

OFFICE OF THE SECRETARY OF STATE
SHEMIA FAGAN
SECRETARY OF STATE

CHERYL MYERS
DEPUTY SECRETARY OF STATE



ARCHIVES DIVISION
STEPHANIE CLARK
DIRECTOR

800 SUMMER STREET NE
SALEM, OR 97310
503-373-0701

NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 414
OREGON DEPARTMENT OF EDUCATION
EARLY LEARNING DIVISION

FILED
03/23/2021 3:44 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: ELD increases clarity for applicants in appealing funding decisions to the Early Learning Council.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 05/05/2021 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

CONTACT: Remy Watts
503-947-0674
remy.watts@ode.state.or.us

700 Summer Street NE
Suite 350
Salem, OR 97301

Filed By:
Remember Watts
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 04/22/2021

TIME: 5:30 PM - 6:30 PM

OFFICER: Remy Watts

ADDRESS: Hearing will be virtual

700 Summer Street NE

Suite 350

Salem, OR 97301

SPECIAL INSTRUCTIONS:

Due to COVID-19, this hearing will be virtual. Please refer to the Early Learning Division website for instructions on how to register and login to the meeting.

<https://oregonearlylearning.com/meeting/april-2021-appeals-rules-public-hearing>

NEED FOR THE RULE(S):

The Early Learning Division is required by HB 3427 of the 2019 Legislative Session to make grants for Early Childhood Equity Fund, Preschool Promise, and Oregon Prekindergarten programs. Adopted rule language does not clearly outline how an applicant can appeal funding decisions to the Early Learning Council and needs to be revised.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

none

FISCAL AND ECONOMIC IMPACT:

Organizations that apply and are approved to administer programs through the Early Learning Programs (OPK, PSP, ECEF) will receive state monies to move forward with approved programming. There is no anticipated adverse impact on organizations whose programs are denied funding or do not apply for funding.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

(1) There are no anticipated adverse impacts for units of local governments, and members of the public are not likely to be economically affected by the rule(s). If local government programs apply and are funded, they will be economically bolstered to serve local populations.

2(a) Only small businesses that apply to Early Learning Programs and desire to appeal their funding decisions to the Early Learning Council will be subject to the rules. In FY2019-2020, there were four appeals by small businesses to the Early Learning Council.

(b) There would be a minimal cost to a small business to appeal a grant funding decision to the Early Learning Division. If the funding is successfully appealed, administrative costs would be reimbursable expenses for awarded grants and therefore would not have any net costs.

(c) There are no anticipated costs to small businesses for professional services, equipment supplies, labor and administration required by the new rules.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

The Early Learning Division convened a Rules Advisory Committee in December 2020 with Early Learning Program applicants from across the state, including organizations serving populations representing racial, ethnic, geographic, socioeconomic, and linguistic diversity, to inform the development of the administrative rules.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

RULES PROPOSED:

414-460-0015, 414-470-0042, 414-575-0025

AMEND: 414-460-0015

RULE SUMMARY: Rule language governing appealing grant decisions to the Early Learning Division is updated for clarity.

CHANGES TO RULE:

414-460-0015

Proposal Review and Contract Award ¶

- (1) Funds shall be awarded on a competitive basis. Subject to available funds, continuation grants shall be awarded on the basis of satisfactory performance.¶
- (2) An applicant must make formal response using forms issued and established by the Division.¶
- (3) Division staff will review completed grant applications to determine eligibility.¶
- (4) A grant review committee will be appointed by the Director. The Council will recommend representatives to the Director to be named to the committee.¶
- (5) The review committee will make funding recommendations to the Director, which may include a negotiated level of funding, to the Director that provide for geographic representation where practicable based on percentages of unmet needs. The Director will make final decisions for funding.¶
- (6) The Division will notify grant recipients of awards and announce the awards on its website.¶
- (7) The Division will offer to enter into a grant agreement with each prospective grant recipient using terms and conditions acceptable to the Division.¶
- (8) Prospective grant recipients forfeit the awarded grant if a signed grant agreement is not returned to the Division within 90 calendar days of receiving the grant agreement. This provision does not apply to federally recognized Oregon Indian tribes.¶
- (9) Forfeited grant funds will be used to further fund Oregon Prekindergarten services.¶
- (10) ~~An applicant not receiving funding may appeal~~The Early Learning Division will determine the amount of funding available for review to the Council. An appeal must be received by the Request for Applications. Applicants may appeal funding decisions by following the process outlined by the Council in writing within 15 calendar days of the date of the notice of non-funding at 700 Summer St., NE, Salem, Oregon, 97301. Only an Request for Applications. The Early Learning Division will notice applicants of their appeal rights in the language that applicants identified in their application. Notices will provide contact information of Early Learning Division employees available for assistance to applicant may appeal a non-funds in the appeals process. The Early Learning Division. The Council will consider the appeal of the non- will provide information on how funding decisions at its next meeting. The Council's decision is final and slot awards will be made for each funding cycle in the Request for Application. Final allocations are based in part on funding availability.

Statutory/Other Authority: ORS 684

Statutes/Other Implemented: ORS 329.175, 329.190, 329.195

AMEND: 414-470-0042

RULE SUMMARY: Rule language governing appeals updated for clarity.

CHANGES TO RULE:

414-470-0042

Preschool Promise Provider Funding Selection and Grant Award

- (1) Division staff will review completed grant applications to determine eligibility.¶
- (2) A grant review committee will be appointed by the Director. The Council will recommend representatives to the Director to be named to the committee. The grant review committee will review and score applications deemed eligible as identify in OAR 414-470-0025. Applications will be scored on the Preschool Promise Provider's ability to meet Preschool Promise requirements as established in OAR 414-470-0040.¶
- (3) The review committee will make funding recommendations to the Director. The Director will make final decisions for funding.¶
- (4) The Division will notify grant recipients of awards and announce the awards on its website.¶
- (5) The Division will offer to enter into a grant agreement with each prospective grant recipient using terms and conditions acceptable to the Division.¶
- (6) Prospective grant recipients forfeit the awarded grant if a signed grant agreement is not returned to the Division within 90 calendar days of receiving a grant agreement. This provision does not apply to federally recognized Oregon Indian tribes.¶
- (7) Forfeited grant funds will be used to fund next highest scored application(s).¶
- (8) An applicant not receiving funding may appeal. The Early Learning Division will determine the amount of funding available for review to the Council. An appeal must be received by the Request for Applications. Applicants may appeal funding decisions by following the process outlined by in the Council within 15 calendar days of the date of the notice of non-funding at 700 Summer St., NE, Salem, Oregon, 97301. Only an applicant may appeal a non-fund Request for Applications. The Early Learning Division will notice applicants of their appeal rights in the language that applicants identified in their application. Notices will provide contact information of Early Learning deeDiv
ision. The Council will consider the appeal of the non- employees available for assistance to applicants in the appeals process. The Early Learning Division will provide information on how funding decisions at its next meeting. The Council's decision is final. Ind slot awards will be made for each funding cycle in the Request for Application. Final allocations are based in part on funding availability.

Statutory/Other Authority: ORS 326.425(7)

Statutes/Other Implemented: ORS 329.172

AMEND: 414-575-0025

RULE SUMMARY: Rule language governing appealing grant decisions to the Early Learning Division is updated for clarity.

CHANGES TO RULE:

414-575-0025

Program Selection and Grant Award

- (1) Division staff will review completed grant applications to determine eligibility.¶
 - (2) A grant review committee will be appointed by the Director. The Council will recommend representatives to the Director to be named to the committee. At least two-thirds of committee members must be members of communities that have experienced systemic disparities because of three or more of the factors identified in OAR 414-575-0015 (4) (a) - (e). The grant review committee will review and score applications deemed eligible by Division staff using scoring criteria established in OAR 414-575-0020.¶
 - (3) The review committee will make funding recommendations to the Director. The Director will make final decisions for funding.¶
 - (4) The Division will notify grant recipients of awards and announce the awards on its website.¶
 - (5) The Division will offer to enter into a grant agreement with each prospective grant recipient using terms and conditions acceptable to the Division.¶
 - (6) Prospective grant recipients forfeit the awarded grant if a signed grant agreement is not returned to the Division within 90 calendar days of receiving a grant agreement. This provision does not apply to federally recognized Oregon Indian tribes.¶
 - (7) Forfeited grant funds will be used to fund next highest scored application(s).¶
 - (8) ~~An applicant not receiving funding may appeal~~The Early Learning Division will determine the amount of funding available for review to the Council. An appeal must be received by the Council in writing within 15 calendar days of the date of the notice of non-funding at 700 Summer St., NE, Salem, Oregon, 97301. Only an applicant may appeal a non-funding decision. The CouncilRequest for Applications. Applicants may appeal funding decisions by following the process outlined in the Request for Applications. The Early Learning Division will notice applicants of their appeal rights in the language that applicants identified in their application. Notices will consider the appeal of the non-fundprovide contact information of Early Learning decDivision at its next meeting. The Council's decision is finalemployees available for assistance to applicants in the appeals process.
- Statutory/Other Authority: Oregon Laws 2019, Chapter 122
Statutes/Other Implemented: ORS 327.274