



Procedures to Resolve Claims of Detrimental Duplication and Adverse Impact Between Community Colleges

Department forms change periodically and it is the college's responsibility to use the most current forms available. Forms, handouts and useful resources are located at <http://www.odccwd.state.or.us/prgapproval/appsandwkshts.aspx>

Approved by the State Board, June 2004

Introduction

The Student Assistance Commission, Office of Degree Authorization (ODA) has the statutory responsibility for resolving complaints of adverse impact and detrimental duplication between schools from different segments of education (intersegmental). The segments of education are community colleges, Oregon University System Institutions, private career schools, independent colleges and universities, and the Oregon Health Sciences University. The procedures used by ODA to address adverse intersegmental impact and detrimental duplication are formal, detailed, and well established. ODA has no role in resolving complaints of adverse impact and detrimental duplication between Oregon's public community colleges.

The Oregon State Board of Education has the statutory authority to resolve complaints of adverse impact and detrimental duplication between community colleges (intra-segmental). The State Board has designated the Department of Community Colleges and Workforce Development with responsibility to implement policies, procedures and guidelines related to community colleges.

Intra-segmental Adverse Impact/Detrimental Duplication Resolution Procedures

These procedures reflect the State Board's interest in using public resources efficiently, preventing unnecessary duplication of programs, assuring that workforce education and training needs in the state are being effectively addressed, and promoting coordination and collaboration among Oregon's community colleges.

Community colleges with a program similar to a proposed program are given an opportunity to investigate and indicate their concern about potential adverse impact. When a college files an adverse impact complaint, it is normally because it believes there is inadequate demand for the proposed program or because the addition of the proposed program adversely affects the ability of the original program to operate (see definitions of adverse impact and detrimental duplication at the end of this document).

Intrasegmental Adverse Impact

Adverse impact may be apparent if there is evidence that a proposed program would create a lack of students in the same program offered at a nearby community college and would create a surplus of program completers that exceeds the job openings for graduates. An adverse impact finding requires a preponderance of evidence that a proposed new program would cause detrimental duplication or significant adverse impact and that there is no proven unmet workforce need for the program.

Exceptions to the Intrasegmental Adverse Impact Procedures

No intrasegmental adverse impact process will be required in the following situations:

1. The proposed program is on the list of needed programs as identified by the State Board of Education; or
2. The proposed program meets the definition and conditions of a Business & Industry program or of contracted training; or
3. The proposed program consists of only courses in an approved certificate of completion or Associate of Applied Science degree program, documents how it prepares students for work within the same cluster of occupations, and it remains within the same criteria used to identify and differentiate programs.

Notification Steps

1. *Notice of Intent.* The proposing college submits a notice of intent to offer a new program or an existing program at a new location, following the most current notification procedures as communicated by the Department. It is expected that prior to submitting a notice of intent, a proposing college communicate and coordinate with nearby community colleges' appropriate instructional leaders such as vice presidents or deans of instruction, presidents, or program chairs for colleges with similar programs. A proposing community college will contact community colleges within a reasonable distance for students to travel for the program (50 miles from the site where the program will be offered). In cases where the proposed program will be drawing a significant number of students from outside the region, or where a significant amount of student placement will be outside the region, the college will be expected to identify affected community college programs from the region affected and contact those colleges, as well. The responding college has the burden to provide evidence of adverse impact as defined in the Intrasegmental Adverse Impact section of these procedures.
2. *Inquiry.* Any community college with questions or potential concerns about adverse impact and detrimental duplication must contact the designated administrator from the proposing college. The contact must be made prior to the end of the reply period (15 days) included in the notice of intent. This initial contact is to inquire about the proposed program, clarify pertinent issues, share concerns, explore solutions, and determine whether they want to file an adverse impact response.
3. *Information.* The proposing college is expected to cooperate, answer questions, provide information, and assist in a timely manner. The goal is to resolve concerns before the lapse of the 15-day reply period as indicated in the notice of intent or to notify the department of the need to extend for 30 days for further clarification.

4. *Response.* In order to exercise rights under these procedures, a college concerned that the proposed program will create verifiable adverse impact on one of its programs, must respond to the proposing college's designated contact person and to the Department within the 15-day reply period as indicated in the notice of intent unless the college has notified the Department to extend for 30 days. The responding college(s) must use the applicable form provided by the Department.
5. *Discussion.* The proposing college shall contact any responding college(s) within 5 days of receiving an objection. Within 20 days of being contacted, every responding college must join the proposing college for discussion among college officers constituting an effort to resolve concerns. The parties may jointly invite a mutually selected advisory panel to enter the discussion as a resource and mediator to reach acceptable agreements. The refusal or failure by a responding college to participate in this discussion will be considered a withdrawal of their objection.
6. *Agreement.* The outcome of the previous step is to be reported in writing to the Department within 5 days after the end of the 20-day period specified for discussion. If agreement is reached, a copy of the agreement with the signatures of the appropriate college administrators will be provided to the Department and all colleges involved. Lacking agreement, written notification will be provided to the Department. If no agreement is reached, the application to the State Board of Education for approval of the proposed program will be postponed until the applicable provisions of the following procedures are completed.

Review Steps (If No Agreement)

1. *Demur.* If agreement is not reached during the Notification Steps, any college that anticipates damage because of the proposing college's latest notice of intent or agreements offered in Step 6 above, may within 10 days of the discussion required in section 5 above submit to the Department and to the proposing college a written demur to explain why it anticipates damage and where applicable to question the proposing college's projections for enrollment, internships, clinicals, field experience, or job placement of graduates. This written demur shall provide to the Department all records, comments, summaries, and documentation of the pertinent communications between community colleges involved in the Notification Steps.
2. *Determination.* The Department may advise withdrawal of the responding college's demur if it is determined not to be valid because the proposed program qualifies for an exception to the adverse impact process, the proposed program or location meets an unmet workforce need in the state, or if the demur is not found to be complete or persuasive. To assist in making a determination, the Department may request a summary of pertinent labor market information from the Department of Employment and/or other source having no conflict of interest and/or refer to other information it deems pertinent. Within 30 days, the Department will recommend acceptance of the proposed program in its latest form or up to another 60 days to resolve the issues.
3. *Application.* If the Department recommends acceptance of the proposed program in its latest form, the proposing college may proceed with the application and approval process.

Programs that have had adverse impact responses filed must complete the full application and approval process that currently includes an action item presented to the State Board of Education.

Appeal Steps

1. *Appeal.* If the Department recommends acceptance of the proposed program in its latest form and responding college(s) is not satisfied, the college(s) may appeal in writing directly to the State Board of Education at the meeting at which the proposed program is presented. If the Department does not recommend the acceptance of the proposed program, the recommending college may appeal in writing directly to the State Board of Education at the next meeting of the board. The responding or requesting college(s) must notify the Department of their intent to appeal and follow the applicable State Board of Education procedures to lay out their appeal.
2. *Decision.* At the recommendation of the Department and/or in the interest of achieving their priorities and goals, the State Board of Education may request changes in the program(s) of any proposing or responding college involved in the adverse impact objection. The State Board of Education decision is final.

Other

Nothing in these steps precludes the State Board thought the Department from encouraging and accepting agreements among all potentially affected colleges regarding new programs and locations in situations in which such agreements are a more effective and efficient way to establish and improve post-secondary service to Oregonians than program-by-program notice and response.

If no responses of adverse impact are received, the college can proceed to develop the proposal for submission to the Department. No response by a college within the timelines identified will be considered to indicate that no adverse impact is evident.

Definitions

589-006-0050

Definitions for Division 006, Chapter 589

(2) "Adverse intersegmental impact" is defined as the detriment of duplication that would fall on a school or its students in a segment other than that of the school proposing the new program or location, except that a publicly funded program or location proposed by a private school or other organization has adverse intersegmental impact if it is detrimental to a school in any of the five segments.

(19) "Detrimental Duplication" is defined as a situation that occurs when recruitment of students for a new program or location will tend to redirect prospects from a fixed pool concomitant with the application of publicly funded educational cost subsidies, thereby significantly reducing enrollment in existing similar programs for which student financial aid is available but the number of prospective enrollees is limited by non-financial factors such as interest, qualifications needed for admission, internship openings for students, and job openings for graduates.