

December 2, 2016

To: Oregon State Board of Education

From: Parasa Chanramy, Stand for Children
Tim Nesbitt, Oregonians for High School Success

CC: Toya Fick, Carmen Rubio, Ted Kulongoski

Re: Implementation of Measure 98

On behalf of the chief petitioners for Measure 98, we thank you for the opportunity to share with you our views regarding the interpretation and intent of the provisions of the measure as drafted. More broadly, on behalf of the organizations and individuals that brought Measure 98 to the voters and secured its passage, we look forward to working with you to ensure the best use of the measure's resources to improve our high school graduation rate and to better prepare our students for success on pathways to rewarding careers.

To help inform your deliberations and to facilitate the expeditious and effective implementation of Measure 98 through your rule making process, we are providing here our responses to some of the questions we have been hearing about the components of, and processes for, implementing Measure 98.

Application and Funding Process is Non-Competitive

Measure 98 establishes a **non-competitive qualifying process** for receipt of funds based on the submission of biennial plans to the Department of Education. The State Board of Education will adopt rules to establish qualifying criteria for district plans as well as reporting criteria and audit processes by March 1, 2017. Funds would be distributed pursuant to the Extended ADMw formula.

District Budgeting

Districts are free to apportion their Measure 98 funds among their high schools and across the grade levels of their high schools. Measure 98 funds are provided for programs and need not be restricted to strict allocations by student or grade level. We look to your rule-making to clarify how funds may be used across the first and second year of a biennium.

Districts are authorized to use up to 5% of their Measure 98 funds (declining to 4% in 2019 and beyond) for administration, including costs associated with reporting and compliance.

First Biennial Plans

Measure 98 is designed for expeditious release of funds for the first year of the 2017-19 biennium. Districts should expect to have to demonstrate compliance with the purposes of the measure for 2017-18, but they will not have to fully implement the systems specified in Section 12(2) of the measure until the following school year. We will look to your rule making for direction on how the implementation of such systems can be supported using a portion of a district's allocation in the first year of the biennium.

We also look forward to enabling districts to launch transitional programs for 8th to 9th graders beginning with the summer of 2017.

Districts May Establish New Programs or Expand Existing Programs

Section 5 of the measure (related to CTE programs), Section 6 (related to college-level courses) and Section 7 (related to dropout-prevention strategies) all use the language "establish and expand." In legislative parlance, this terminology means that investments in these programs may be used to ***establish new programs or expand existing ones***. (See memo from Gregory Chaimov, below.)

Section 8 defines the baseline for program expansions as the programs in effect prior to the effective date of the measure. Measure 98 takes effect with the 2017-18 school year. So programs in effect in the 2016-17 school year would set the baseline for the measure's program expansions. Programs can be expanded in 2017-18, or new programs can be established, or both.

Examples of expansions of CTE, college credit or dropout prevention programs include:

- A program that serves 30 students could be expanded to add more students; or,
- More teachers could be hired to create two classes of 15 students or to enrich the staffing for the existing class of 30 students, consistent with the goal of "appropriate staffing ratios and class sizes" in Section 8 (2)(c); and/or
- New equipment could be purchased to better serve these students.

Further, an exception in Section 8 allows the continuation of programs with Measure 98 funds when funding is lost due to the expiration of time-limited grants. This is intended to allow for the continuation of programs currently funded by one-time grants, such as the state's CTE Revitalization Grants and the federal School Improvement Grants. Another exception would allow a school district to continue a so-called "fifth year" co-enrollment program, for which funding had been provided by the State School Fund.

Finally, the provisions of Section 8 are intended to prohibit the use of Measure 98 funds to backfill funding for existing programs and thereby redirect funding to other areas of a school district's budget. However, these provisions should not be misinterpreted as a "maintenance of effort" requirement. For example, a district may decide to scrap a CTE program deemed insufficiently relevant or rigorous to continue, such as woodshop

focused on building a bird house, and use its Measure 98 funds to establish a more relevant and rigorous CTE program, such as a home building program in partnership with a local construction company. In the process, a district could choose to scrap the bird house program and apply the savings elsewhere in its K-12 budget.

Measure 98 is not intended to handcuff districts in the process of continually adjusting and improving their high school programs. But it does prohibit backfilling, by which a district would apply Measure 98 funds to a current program in order to move the money for that program elsewhere in its budget.

Not an “Unfunded Mandate” but a “Funded Opportunity”

Measure 98 has been mischaracterized by some as an “unfunded mandate.” Rather, it’s a funded opportunity. First, districts are not required to apply for its funding, although we hope that all will. Second, districts will be under no obligation to spend a dollar more than the funding provided by the measure. Unlike full-day kindergarten, where funding followed the adoption of the program and proved insufficient in some cases to cover all costs of the expansion, funding provided by Measure 98 determines the scope of the programs to be established or expanded. There is no obligation or expectation that districts supplement funding for Measure 98 programs with other district funds.

ODE Budget

Pursuant to Section 10 of the measure, the Department of Education may retain up to 1.5% of the statewide allocation of the Measure 98 funds in the 2017-19 biennium. In later biennia, this amount declines to 1.25%. We are interested in how you choose to budget the approximately \$4.4 million that may be retained by the Department for 2017-19.

Ongoing Commitments of the Measure 98 Coalition

We are gratified that a broad coalition of business, labor, educators and community organizations came together to support Measure 98. Our coalition will support an adequate increase in the State School Fund in addition to the commitment of funds to Measure 98. In particular, Stand for Children will advocate for a State School Fund sufficient to meet the current service level for K-12, now estimated at \$8.02 billion in 2017-19, in addition to the funding specified in Measure 98.

Resources Available from the Measure 98 Campaign

The following materials, prepared by ECONorthwest and posted on the Measure 98 website, are available to assist you and local districts in budgeting for and assessing the effectiveness of Measure 98’s investments.

- Projected distribution of Measure 98 funds by district;

- Projected graduation rates at current service levels without Measure 98;
- Projected improvements in graduation rates from investments in CTE, early college credit programs and dropout prevention/student support programs, both generically and, in one recent simulation, for a specific Oregon school district (Bend-La Pine); and
- Projections of job openings by industry, both statewide and in selected regions of Oregon, over the next five years compared to the number of high school students earning CTE credits in those fields.

MEMORANDUM

To: Tim Nesbitt
From: Gregory A. Chaimov
Date: June 27, 2016
Subject: Establish and Expand

This memorandum responds to your request for our opinion on the accuracy of the following statement in a story by Oregon Public Broadcasting:

Note that on college credit and career-technical education, the initiative says “establish and expand.” Therefore, it’s not enough for Oregon school districts to have a program, or do one big expansion. The initiative requires continual expansion for districts to keep getting the money.

The statement is inaccurate, presumably because the statement does not read sections 5, 6, and 7 of the proposed measure in light of section 8. Section 8 prohibits (with an exception) school districts from using moneys from the new achievement funds only to maintain programs, opportunities and strategies “established prior to the effective date of [Initiative Petition 65].” IP 65 thus assumes that school districts may use funds made available through the new achievement to maintain programs, opportunities, and strategies established or expanded through the new fund.

The use of the conjunctive “and” between “establish” and “expand” also does not mean that a school district must both establish and expand programs. A school district could establish a new program or expand an existing program, or both: “‘and’ may be construed to mean ‘or,’ and ‘or’ construed to mean ‘and’[.]”. Bill Drafting Manual, p. 20.8 (Leg Counsel 2014).

If there is concern that others might similarly misread the measure, statements in the Voters’ Pamphlet or in other communications with the public about the meaning of the measure will help ensure a correct reading. Courts and the Attorney General look to proponents’ public statements to discern the meaning of initiative measures.

Please let us know if you have any questions or need additional information.