney-client privilege.

(E) *Outside Counsel*

(1) Outside counsel authorized to provide legal services and advice to the Board, the Chancellor's Office, and the seven OUS institutions will be organized and managed under the following three-tier framework.

(a) Full-Service Law Firms

(i) Using information gathered through a procurement process or other means, the OUS general counsel, and any institutional general counsel authorized by Section (A)(2) of this policy, will select three to five full-service law firms that may provide a substantial portion of the outside legal services required by the Board and Oregon University System.

(ii) Full-service law firms will be procured centrally out of the Chancellor's Office and will be available to the Board, the Chancellor's Office and all seven OUS institutions for legal services.

(b) Law Firms with Specific Industry, Subject Matter, or Regional Expertise

(i) Using information gathered through a procurement process or other means, the OUS general counsel and any institutional general counsel authorized by Section (A)(2) of this policy will identify a number of law firms or outside attorneys that specialize in a specific industry, subject matter, or region to serve recurring needs of the Board, the Chancellor's Office, and the seven OUS institutions, separate from those needs served by full-service law firms.

(ii) Law firms with specific industry, subject matter, or regional expertise, although identified through a collaborative process among the OUS general counsel and any institutional general counsel authorized by Section (A)(2) of this policy, will be procured individually by the Chancellor's Office or OUS institution, as appropriate and authorized.

(c) Singular Engagements

(i) For unique matters or when, in the judgment of the OUS general counsel or any institutional general counsel authorized by Section (A)(2) of this policy, as applicable, it is in the best interests of the OUS institution, the Chancellor's Office or OUS institution may contract separately with outside counsel to handle a singular engagement.

(2) Outside Counsel Database

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(i) In order to track outside counsel engagements and permit the Chancellor's Office and OUS institutions to engage, as appropriate, outside counsel to meet legal services needs, the OUS general counsel and any institutional general counsel authorized by Section (A)(2) of this policy will maintain a database of all outside counsel engagements, whether by a full-service law firm, a law firm with specific industry, subject matter, or regional expertise, or a singular engagement.

(ii) The database, for the use by the in-house legal services offices within the Oregon University System, will contain information, including, but not limited to, the matters handled by all outside counsel engagements and an evaluation of the services provided.

(iii) The database is a compilation of information which is known only to certain individuals within the Oregon University System and is used in the course of business conducted by the Oregon University System. The database has actual or potential commercial value to the Oregon University System with regard to the selection of attorneys and it gives those with access to the database an opportunity to obtain a business advantage over other colleges and universities that may not use it.

(3) The OUS general counsel, and any institutional general counsel authorized by Section (A)(2) of this policy will review all outside counsel engagements annually and, as appropriate, recommend changes to outside counsel engaged to advise the Oregon University System and its institutions.

(4) The OUS general counsel and any institutional general counsel authorized by Section (A)(2) of this policy will give direction, as appropriate, to each outside law firm or attorney engaged to provide legal services regarding ethical expectations, including, but not limited to, the management of conflicts.

(F) *Accountability and Board Reporting*

(1) The OUS general counsel, in collaboration with any institutional general counsel authorized by Section (A)(2) of this policy, will report on the state of legal services, including any performance metrics or other benchmarks, to the Board annually. The management of legal accountability mechanisms is, as appropriate, the responsibility of the OUS general counsel or any institutional general counsel authorized by Section (A)(2) of this policy.

(2) The OUS general counsel and any institutional general counsel authorized by Section (A)(2) of this policy may work, as appropriate, with the Chancellor or the State Board of Higher Education directly on legal issues facing their respective employing institutions.

(3) Pursuant to the OUS internal management directive (IMD) on Review of Legal Agreements and Documents, each in-house attorney will maintain a log of any agreement or transaction drafted or reviewed pursuant to that IMD. Information in these logs, as appropriate and not otherwise protected by the attorney-client privilege, may be a part of the annual report on legal services to the Board.

(4) The OUS general counsel and any institutional general counsel authorized by Section (A)(2) of this policy will meet in-person, by video-conference, or by telephone, at least monthly, to

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discuss and coordinate system-wide legal matters and to ensure, as appropriate, consistency of legal advice.

(5) All in-house OUS attorneys will meet in-person at least semi-annually.

(G) *Review*

(1) This Board policy will be reviewed from time-to-time, but no less than once a biennium, for amendment or revision.

(2) The OUS general counsel may, as part of the review of the Oregon University's System initial biennium of responsibility for its own legal services, request an audit from the Oregon University System Internal Audit Division to identify any weaknesses that may be addressed and remedied moving forward.

RELATED RESOURCES

Provide links to forms, external pages, implementation guides, etc. if applicable. Leave blank if not.