

OHIO BOARD OF REGENTS

Consideration of a Joint Use Agreement between The Ohio State University
and Delaware Speech and Hearing Center.

RESOLUTION

WHEREAS, the 126th Ohio General Assembly enacted H.B. 699 which includes a specific capital appropriation of \$75,000 to The Ohio State University for the Delaware Speech & Hearing with OSU Medical College; and

WHEREAS, the Ohio Board of Regents' Rule 3333-1-03 requires that a joint use agreement between the institution for which funds are appropriated and the organization which will own or lease and operate facilities to be constructed or improved with such funds must be approved by the Chancellor; and

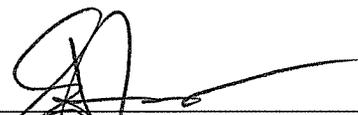
WHEREAS, The Ohio State University and Delaware Speech and Hearing Center have presented a joint use agreement for approval by the Ohio Board of Regents; and

WHEREAS, the agreement has been reviewed and its format is found to be appropriate, its description of extent and nature of use has been specified, and the commitment extends no less than fifteen years, and it is in conformity with Rule 3333-1-03; and

WHEREAS, the parties have determined that the value of the use is reasonably related to the amount of the appropriation; and

NOW, THEREFORE,

BE IT RESOLVED: that the Joint Use Agreement between The Ohio State University and Delaware Speech and Hearing Center, and attached and made a part hereof, be approved.



Eric D. Fingerhut
Chancellor

10/7/07

Date

Joint Use Agreement between The Ohio State University and Delaware Speech
and Hearing Center, Inc.

BACKGROUND

H.B. 699 includes a specific capital appropriation of \$ 75,000 to The Ohio State University for the Delaware Speech and Hearing Center, Inc (Center). The Center owns and operates the facility to be improved with state capital funds. As required in Ohio Administrative Code section 3333-1-03, The Ohio State University submitted a Joint Use Agreement for consideration and approval by the Chancellor.

State funds will support various capital improvements to the Center facility located at 494 West Central Avenue, Delaware, Ohio.

REVIEW

The Center supports the research and education of The Ohio State University Medical College and provides practicum experiences for graduate level students.

The Center commits to provide for the equivalent of four (4) students at least one (1) full day per week per year or one(1) student per quarter for a full day or two (2) students per quarter on two (2) half (1/2) days. The Center will also provide for the reasonable placement of two (2) audiology students. The Center and The Ohio State University Medical College, Department of Speech and Hearing Science, agree that only Speech Language Pathology students will receive practicum experiences at this time.

The agreement conforms to Ohio Administrative Code as follows –

- The format of the agreement is appropriate
- The commitment extends no less than fifteen years
- The value of use to Ohio higher education institutions is reasonably related to the amount of the appropriation

RECOMMENDATION

**Staff recommends Chancellor approval of the Joint Use Agreement
between The Ohio State University and Delaware Speech and Hearing
Center, Inc.**

JOINT USE AGREEMENT ANALYSIS

Institutions Involved The Ohio State University/Delaware Speech and Hearing Center

Project Title Delaware Speech and Hearing Capital Improvements

Capital Bill HB 699 Item CAP-747, Delaware Speech & Hearing with OSU Medical College

- Yes 1. Is the facility to be built/improved identified specifically by address or location?
- Yes 2. Does the non-profit organization now own the property or have a long term lease? If not, when will it control the property?
- Yes 3. Does the agreement provide for use of the facility for at least 15 years from the time that it is ready for occupancy?
- Yes 4. If the agreement is terminated, is there a pro rata reimbursement clause? Is the reimbursement formula correct?
- Yes 5. Will funds be used only for capital improvements and not operating costs?
- Yes 6. Will the non-profit hold the institution harmless for all operation/maintenance costs?
- Yes 7. Will the non-profit comply with federal, state and local laws and rules?
- Yes 8. Is the non-profit required to competitively bid as outlined generally in ORC Chapter 153 (published ads, sealed bids, public opening, award to lowest responsive and responsible bidder, etc.)?
- Yes 9. Does the contract provide for a 1.5% administrative fee for the institution?
- Yes 10. Does the agreement require that amendments be approved by the Board of Regents?
- Yes 11. Is a drawdown schedule or payment procedure included?
- Yes 12. Are the extent and nature of spaces and uses adequately described?
- Yes 13. Are the terms and conditions of use of the facility described?
- Yes 14. **Has the institution demonstrated that the value of the use of the facility is reasonably related to the amount of the appropriation? (See attached worksheet)**
- Yes 15. Is the facility insured?

Joint Use Agreement Worksheet

The Ohio Board of Regents

April, 2005

Direction: The purpose of this worksheet is to enable a campus to demonstrate how the value of the uses that will be derived from a Joint Use Agreement is reasonably related to the value of the state capital appropriation made to the partner entity. Section I is to be filled out by the staff of the Board of Regents. Sections II and III are to be filled out by the partner campus.

Example: A campus wishes to enter into a Joint Use Agreement with a 501(C)(3) entity for a state appropriation of \$5,000,000. The annual debt service paid by the state on this appropriation is about \$390,000 per year, for 20 years. To demonstrate that the value of the uses of the facility is reasonably related to the state appropriation, the sum of the campus' educational uses of the facility should roughly equal \$390,000 per year for 20 years.

Section I: State appropriation information.

1. Amount of state appropriation provided:	\$75,000.00	_____
2. Estimated annual debt service on the appropriation:	\$5,768.00	_____
3. Term of the state bond, in years:	20	_____

Section II: Estimated value of use of the facility.

Use(s) of the facility*	Annual value of use	# of years
a. <u>OSU Speech and Hearing Student externships</u>	<u>\$8,000.00</u>	<u>20</u>
b. _____	\$ _____	_____
c. _____	\$ _____	_____
d. _____	\$ _____	_____
e. _____	\$ _____	_____
f. _____	\$ _____	_____

(* List additional uses on separate page as needed.)

Section III:

On a separate page, explain how each use listed in Section II was valued for this analysis.

Value Analysis:

The estimated value of use of the facility was based on the current projected daily rate of income estimated in the Delaware Speech and Hearing Center ("Center") by the students. This estimate is approximately \$200.00 per day per student.

The Center has committed "to provide for the equivalent of four students for at least one full day per week per year" that can be fulfilled as follows:

- "One student per quarter for a full day" or
- "Two students per quarter on two half days"

A full day is defined as 70% contact time (billable) and 30% paperwork, quality assurance, coordination time and etc. The value is based on actual billable time for a student which is conservatively estimated at \$100.00 per half day or \$200.00 per day.

If a student generates \$200.00 per day for one day a week times 10 weeks that student generates \$2000.00 per quarter. The equivalent of four students, each working one day per week for 10 weeks, would be valued at \$8000.00 per year.

The number of students assigned at any given time shall be mutually agreed upon by the University and the Center but at no time shall the Center fall below the committed minimum annual debt service amount of \$5,768.00.

JOINT USE AGREEMENT

This joint use agreement (this "Agreement") is made and entered into as of the 1 day of July, 2007 by and between The Ohio State University (the "University"), acting under the provisions of Chapter 3335 of the Revised Code of Ohio, and the Delaware Speech and Hearing Center, Inc. ("Center"), a non-profit corporation organized and existing under the laws of the State of Ohio.

RECITALS

WHEREAS, the General Assembly has appropriated funds to the University for the following project (the "project"):

Project Name: Delaware Speech & Hearing with OSU Medical College

Legislation: House Bill 699

Capital Appropriation: CAP-747

OSU Project Number: #315-07-1556

In the total amount of seventy-five thousand dollars (\$75,000.00), (the "Appropriation").

WHEREAS, in 2006 the Ohio General Assembly appropriated state capital funds in the amount of \$75,000.00 to The Ohio State University for the Delaware Speech & Hearing with OSU Medical College to provide for the continued participation of both entities in research and education and to provide practicum experiences for graduate level students.

WHEREAS, the Center commits to provide for the equivalent of four (4) students for at least one (1) full day per week per year or one (1) student per quarter for a full day or two (2) students per quarter on two (2) half (1/2) days and also to provide for the reasonable placement of audiology students. The Center shall not be obligated to provide for more than two students per quarter. At the time of execution of this Agreement, the Center and The Ohio State University Department of Speech and Hearing Science agree that only Speech Language Pathology students shall be provided practicum experiences. However, the Center and The Ohio State University Department of Speech and Hearing Science will consider practicum experiences for audiology students at such time as the parties feel such a relationship is beneficial to both the Center and The Ohio State University Department of Speech and Hearing Science.

WHEREAS, the University has concluded that the value of the use of the facilities by the University as provided in this agreement is reasonably related to the amount of the appropriation.

NOW, THEREFORE, in furtherance of the above, and in consideration of the mutual covenants, promises, conditions and terms to be performed by each, the University and the Center hereby agree as follows:

AGREEMENT

1. Commitment. The Center commits to the University that the monies for the project will be used to expand the facilities and to provide greater access to educational opportunities and experiences for OSU students in The Ohio State University Department of Speech and Hearing Science.
2. Term. The term of this Agreement shall commence as of the date of its approval by the Ohio Board of Regents and shall expire twenty (20) years from the date thereafter. In the event that this Agreement is terminated prior to its expiration, the Center shall reimburse the State of Ohio with an amount calculated by (a) dividing the amount of the appropriation actually paid to the Center under the Agreement by twenty (20), and (b) multiplying the resulting amount by (i) twenty (20), less (ii) the number of full years the project has been utilized by the University in accordance with the Agreement (the "Reimbursement Amount"). The Reimbursement Amount shall be paid in cash.
3. Compliance with Laws. On this construction project the Center shall comply with all pertinent federal, state and local laws as well as state administrative regulations including those relating to competitive bidding and prevailing wage.
4. Funds used for Capital Improvements. Except for the funds used to cover the University's administrative costs, the funds provided under this Agreement shall be used by the Center only for capital improvements to the Center's facility located at 494 West Central Avenue, Delaware, Ohio 43015 and shall not be used for operating expenses. The Center, in connection with the Agreement, shall use where applicable competitive bidding procedures equivalent to those enumerated in relevant provisions of Chapter 153 Ohio Revised Code involving (1) publishing advertisements to seek bids, (2) receiving sealed bids, and (3) awarding contracts to the lowest, responsive and responsible bidders.
5. Ownership of the Delaware Speech and Hearing Center, Inc. and Insurance. The Center's facility located at 494 West Central Avenue, Delaware, Ohio 43015 is owned by Delaware Speech and Hearing Center, Inc., a non-profit corporation organized and existing under the laws of the State of Ohio, and is fully insured.
6. Hold Harmless. The University shall have no liability for, and the Center shall indemnify and hold the University harmless from, all construction, operation and maintenance costs of the project.
7. Distribution of Funds and Administrative Costs. Upon execution of this Agreement, the University shall submit to the Ohio Board of Regents a formal request for the release of the Appropriation. The University shall be paid for administrative costs incurred as a result of the construction of the project. Such administrative costs shall be \$1,125.00 which is equal to 1.5% of the appropriation and shall be paid by the University to itself concurrently with the University's payment to the Center. The Center shall submit a draw request of permitted use of funds to the University in the amount of \$73, 875.00, as soon as practicable upon the signing of this Agreement; but

not longer than eleven months from the date of the signing of this Agreement. The University shall, within 30 calendar days after receipt of the Center draw request, disburse the Appropriation.

8. The terms and conditions of such use by the University shall be more favorable than the terms and conditions of use by any other entity to a degree that reasonably reflects the magnitude of the University's investment in the facility. The Ohio Board of Regents, shall, upon request, be provided with pertinent records by the Center and the University that measure the nature and extent of the collaboration between the Center and the University, and the terms and conditions governing such collaboration. The Center shall not be penalized if the University is unable to maintain the projected number of students per year.
9. Validity. If any term, covenant or condition of this Agreement or the application thereof to any person or circumstance shall, to any extent, be illegal, invalid or unenforceable because of judicial construction, then the remaining terms, covenants and conditions of this Agreement or their application to persons or circumstances other than those held invalid or unenforceable shall not be affected thereby; and each term, covenant or condition of this Agreement shall be valid and enforced to the fullest extent permitted by law.
10. Assignment. This Agreement may not be assigned in any form or to any extent by either party without the written consent of the other party.
11. Notices. Any notice required or permitted to be given under this Agreement shall be given either by: (i) first-class certified mail, return receipt requested, addressed to the party at the address shown below, or (ii) personal delivery at the then-current address of such party; in either event, with a copy given by either manner to the person designated below to receive a copy. Such notice shall be effective when delivered to both persons. The current addresses of the parties and the persons to receive copies are, respectively, as follows:

To the University:

Christopher M. Culley
General Counsel
Office of Legal Affairs
The Ohio State University
1590 North High Street
Suite 500
Columbus, Ohio 43210-2178

Gail Whitelaw
Clinic Director
Department of Speech and Hearing
The Ohio State University
1070 Carmack Road
Columbus, OH 43210

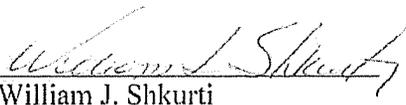
To the Center: Delaware Speech and Hearing Center, Inc.
494 West Central Avenue
Delaware, Ohio 43015
Attention: Guy Naples, Executive Director

With a copy to: Jim Dietz, Esq.
Manos, Martin, Pergram & Dietz
50 North Sandusky Street
Delaware, Ohio 43015

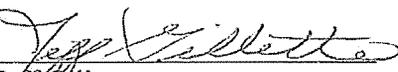
11. Governing Law. This Agreement shall be subject to and interpreted in accordance with the laws of the State of Ohio, and any action brought pursuant to this Agreement shall be brought in a court of competent jurisdiction within the State of Ohio.
12. Amendments. Any amendment to this Agreement will not be effective unless and until approved in writing by the parties hereto and by the Ohio Board of Regents.
13. Headings. The headings used in this Agreement are inserted only as a matter of convenience and for reference and should not be given effect in the interpretation of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

THE OHIO STATE UNIVERSITY

By: 
William J. Shkurti
Senior Vice President, Business & Finance

DELAWARE SPEECH AND HEARING CENTER

By: 
Jeff Gillette
Board President