

Corrections Policy Committee Minutes August 13, 2013 (Draft)

The Corrections Policy Committee of the Board on Public Safety Standards and Training held a regular meeting on Tuesday, August 13, 2013, in the Governor Victor G. Atiyeh Boardroom at the Department of Public Safety Standards and Training located in Salem, Oregon. Chair Lisa Settell called the meeting to order at 1:38 p.m.

Attendees:

Committee Members:

Lisa Settell, Parole and Probation Officer, Chair
Rick Angelozzi, Department of Corrections Superintendent
Brian Burger, Department of Corrections AFSCME Representative
Erik Douglass, Non-Management Corrections Officer
Tami Jackson, Non-Management DOC
Andy Long, Oregon State Sheriff's Association
Jason Myers, Oregon State Sheriff's Association
Joseph Pishioneri, Non-Management Law Enforcement
Barbara Shipley, Oregon Sheriff's Jail Command Council
Jeff Wood, Oregon Association of Community Corrections Directors
Linda Yankee, Oregon Sheriff's Jail Command Council

Committee Members Absent:

Daryl Borello, Department of Corrections Training Division
Michael Gower, Designee for Director of Department of Corrections

DPSST Staff:

Todd Anderson, Training Division Director
Leon Colas, Professional Standards Coordinator/Investigator
Theresa King, Professional Standards Coordinator/Investigator
Linsay Hale, Certification Coordinator
Sharon Huck, JTA Coordinator
Kristy Witherell, Administrative Support



1. Election of a New Chair

- *Joseph Pishioneri moved to recommend Lisa Settell as the new Corrections Policy Committee Chair. Rick Angelozzi seconded the motion. The motion carried unanimously.*
- *Joseph Pishioneri moved to recommend Brian Burger as the new Corrections Policy Committee vice Chair. Rick Angelozzi seconded the motion. The motion carried unanimously.*

2. Minutes of May 14, 2013 Meeting

Approve the minutes of the May 14, 2013 Corrections Policy Committee meeting.

To see a complete record of the May 14, 2013 Corrections Policy Committee minutes, please go to:

http://www.oregon.gov/dpsst/BD/Policy_Committee_Minutes/CPC_Minutes/CPCMinutes051413.pdf

- *Joseph Pishioneri moved that the committee approve the minutes of the May 14, 2013 Corrections Policy Committee meeting. Rick Angelozzi seconded the motion. The motion carried unanimously.*

3. OAR 259-008-0025 – Minimum Standards for Training - Proposed Rule

Presented by Linsay Hale

See Appendix A for details.

- *Joseph Pishioneri moved that the Corrections Policy Committee recommends to the Board filing the proposed language for OAR 259-008-0025 with the Secretary of State as a proposed rule and as a permanent rule if no comments are received. Brian Burger seconded the motion. The motion carried unanimously.*

It is the consensus of the committee there is no fiscal impact on small business.

4. Quarterly Review of DOC Basic Corrections Course by the DPSST Audit Team

Presented by Theresa King

See Appendix B for details.

- *The reporting period was April through June of 2013.*
- *The audit team noted non-compliance in regard to test #2. A non-compliance letter was issued and DOC has until October to come into compliance. Theresa King spoke to Daryl Borello and he assured Theresa they are in the process of working through test #2 and they will meet the deadline.*
- *The DOC audit team found the 2012 DOC BCC meets the minimum training standards with exception of test #2.*

5. Law Enforcement Wall Nomination

Presented by Eriks Gabliks

- *The Jackson County Sheriff's Office identified through research Charles H. Basye, a Corrections Officer who was murdered by an inmate during an escape in 1917. The nomination was submitted to the National Memorial in Washington D.C. His name is on the National Memorial Wall and the sheriff's office is asking for the same honor to be given to Deputy Basye in Oregon.*
- *Brian Burger moved that the Corrections Policy Committee recommends to the Board adding Charles H. Basye's name to the Law Enforcement Memorial Wall. Joseph Pishioneri seconded the motion. The motion carried unanimously.*

6. **Jeffrey L. Holland, Marion County Sheriff's Office – DPSST #18102**

Presented by Leon Colas

See Appendix C for details.

- *Joseph Pishioneri moved that the Corrections Policy Committee adopts the Staff report as the record upon which its recommendations are based. Brian Burger seconded the motion. The motion carried unanimously with Jason Myers and Jeff Wood abstaining.*
- By discussion and consensus:
 - a. Identify and articulate the misconduct that is specific to this case. *The committee did not find misconduct in this case.*
- *Brian Burger moved that the Corrections Policy Committee finds HOLLAND's conduct does not rise to the level to warrant the revocation of his certification(s) and, therefore, recommends to the Board that these certification(s) not be revoked. Joseph Pishioneri seconded the motion. The motion carried unanimously with Jason Myers and Jeff Wood abstaining.*

7. **Ladislado Miranda JR, DOC – Oregon State Penitentiary – DPSST #39976**

Presented by Leon Colas

See Appendix D for details.

- *Brian Burger moved that the Corrections Policy Committee adopts the staff report as the record upon which its recommendations are based. Joseph Pishioneri seconded the motion. The motion carried unanimously.*
- By discussion and consensus:
 - a. Identify the conduct that is at issue: *MIRANDA's 2003 and 2013 DUI convictions and his 2007 Disorderly Conduct arrest.*
 - b. The identified conduct did not involve **Dishonesty in a 7-4 vote.**
 - c. The identified conduct did not involve a **Disregard for the Rights of Others.**
 - d. The identified conduct did not involve **Misuse of Authority.**
 - e. The identified conduct did involve **Gross Misconduct based on MIRANDA's two DUI convictions.**
 - f. The identified conduct did involve **Misconduct based on what was stated above under GROSS MISCONDUCT.**
 - g. The identified conduct did not involve **Insubordination.**
 - h. By discussion and consensus, the Corrections Policy Committee must identify and consider any mitigating and aggravating circumstances.

The committee noted as mitigating circumstances MIRANDA's vast amount of support from coworkers, command staff, line staff and mental health professionals. He completed treatment twice. MIRANDA was cooperative with police when he was arrested.

The committee noted as aggravating circumstances MIRANDA's BAC was .14 and .16 when arrested for DUI. He claimed he only had two pounders of beer which was untruthful. MIRANDA was dishonest with the officer who arrested him for Disorderly Conduct. He threatened the limo driver. MIRANDA was dishonest to the healthcare worker when he was caught reading a book instead of watching an inmate for which he received a letter of reprimand from the incident.

- *Brian Burger moved that the Corrections Policy Committee finds MIRANDA's conduct does not rise to the level to warrant the revocation of his certification(s) and, therefore, recommends to the Board that these certification(s) not be revoked. The motion failed.*
- *Andy Long moved that the Corrections Policy Committee finds MIRANDA's conduct does rise to the level to warrant the revocation of his certification(s) and, therefore, recommends to the Board that these certification(s) be revoked. Rick Angelozzi seconded the motion. The motion carried in a 9-2 vote with Lisa Settell and Brian Burger voting no.*
- *Brian Burger moved that the Corrections Policy Committee recommends to the Board that MIRANDA's conduct encapsulated the lowest end of the categories noted above with a focus on GROSS MISCONDUCT, therefore, recommending a five-year disqualifier; MIRANDA may reapply for certification in five years. Tami Jackson seconded the motion. The motion carried unanimously.*

8. Gary W. Pruitt, DOC – Oregon State Penitentiary – DPSST #31228

Presented by Leon Colas

See Appendix E for details.

- *Joseph Pishioneri moved that the Corrections Policy Committee adopts the staff report as the record upon which its recommendations are based. Erik Douglass seconded the motion. The motion carried unanimously.*
- By discussion and consensus:
 - a. Identify the conduct that is at issue: *PRUITT failed to perform the duties of a driver in an accident where there was property damage.*
 - b. The identified conduct did involve **Dishonesty** in a 6-5 vote based on the physical evidence of the car not fitting the statement PRUITT gave to the officers. He was dishonest when stating another car caused the wreck when witnesses did not see another car involved.
 - c. The identified conduct did involve a **Disregard for the Rights of Others** based on PRUITT driving away from the accident.

- d. The identified conduct **did not** involve **Misuse of Authority**.
- e. The identified conduct **did** involve **Gross Misconduct based on PRUITT's Failure to Perform the Duties of a Driver in an Accident conviction**.
- f. The identified conduct **did** involve **Misconduct based on what was stated above under GROSS MISCONDUCT**.
- g. The identified conduct **did not** involve **Insubordination**.

By discussion and consensus, the Corrections Policy Committee must identify and consider any mitigating and aggravating circumstances.

The committee noted as mitigating circumstances PRUITT's 18 year career with DOC.

The committee noted as aggravating circumstances PRUITT being on court probation.

- *Jason Myers moved that the Corrections Policy Committee finds PRUITT's conduct does rise to the level to warrant the revocation of his certification(s) and, therefore, recommends to the Board that these certification(s) be revoked. Barbara Shipley seconded the motion. The motion carried in a 7-4 vote.*
- *Brian Burger moved that the Corrections Policy Committee recommends to the Board that PRUITT's conduct encapsulated the lowest end of the categories noted above with a focus on DISHONESTY, therefore, recommending a five-year disqualifier. The motion failed.*
- *The Corrections Policy Committee voted on the categories listed below and recommends to the Board that PRUITT's conduct receive the following periods of ineligibility:*

Category I: Dishonesty (5 years to Lifetime). *Jason Myers moved that the Corrections Policy Committee recommends to the Board a lifetime revocation based on dishonesty. Tami Jackson seconded the motion. The motion carried in an 8-3 vote.*

Category II: Disregard for Rights of Others (5 years to 15 years). *Jason Myers moved that the Corrections Policy Committee recommends to the Board a five year revocation based on Disregard for the Rights of Others. Tami Jackson seconded the motion. The motion carried in an 8-3 vote.*

Category IV: Gross Misconduct (5 years to 10 years). *Jason Myers moved that the Corrections Policy Committee recommends to the Board a five year revocation based on Gross Misconduct. Tami Jackson seconded the motion. The motion carried in an 8-3 vote.*

Category V: Misconduct (3 years to 7 years). *Jason Myers moved that the Corrections Policy Committee recommends to the Board a three year revocation based on Misconduct. Tami Jackson seconded the motion. The motion carried in an 8-3 vote.*

Since the Corrections Policy Committee voted for the highest level of the Dishonesty category—a lifetime disqualifier, PRUITT may never reapply for certification.

9. John Rimmell – DPSST #19465

Presented by Leon Colas

See Appendix F for details.

- *Joseph Pishioneri moved that the Corrections Policy Committee adopts the staff report as the record upon which its recommendations are based. Rick Angelozzi seconded the motion. The motion carried unanimously.*
- By discussion and consensus:
 - a. Identify the conduct that is at issue: *REMMELL's 2003 DUII conviction.*
 - b. The identified conduct did not involve **Dishonesty**.
 - c. The identified conduct did not involve a **Disregard for the Rights of Others**.
 - d. The identified conduct did not involve **Misuse of Authority**.
 - e. The identified conduct did involve **Gross Misconduct based on REMMELL's 2003 DUII conviction.**
 - f. The identified conduct did involve **Misconduct on noted above under GROSS MISCONDUCT.**
 - g. The identified conduct did not involve **Insubordination**.

- By discussion and consensus, the Corrections Policy Committee must identify and consider any mitigating and aggravating circumstances.

The policy committee noted as mitigating circumstances REMMELL completing diversion and treatment.

The policy committee noted as aggravating circumstances the lack of information given to the committee in regard to the case.

- *Brian Burger moved that the Corrections Policy Committee finds REMMELL's conduct does not rise to the level to warrant the revocation of his certification(s) and, therefore, recommends to the Board that these certification(s) not be revoked. Andy Long seconded the motion. The motion carried unanimously.*

10. Lisa C. Robertson – DPSST #23246

Presented by Leon Colas

See Appendix G for details.

- *Rick Angelozzi moved that the Corrections Policy Committee adopts the staff report as the record upon which its recommendations are based. Joseph Pishioneri seconded the motion. The motion carried unanimously.*

- By discussion and consensus:
 - a. Identify the conduct that is at issue: **ROBERTSON's Theft III conviction.**
 - b. The identified conduct did involve **Dishonesty based on ROBERTSON stating that her daughter had no involvement with shoplifting.**
 - c. The identified conduct did involve a **Disregard for the Rights of Others based on ROBERTSON violating property rights by shoplifting and stealing from a company.**
 - d. The identified conduct did not involve **Misuse of Authority.**
 - e. The identified conduct did not involve **Gross Misconduct.**
 - f. The identified conduct did involve **Misconduct based on ROBERTSON's Theft III conviction.**
 - g. The identified conduct did not involve **Insubordination.**

By discussion and consensus, the Corrections Policy Committee must identify and consider any mitigating and aggravating circumstances.

The committee noted as mitigating circumstances ROBERTSON struggling financially which may have caused her to steal from Bi-mart. She was honest when confronted about her personal responsibility involving the theft.

The committee noted as aggravating circumstances ROBERTSON involved her daughter with stealing from the store.

- *Brian Burger moved that the Corrections Policy Committee finds ROBERTSON's conduct does rise to the level to warrant the revocation of her certification(s) and, therefore, recommends to the Board that these certification(s) be revoked. Joseph Pishioneri seconded the motion. The motion carried unanimously.*
- *The Corrections Policy Committee voted on the categories listed below and recommends to the Board that ROBERTSON's conduct receive the following periods of ineligibility:*

Category I: Dishonesty (5 years to Lifetime). *Jason Myers moved that the Corrections Policy Committee recommends to the Board a lifetime revocation based on dishonesty. Tami Jackson seconded the motion. The motion carried unanimously.*

Category II: Disregard for Rights of Others (5 years to 15 years). *Jason Myers moved that the Corrections Policy Committee recommends to the Board a five year revocation based on Disregard for the Rights of Others. Tami Jackson seconded the motion. The motion carried unanimously.*

Category V: Misconduct (3 years to 7 years). *Jason Myers moved that the Corrections Policy Committee recommends to the Board a three year revocation*

based on Misconduct. Tami Jackson seconded the motion. The motion carried unanimously.

Since the Corrections Policy Committee voted for the highest level of the Dishonesty category—a lifetime disqualifier, ROBERTSON may never reapply for certification.

11. Shawn D. Spevacek, Benton County Sheriff's Office – DPSST #22047

Presented by Leon Colas

See Appendix H for details.

- *Joseph Pishioneri moved that the Corrections Policy Committee adopts the staff report as the record upon which its recommendations are based. Jason Myers seconded the motion. The motion carried unanimously.*
- By discussion and consensus:
 - a. Identify the conduct that is at issue: *SPEVACEK's 2013 Harassment conviction and untruthfulness in his interview.*
 - b. The identified conduct did involve *Dishonesty based on SPEVACEK not being forthcoming during his interview. He intentionally omitted information in his reports.*
 - c. The identified conduct did involve a *Disregard for the Rights of Others based on SPEVACEK cutting off oxygen to an inmate.*
 - d. The identified conduct did involve *Misuse of Authority based on SPEVACEK harming another under the color of office. He abused the public's trust.*
 - e. The identified conduct did involve *Gross Misconduct based on SPEVACEK affected the efficient operations of the agency.*
 - f. The identified conduct did involve *Misconduct based on SPEVACEK's Harassment conviction.*
 - g. The identified conduct did involve *Insubordination based on SPEVACEK completely disregarding the agency's policies that were in place. He violated a work plan that was already in place.*

By discussion and consensus, the Corrections Policy Committee must identify and consider any mitigating and aggravating circumstances.

The committee did not note any mitigating circumstances.

The committee noted as aggravating circumstances SPEVACEK's position as a Supervisor, Defensive Tactics Instructor, and he was trained in Use of Force. He had a work plan already in place which included anger issues. SPEVACEK knew exactly what he was doing and he knew he was wrong. He had a similar incident before.

Andy Long moved that the Corrections Policy Committee finds SPEVACEK's conduct does rise to the level to warrant the revocation of his certification(s) and, therefore,

recommends to the Board that these certification(s) be revoked. Joseph Pishioneri seconded the motion. The motion carried unanimously.

- *Joseph Pishioneri moved that the Corrections Policy Committee recommends to the Board that SPEVACEK's conduct encapsulated the highest end of the categories noted above with a focus on DISHONESTY, therefore, recommending a lifetime disqualifier; SPEVACEK may never reapply for certification. Linda Yankee seconded the motion. The motion carried unanimously.*

12. Academic Proficiency Standard – Information Only

Presented by Linsay Hale

It is the consensus of the committee to table the discussion for the November Corrections Committee meeting.

13. Staff Update

- *The Legislature adjourned in July. The Agency Oversight Bill which gives permission to finish the investigation on an individual after they have resigned has passed. House Bill 3194 was approved which restores the Leadership program at DPSST. DPSST is in the process of hiring the Leadership Coordinator position. The two-week Supervision and two-week Middle-Management class is slated to begin after January 1, 2014. DPSST is embracing Data Led Policing and Data Led Criminal Justice as part of the program.*
- *At the last meeting, the Board approved DPSST's request to stop offering the optional CPR class in the evening. The class will be phased out after January 1, 2014.*
- *DPSST hired a new Parole and Probation Coordinator. Her name is Staci Heintzman-Yutzie. She is from Benton County Juvenile Parole and Probation. She will be enrolled in the next Parole and Probation class.*
- *A reminder to the committee, the September 2014 Parole and Probation class will be the new five-week curriculum.*
- *DPSST is currently recruiting to fill Amanda Rasmussen's position on the committee.*
- *DPSST is working on a Stress First Aid Training class for Corrections. DPSST entered into an agreement with The National Center for Post-Traumatic Stress which has developed a similar program for the Navy and Marine Corps. The program will be modified. DPSST will have a separate class for Police and Corrections.*
- *Todd Anderson stated that DPSST is in a full hiring process at the moment. Currently, there are nine positions open in Academy Training.*

14. Next Scheduled Meeting – November 12, 2013 at 1:30 p.m.

With no further business before the committee, the meeting adjourned at 3:55 p.m.

Appendix A

Department of Public Safety Standards and Training Memo

Date: August 13, 2013
To: Corrections Policy Committee
From: Linsay Hale
Standards & Certification Program Manager
Subject: Academic Proficiency Standard – Information Only

Background: On August 22, 2001, based on a curriculum readability level determination conducted by Western Oregon University in 2000, DPSST adopted a 12th grade reading and writing standard to address the high level of academic failure of students enrolled in the basic police course. This standard required basic police applicants to provide evidence to DPSST that the applicant has attained a minimum of a 12th grade reading and writing level in the English language. On February 6, 2002, a standard was adopted requiring telecommunicators and emergency medical dispatchers (EMD) to demonstrate a 12th grade reading level only.

The adoption of this standard drastically reduced the number of academic failures of basic police and basic telecommunicator/EMD students attending the Academy. This standard also allowed local agencies to identify applicants with reading and writing challenges during the selection process.

DPSST researched and approved tests which allowed applicants to demonstrate they meet these requirements. These standards made the hiring agency responsible for ensuring a DPSST-approved reading and writing test had been administered and the results forwarded to DPSST on a Form F-5 (Application for Training) prior to an applicant being allowed entry into a basic police or telecommunicator/EMD course at the academy. A later rule update exempted applicants with a four-year college degree from this requirement.

Update: A recent question raised by a constituent led to the reevaluation of the requirements of this standard as well as the tests that have been approved for use in meeting the standard. It quickly became apparent that, with the exception of Clackamas Community College, the DPSST-approved tests didn't measure reading and writing grade levels, but were actually proficiency tests, measuring the probability of the applicant's success in the field of law enforcement or telecommunications/emergency medical dispatch.

Since the implementation of the reading and writing standard, police and telecommunicator/EMD agencies have implemented applicant testing as part of their selection processes with positive results. DPSST has seen a significant drop in academic failures in the basic police and basic telecommunicator/EMD classes, which was the desired result when the

standard was implemented in 2001. However, this drop in the failure rate was not completely the result of ensuring that applicants can read and write at a 12th grade level, it was because hiring agencies were utilizing pre-employment proficiency tests. As a result, a rule change was adopted renaming the standard from a reading and writing standard to an academic proficiency standard.

DPSST is no longer involved in approving testing vendors. Agencies are free to choose whichever proficiency test best fits their particular agency's hiring needs and budget in consultation with their human resources staff. The DPSST Form F-5 will continue to be used for ensuring that a test has been administered, but will be updated to eliminate the requirement for score reporting.

Issue: At the time of the initial readability level determination conducted by WOU in 2000, the readability level of the corrections curriculum was determined to be at a grade level of 9.7 and the parole and probation curriculum determined to be at a 10.5 grade level. Consequently, a reading/writing standard was not adopted as a prerequisite for admittance to basic corrections or basic parole and probation academy classes.

Currently, there is no academic proficiency standard for the corrections and parole and probation disciplines.

ACTION ITEM 1: Provide direction to staff with regards to implementing an academic proficiency standard for the corrections and parole and probation disciplines.

Appendix B

Department of Public Safety Standards and Training

DATE: August 13, 2013

TO: Eriks Gabliks, Director

FROM: Theresa M. King
DOC BCC Audits Unit Coordinator

SUBJECT: Quarterly Review of DOC BCC by DPSST Audit Team

Issue:

Is the DOC BCC meeting the established standards for Basic Corrections Training?

Background:

The concept of Oregon Department of Corrections (DOC) providing its own training as an alternative to the DPSST 200-hour Basic Corrections Course (BCC) was proposed in the 2009 Governors' Recommended Budget as a cost saving for DOC. This concept was given statutory approval for a period of four years with the requirement that it meets or exceeds the DPSST BCC, that DPSST audit the DOC BCC and that DPSST provide a written report to the legislature in 2011.

Since 2010, the Audit Team has provided the Corrections Policy Committee with quarterly updates of the DOC BCC. Within the quarterly updates, the Audit Team has identified areas in which the DOC BCC has met the minimum standards or has exceeded the minimum standard. In cases in which the DOC BCC has not met the minimum standards, the Audit Team has identified the areas of non-compliance and the required remedy.

During this reporting period, **April 2013 through June 2013**, the Audit Team conducted a series of audits for the 2013 DOC BCC.¹ One compliance issue remains outstanding, the BCC Test 2. In April 2013 a non-compliance letter was issued requiring compliance with state standards by October 15, 2013. DOC PDU continues to work toward this compliance requirement.²

¹ Exhibits 1 - 91

² See May CPC Quarterly Staff Report for specific issues relating to non-compliance.

Audit Program Overview

DOC BCC Training

During this reporting period, DOC BCC began five³ new classes using the 2012 DOC BCC curriculum. Nine classes were still in progress at some phase of their 2012 BCC training.

DOC COD

During this reporting period, DOC submitted 1 applications for Career Officer Development (COD) to DPSST, that application is incomplete and is pending approval.

DOC BCC Testing Results

During this reporting period, the cumulative average for Test #1 was 87.44% and the cumulative average for Test #2 was 87.67%.

DOC Training Failures requiring remediation

During this reporting period, there was seven academic failure, four firearms failure, one defensive tactics and seven Reality Based Training failures. These failures either have been successfully remediated or are scheduled to be remediated.⁴

Firearms

During this reporting period DOC's firearms failure rate continued to decrease.⁵

Basic Corrections Certifications

DOC BCC Basic Corrections certifications issued

During this reporting period, DOC PDU submitted 41 new applications for certification and 46 pending Basic Corrections certifications were granted.

Curriculum

2012 DOC BCC Curriculum

In late 2011, the Corrections Policy Committee approved the new 240 hour Basic Corrections Course. DOC was allowed six months to update their curriculum. They received an extension and on August 14, 2012, the CPC reviewed and approved the new six-week 2012 DOC BCC. This new program was subsequently approved by the Executive Committee. In January 2013, DOC began the delivery of the new state standard.

³ BCC 067, 068, 069, 070, 071

⁴ Exhibit 10 DOC Corrective Action Classes

⁵ Exhibit 158 Audit Team analysis

Instructor Training and Certification

Instructor Development Courses

DOC PDU delivered no Instructor Development classes within this reporting period.

Instructor Applications

During this reporting period, 62 BCC instructors were certified for the 2012 BCC program, for total of 308 BCC instructors.

Audits

Training On-Site Audits

During this reporting period, the Audit Team conducted multiple on-site audits of training. These included observation of the training, review of the lesson plans, student handout materials, instructor presentation, student participation, skills sheets or online courses and student surveys.⁶

Administrative Records Audits

During this reporting period, the Audit Team conducted no administrative records audit.

CORPAT Data Collection:

During this reporting period, six CORPAT were delivered and the data collected.

Findings

With the exception of Test 2, in general, the 2012 DOC BCC *meets* the minimum training standards for the basic certification of corrections officers employed by a law enforcement unit other than the Department of Corrections.

Attachments:

- Ex 1 DOC BCC Student Training [Report]
- Ex 2 DOC BCC [Student Progress Report] 059
- Ex 3 DOC BCC [Student Progress Report] 060
- Ex 4 DOC BCC [Student Progress Report] 063
- Ex 5 DOC BCC [Student Progress Report] 064
- Ex 6 DOC BCC [Student Progress Report] 067
- Ex 7 DOC BCC [Student Progress Report] 068
- Ex 7A DOC BCC [Student Progress Report] 069

⁶ Exhibits 14 – 157 and 159

- Ex 8 DOC BCC [Student Progress Report] 070
- Ex 9 DOC BCC [Student Progress Report] 071
- Ex 10 DOC BCC 2013 2nd Quarter Corrective Action Classes
- Ex 11 DOC BCC High and Low Academic Scores by Class
- Ex 12 DOC BCC Instructor Development Courses
- Ex 13 Audit Team – Audit Tracking
- Ex 14 Audit 04 04 13 068 Pre-Corpat
- Ex 15 Audit 04 08 13 067 Oregon Accountability Model
- Ex 16 Audit 04 08 13 067 Correctional Case Management
- Ex 17 Audit 04 08 13 067 Ethics and Professionalism
- Ex 18 Audit 04 08 13 068 Correctional Case Management
- Ex 19 Audit 04 08 13 068 Oregon Accountability Model
- Ex 20 Audit 04 08 13 068 Ethics and Professionalism
- Ex 21 Audit 04 09 13 067 Employee Wellness
- Ex 22 Audit 04 09 13 067 Health and Fitness Part 1
- Ex 23 Audit 04 09 13 067 Respectful Workplace
- Ex 24 Audit 04 09 13 068 Respectful Workplace
- Ex 25 Audit 04 10 13 067 Communicable Disease
- Ex 26 Audit 04 10 13 067 Bloodborne Pathogens
- Ex 27 Audit 04 10 13 067 Interpersonal Communication Skills Part 1
- Ex 28 Audit 04 10 13 067 PREA
- Ex 29 Audit 04 10 13 068 Communicable Diseases
- Ex 30 Audit 04 10 13 068 PREA
- Ex 31 Audit 04 10 13 068 Bloodborne Pathogens
- Ex 32 Audit 04 11 13 067 Mental Health and Disabilities
- Ex 33 Audit 04 11 13 067 Prohibited Inmate Conduct
- Ex 34 Audit 04 11 13 068 Prohibited Inmate Conduct
- Ex 35 Audit 04 11 13 068 Report Writing
- Ex 36 Audit 04 12 13 067 Defensive Tactics Part 1
- Ex 37 Audit 04 12 13 067 Use of Force

Ex 38 Audit 04 12 13 068 Use of Force

Ex 39 Audit 04 12 13 068 Defensive Tactics Part 1

Ex 40 Audit 04 15 13 067 Supervision of Inmates

Ex 41 Audit 04 15 13 067 Maintain Your Boundaries

Ex 42 Audit 04 15 13 067 Basic Security Practices

Ex 43 Audit 04 16 13 067 CPR/AED

Ex 44 Audit 04 16 13 067 Evidence Handling

Ex 45 Audit 04 17 13 067 Report Writing

Ex 46 Audit 04 17 13 067 Interpersonal Communication Skills Part 1

Ex 47 Audit 04 17 13 068 Mental Health and Disabilities

Ex 48 Audit 04 17 13 068 Interpersonal Communication Skills Part 2

Ex 49 Audit 04 18 13 067 Suicide Awareness

Ex 50 Audit 04 18 13 067 Legal Issues

Ex 51 Audit 04 18 13 068 Suicide Awareness

Ex 52 Audit 04 18 13 068 Legal Issues

Ex 53 Audit 04 22 13 067 OC Pepper Spray

Ex 54 Audit 04 22 13 067 Defensive Tactics Part 2

Ex 55 Audit 04 22 13 067 Health and Fitness Part 3

Ex 56 Audit 04 22 13 068 OC Pepper Spray

Ex 57 Audit 04 23 13 067 Health and Fitness Part 4

Ex 58 Audit 04 23 13 067 Online Training

Ex 59 Audit 04 24 13 067 Reality Based Training

Ex 60 Audit 04 24 13 067a Defensive Tactics Part 3

Ex 61 Audit 04 24 13 067b Defensive Tactics Part 3

Ex 62 Audit 04 24 13 068 Reality Based Training Part 1

Ex 63 Audit 04 24 13 068 Defensive Tactics Part 3

Ex 64 Audit 04 25 13 067 Problem Based Learning Part 1

Ex 65 Audit 04 25 13 067 Reality Based Scenarios Security Procedures

Ex 66 Audit 04 25 13 067 Decision Making

Ex 67 Audit 04 25 13 068 Problem Based Learning Part 1

Ex 68 Audit 04 25 13 068 Decision Making

Ex 69 Audit 04 25 13 068 Reality Based Scenarios Security Procedures

Ex 70 Audit 04 26 13 067a Reality Based Scenarios Security Procedures

Ex 71 Audit 04 26 13 067b Reality Based Scenarios Security Procedures

Ex 72 Audit 04 26 13 068 Reality Based Scenarios Security Procedures

Ex 73 Audit 04 29 13 067 Reality Based Scenarios Inmate Health Care

Ex 74 Audit 04 29 13 067 Reality Based Scenarios Inmate Health Care

Ex 75 Audit 04 30 13 067 Health and Fitness Part 5

Ex 76 Audit 04 30 13 067 Reality Based Scenarios Inmate Supervision

Ex 77 Audit 04 30 13 067 Reality Based Scenarios Security Procedures

Ex 78 Audit 04 30 13 068 Health and Fitness Part 5

Ex 79 Audit 04 30 13 068 Reality Based Training

Ex 80 Audit 04 30 13 068 Reality Based Scenarios Inmate Supervision

Ex 81 Audit 05 01 13 067 Reality Based Training Part 2

Ex 82 Audit 05 01 13 067 Defensive Tactics Part 4

Ex 83 Audit 05 06 13 063 Medical Escorts and Restraints

Ex 84 Audit 05 07 13 063 Defensive Tactics Part 5

Ex 85 Audit 05 08 13 063 Interpersonal Communication Skills Part 3

Ex 86 Audit 05 07 13 063 Employee Wellness Part 2

Ex 87 Audit 05 08 13 063 Post Corpat

Ex 88 Audit 05 09 13 063 Cell Extraction

Ex 89 Audit 05 10 13 063 Problem Based Learning Parts 2 & 3

Ex 90 Audit 05 10 13 063 Reality Based Training Part 4

Ex 91 Audit 05 10 13 063 Reality Based Scenarios Security Procedures

Ex 92 Audit 05 13 13 063 Firearms Series

Ex 93 Audit 05 30 13 069 Pre Corpat

Ex 94 Audit 06 03 13 069 Correctional Case Management

Ex 95 Audit 06 03 13 069 Ethics and Professionalism

Ex 96 Audit 06 03 13 070 Correctional Case Management

Ex 97 Audit 06 03 13 070 Ethics and Professionalism

Ex 98 Audit 06 03 13 070 Oregon Accountability Model

Ex 99 Audit 06 04 13 069 Health and Fitness Part 1

Ex 100 Audit 06 04 13 069 Respectful Workplace

Ex 101 Audit 06 04 13 069 Employee Wellness Part 1

Ex 102 Audit 06 04 13 070 Employee Wellness Part 1

Ex 103 Audit 06 04 13 070 Respectful Workplace

Ex 104 Audit 06 04 13 070 Health and Fitness Part 1

Ex 105 Audit 06 05 13 069 Communicable Disease

Ex 106 Audit 06 05 13 069 Bloodborne Pathogens

Ex 107 Audit 06 05 13 069 PREA

Ex 108 Audit 06 05 13 069 Interpersonal Communication Skills Part 1

Ex 109 Audit 06 05 13 070 Communicable Disease

Ex 110 Audit 06 05 13 070 Interpersonal Communication Skills Part 1

Ex 111 Audit 06 05 13 070 PREA

Ex 112 Audit 06 06 13 069 Prohibited Inmate Conduct

Ex 113 Audit 06 06 13 069 Report Writing

Ex 114 Audit 06 06 13 070 Report Writing

Ex 115 Audit 06 06 13 070 Prohibited Inmate Conduct

Ex 116 Audit 06 07 13 070 Defensive Tactics Part 1

Ex 117 Audit 06 07 13 070 Use of Force

Ex 118 Audit 06 10 13 070 Mental Health and Disabilities

Ex 119 Audit 06 10 13 070 Interpersonal Communication Skills Part 2

Ex 120 Audit 06 10 13 071 Correctional Case Management

Ex 121 Audit 06 10 13 071 Ethics and Professionalism

Ex 122 Audit 06 10 13 071 Oregon Accountability Model

Ex 123 Audit 06 11 13 070 Evidence Handling

Ex 124 Audit 06 11 13 071 Employee Wellness Part 1

Ex 125 Audit 06 11 13 071 Health and Fitness Part 1

Ex 126 Audit 06 11 13 071 Respectful Workplace

Ex 127 Audit 06 12 13 070 Basic Security Practices

Ex 128 Audit 06 12 13 070 Supervision of Inmates

Ex 129 Audit 06 12 13 070 Maintaining Your Boundaries

Ex 130 Audit 06 12 13 071 Interpersonal Communication Skills Part 1

Ex 131 Audit 06 12 13 071 Bloodborne Pathogens

Ex 132 Audit 06 12 13 071 PREA

Ex 133 Audit 06 13 13 070 Suicide Awareness & Intervention

Ex 134 Audit 06 18 13 070 Health and Fitness Psart 4

Ex 135 Audit 06 19 13 069 Defensive Tactics Part 3

Ex 136 Audit 06 19 13 069 Reality Based Training Part 1

Ex 137 Audit 06 19 13 070 Defensive Tactics Part 3

Ex 138 Audit 06 19 13 070 Reality Based Training Part 1

Ex 139 Audit 06 20 13 069 Reality Based Scenarios Security Procedures

Ex 140 Audit 06 20 13 070 Problem Based Learning Part 1

Ex 141 Audit 06 20 13 070 Decision Making

Ex 142 Audit 06 20 13 070 Reality Based Scenarios AM

Ex 143 Audit 06 30 13 070 Reality Based Scenarios PM

Ex 144 Audit 06 24 13 071 Defensive Tactics Part 2

Ex 145 Audit 06 24 13 071 OC Pepper Spray

Ex 146 Audit 06 24 13 071 Health and Fitness Part 3

Ex 147 Audit 06 25 13 069 Reality Based Scenarios Security Procedures

Ex 148 Audit 06 25 13 069 Health and Fitness Part 5

Ex 149 Audit 06 25 13 071 Online Training

Ex 150 Audit 06 25 13 071 Health and Fitness Part 5

Ex 151 Audit 06 26 13 069 Defensive Tactics Part 4

Ex 152 Audit 06 26 13 069 Reality Based Training Part 2

Ex 153 Audit 06 26 13 071 Defensive Tactics Part 3

Ex 154 Audit 06 26 13 071 Reality Based Training Part 1

Ex 155 Audit 06 27 13 071 Problem Based Learning

Ex 156 Audit 06 27 13 071 Reality Based Scenario

Ex 157 Audit 06 27 13 071 Decision Making

Ex 158 Firearms Overview

Ex 159 Student Survey

Appendix C

Department of Public Safety Standards and Training Memorandum

DATE: August 13, 2013

TO: Corrections Policy Committee

FROM: Leon S. Colas
Professional Standards Investigator/Coordinator

**SUBJECT: JEFFREY L. HOLLAND DPSST #18102
Marion County Sheriff's Office**

ISSUE:

Should Jeffrey L. Holland's Basic, Intermediate, Advanced, Supervisory, Management and Executive Corrections certifications be revoked, based on violation of the moral fitness standards defined in OAR 259-008-0010, and as referenced in OAR 259-008-0070?

This case involves Holland's retirement while under investigation after an internal investigation sustained violations of numerous agency policies related to supervisory accountability, discipline and appeal, and truthfulness.

BACKGROUND and OVERVIEW:

1. *From December 1984 to July 1985, HOLLAND was employed by the Josephine County Sheriff's Office as a deputy sheriff.⁷ On April 10, 1987 HOLLAND was hired by the Polk County Sheriff's Office as a deputy sheriff.⁸ He signed his Code of Ethics and obtained Basic and Intermediate Corrections certifications.⁹ On April 2, 1996, HOLLAND resigned from the Polk County Sheriff's Office and on April 3, 1996, he was hired by the Marion County Corrections Department as a corrections officer. He obtained an Advanced Corrections certification.¹⁰ HOLLAND resigned from the Marion County Corrections Department on September 1, 1998 and was transferred to the Marion County Sheriff's Office*

⁷ Ex A1

⁸ Ex A1

⁹ Ex A1, A2

¹⁰ Ex A1

as a deputy sheriff.¹¹ He ultimately obtained Supervisory, Management and Executive corrections certifications.¹²

- 2. In July 2012, DPSST received a form F-4 Personnel Action Report showing that HOLLAND had retired from the Marion County Sheriff's Office while under investigation.¹³ DPSST sought and obtained the information relating to the retirement.¹⁴*
- 3. In May 2013, DPSST notified HOLLAND via certified mail that his case would be heard before the Corrections Policy Committee (CPC), and gave him the opportunity to provide mitigating circumstances for the Committee's consideration.¹⁵*
- 4. HOLLAND provided a response.¹⁶ With his response he submitted a modified copy of a Stipulation Voluntarily Relinquishing Certifications. However, it substantially changed the nature of the document and so DPSST declined to accept that document to terminate the proceedings.¹⁷*

DISCUSSION:

ORS 181.640 requires that DPSST, through its Board, identify in Oregon Administrative Rules (OAR) the conduct that requires denial or revocation (mandatory disqualifying misconduct). For all other misconduct, denial or revocation is discretionary, based on Policy Committee and Board review. (ref. OAR 259-008-0070(4), (9))

DISCRETIONARY DISQUALIFYING MISCONDUCT:

OAR 259-008-0070 specifies discretionary disqualifying misconduct as:

(4)(a)(A) The public safety professional or instructor falsified any information submitted on the application for certification or on any documents submitted to the Board or Department;

(B) The public safety professional or instructor fails to meet the applicable minimum standards, minimum training or the terms and conditions established under ORS 181.640; or

(C) The public safety professional or instructor has been convicted of an offense, punishable as a crime, other than a mandatory disqualifying crime listed in section

¹¹ Ex A1

¹² Ex A1

¹³ Ex A3

¹⁴ Ex A4, A5, with sub-exhibits

¹⁵ Ex A6

¹⁶ ExA7

¹⁷ Ex A8

(3) of this rule, in this state or any other jurisdiction. Presumptive categories have been identified for the crimes listed in subsection (4), based solely on the elements of the crime. Other categories may apply based on the conduct leading to the conviction; . . .

** * **

(b) For purposes of this rule, discretionary disqualifying misconduct includes misconduct falling within the following categories:

(A) Category I: Dishonesty: Includes untruthfulness, dishonesty by admission or omission, deception, misrepresentation, falsification;

(B) Category II: Disregard for the Rights of Others: Includes violating the constitutional or civil rights of others, and conduct demonstrating a disregard for the principles of fairness, respect for the rights of others, protecting vulnerable persons, and the fundamental duty to protect and serve the public.

(C) Category III: Misuse of Authority: Includes abuse of public trust, obtaining a benefit, avoidance of detriment, or harming another, and abuses under the color of office.

(D) Category IV: Gross Misconduct: Means an act or failure to act that creates a danger or risk to persons, property, or to the efficient operation of the agency, recognizable as a gross deviation from the standard of care that a reasonable public safety professional or instructor would observe in a similar circumstance;

(E) Category V: Misconduct: Misconduct includes conduct that violates the law, practices or standards generally followed in the Oregon public safety profession.

NOTE: It is the intent of this rule that "Contempt of Court" meets the definition of Misconduct within this category; or

(F) Category VI: Insubordination: Includes a refusal by a public safety professional or instructor to comply with a rule or order, where the order was reasonably related to the orderly, efficient, or safe operation of the agency, and where the public safety

professional's or instructor's refusal to comply with the rule or order constitutes a substantial breach of that person's duties. (Note: There are no category VI crimes.)

(c) For discretionary disqualifying misconduct, the applicable category will be determined based on the facts of each case. Discretionary disqualifying misconduct under (a)(C) includes, but is not limited to, the following list, which identifies the applicable category for each listed discretionary offense, based on the elements of the crime:

** * **

(see rule for list)

POLICY COMMITTEE AND BOARD REVIEW:

In making a decision to authorize initiation of proceedings based on discretionary disqualifying misconduct, (criminal or non-criminal) OAR 259-008-0070(9)(d) requires the Policy Committee and the Board to consider mitigating and aggravating circumstances, including, but not limited to:

- (A) When the misconduct occurred in relation to the public safety professional's or instructor's employment in public safety (i.e., before, during after);*
- (B) If the misconduct resulted in a conviction:*
 - (i) Whether it was a misdemeanor or violation;*
 - (ii) The date of the conviction(s);*
 - (iii) Whether the public safety professional or instructor was a minor at the time and tried as an adult;*
 - (iv) Whether the public safety professional or instructor served time in prison/jail and, if so, the length of incarceration;*
 - (v) Whether restitution was ordered, and whether the public safety professional or instructor met all obligations;*
 - (vi) Whether the public safety professional or instructor has ever been on parole or probation. If so, the date on which the parole/probation period expired or is set to expire;*
 - (vii) Whether the public safety professional or instructor has more than one conviction and if so, over what period of time;*
- (C) Whether the public safety professional or instructor has engaged in the same misconduct more than once, and if so, over what period of time;*
- (D) Whether the actions of the public safety professional or instructor reflect adversely on the profession, or would cause a reasonable person to have substantial doubts about the public safety professional's or instructor's honesty, fairness, respect for the rights of others, or for the laws of the state or the nation;*

- (E) Whether the misconduct involved domestic violence;
- (F) Whether the public safety professional or instructor self reported the misconduct;
- (G) Whether the conduct adversely reflects on the fitness of the public safety professional or instructor to perform as a public safety professional or instructor;
- (H) Whether the conduct renders the public safety professional or instructor otherwise unfit to perform their duties because the agency or public has lost confidence in the public safety professional or instructor;
- (I) What the public safety professional's or instructor's physical or emotional condition was at the time of the conduct.

STANDARD OF PROOF:

The standard of proof on this matter is a *preponderance of evidence*; evidence that is of greater weight and more convincing than the evidence offered in opposition to it; more probable than not. [Ref ORS 183.450(5)]

ACTION ITEM 1:

Staff requests the Policy Committee review the matter and recommend to the Board whether or not to revoke HOLLAND's certification(s) based on violation of the established moral fitness standards:

- 2. By vote, the Policy Committee *adopts/does not adopt* the Staff report as the record upon which its recommendations are based.
- 3. By discussion and consensus:

- a. Identify and articulate the **misconduct that is specific to this case**.

- b. The identified conduct *did/did not* involve **Dishonesty**.

- c. The identified conduct *did/did not* involve **Disregard for the Rights of Others**.

d. The identified conduct *did/did not* involve **Misuse of Authority**.

e. The identified conduct *did/did not* involve **Gross Misconduct**.

f. The identified conduct *did/did not* involve **Misconduct**.

g. The identified conduct *did/did not* involve **Insubordination**.

4. By discussion and consensus, the Policy Committee must identify and consider any mitigating and aggravating circumstances.

5. By vote, the Policy Committee finds HOLLAND's conduct *does/does not* rise to the level to warrant the revocation of his certifications(s), and therefore recommends to the Board that these certification(s) *be revoked/not be revoked*.

ACTION ITEM 2 (required only if the Committee recommends to the Board that certification be denied or revoked):

Under OAR 259-008-0070(4)(d), upon determining to proceed with the denial or revocation of a public safety professional's certification based on discretionary disqualifying misconduct, the Policy Committee and Board must determine an *initial* minimum period of ineligibility to apply for certification, using the following ineligibility grid:

- (A) Category I: Dishonesty (5 years to Lifetime).
- (B) Category II: Disregard for Rights of Others (5 years to 15 years).
- (C) Category III: Misuse of Authority (5 years to 10 years).
- (D) Category IV: Gross Misconduct (5 years to 10 years).
- (E) Category V: Misconduct (3 years to 7 years).
- (F) Category VI: Insubordination (3 years to 7 years).

By vote, the Policy Committee recommends to the Board that the minimum period of ineligibility to reapply for certification will be *identify period of time* from the date of revocation.

Attachments

Information Only - SUBSEQUENT DUE PROCESS:

Each Oregon public safety professional is entitled to due process when revocation or denial action is considered.

- *If the Policy Committee recommends revocation, DPSST will issue a Notice of Intent to Revoke to the officer. The officer will have twenty (20) days to request a hearing to contest the revocation action.*
- *The Policy Committee's recommendation will be forwarded to the Board. Upon review the Board will either affirm the Policy Committee's decision, or overturn it with a 2/3 vote. If the Board determines that revocation action is not appropriate, DPSST will close the case and issue a Notice of Withdrawal and Termination of Proceedings.*

Due process is an important part of the contested case hearing. Every public safety professional has the right to:

- *Appear in person.*
- *Examine reports and evidence against them as a part of discovery.*
- *Call witnesses.*
- *Face or cross-examine their accuser.*
- *Be represented by counsel.*

The case will be heard before an Administrative Law Judge (ALJ) who is assigned the case through the Office of Administrative Hearings. All hearings are subject to the Administrative Procedures ACT. The hearing is similar to a trial; full discovery is provided and each side calls witnesses and offers evidence. The ALJ issues a Proposed Order; each side may review it and file legal exceptions. A Final Order is then issued. Due process allows for a judicial review to the Court of Appeals where three Oregon justices will review the case.

Appendix D

Department of Public Safety Standards and Training Memorandum

DATE: August 13, 2013

TO: Corrections Policy Committee

FROM: Leon S. Colas
Professional Standards Investigator/Coordinator

SUBJECT: **LADISLADO MIRANDA, JR. DPSST #39976**
Department of Corrections – Oregon State Penitentiary

ISSUE:

Should Ladislado Miranda's Basic Corrections certification be revoked, based on discretionary disqualifying misconduct as defined in OAR 259-008-0070(4) and as referenced in OAR 259-008-0010?

This case involves Miranda's conduct surrounding his 2013 and 2003 convictions for DUII.

BACKGROUND and OVERVIEW:

5. *On September 25, 2000, MIRANDA was hired by the Department of Corrections as a corrections officer.¹⁸ He attended training, signed his Code of Ethics,¹⁹ and obtained a Basic Corrections certification.²⁰*
6. *In June 2012, DPSST received information via LEDS that MIRANDA had been arrested for Driving Under the Influence of Intoxicants in May of 2012. LEDS also revealed a 2007 arrest for Disorderly Conduct, a 2003 arrest and conviction for DUII, and a 2000 arrest for DUII and subsequent diversion. An OJIN check revealed the status of these matters.²¹ DPSST sought and obtained the information relating to the arrests and convictions.²²*
7. *DPSST monitored the 2012 DUII case through the Marion County Circuit Court. MIRANDA was convicted of this charge on January 3, 2013 after changing his plea to guilty.²³ His*

¹⁸ Ex A1

¹⁹ Ex A2

²⁰ Ex A1

²¹ Ex A3

²² Ex A4, A5-A8

²³ Ex A5

agency issued him a letter of reprimand on April 16, 2013 for this and other misconduct.²⁴ The 2007 Disorderly Conduct charge apparently was never prosecuted.²⁵ MIRANDA was convicted of the 2003 DUI in March 2003 on his plea of guilty,²⁶ and his 2000 DUI was resolved through a diversion program.²⁷

8. In May 2013, DPSST notified MIRANDA via certified mail that his case would be heard before the Corrections Policy Committee (CPC), and gave him the opportunity to provide mitigating circumstances for the Committee's consideration.²⁸
9. MIRANDA provided a response.²⁹

DISCUSSION:

ORS 181.640 requires that DPSST, through its Board, identify in Oregon Administrative Rules (OAR) the conduct that requires denial or revocation (mandatory disqualifying misconduct). For all other misconduct, denial or revocation is discretionary, based on Policy Committee and Board review. (ref. OAR 259-008-0070(4), (9))

DISCRETIONARY DISQUALIFYING MISCONDUCT:

OAR 259-008-0070 specifies discretionary disqualifying misconduct as:

(4)(a)(A) The public safety professional or instructor falsified any information submitted on the application for certification or on any documents submitted to the Board or Department;

(B) The public safety professional or instructor fails to meet the applicable minimum standards, minimum training or the terms and conditions established under ORS 181.640; or

(C) The public safety professional or instructor has been convicted of an offense, punishable as a crime, other than a mandatory disqualifying crime listed in section (3) of this rule, in this state or any other jurisdiction. Presumptive categories have been identified for the crimes listed in subsection (4), based solely on the elements of the crime. Other categories may apply based on the conduct leading to the conviction; . . .

²⁴ Ex A9

²⁵ ExA7

²⁶ Ex A6

²⁷ Ex A8

²⁸ Ex A10

²⁹ Ex A11

* * *

(b) For purposes of this rule, discretionary disqualifying misconduct includes misconduct falling within the following categories:

(A) Category I: Dishonesty: Includes untruthfulness, dishonesty by admission or omission, deception, misrepresentation, falsification;

(B) Category II: Disregard for the Rights of Others: Includes violating the constitutional or civil rights of others, and conduct demonstrating a disregard for the principles of fairness, respect for the rights of others, protecting vulnerable persons, and the fundamental duty to protect and serve the public.

(C) Category III: Misuse of Authority: Includes abuse of public trust, obtaining a benefit, avoidance of detriment, or harming another, and abuses under the color of office.

(D) Category IV: Gross Misconduct: Means an act or failure to act that creates a danger or risk to persons, property, or to the efficient operation of the agency, recognizable as a gross deviation from the standard of care that a reasonable public safety professional or instructor would observe in a similar circumstance;

(E) Category V: Misconduct: Misconduct includes conduct that violates the law, practices or standards generally followed in the Oregon public safety profession.

NOTE: It is the intent of this rule that "Contempt of Court" meets the definition of Misconduct within this category; or

(F) Category VI: Insubordination: Includes a refusal by a public safety professional or instructor to comply with a rule or order, where the order was reasonably related to the orderly, efficient, or safe operation of the agency, and where the public safety professional's or instructor's refusal to comply with the rule or order constitutes a substantial breach of that person's duties. (Note: There are no category VI crimes.)

(c) For discretionary disqualifying misconduct, the applicable category will be determined based on the facts of each case. Discretionary disqualifying misconduct under (a)(C) includes, but is not limited to, the following list, which identifies the applicable category for each listed discretionary offense, based on the elements of the crime:

** * **

ORS 813.010 (DUII) – Category IV

** * **

SPECIFIC TO THIS CASE:

OAR 259-008-0070(4) specifies the discretionary disqualifying misconduct of DUII as Category IV, Gross Misconduct, based on the elements of the crime. It carries a presumptive length of ineligibility for reconsideration for certification of five to ten years.

POLICY COMMITTEE AND BOARD REVIEW:

In making a decision to authorize initiation of proceedings based on discretionary disqualifying misconduct, (criminal or non-criminal) OAR 259-008-0070(9)(d) requires the Policy Committee and the Board to consider mitigating and aggravating circumstances, including, but not limited to:

- (A) When the misconduct occurred in relation to the public safety professional's or instructor's employment in public safety (i.e., before, during after);*
- (B) If the misconduct resulted in a conviction:*
 - (i) Whether it was a misdemeanor or violation;*
 - (ii) The date of the conviction(s);*
 - (iii) Whether the public safety professional or instructor was a minor at the time and tried as an adult;*
 - (iv) Whether the public safety professional or instructor served time in prison/jail and, if so, the length of incarceration;*
 - (v) Whether restitution was ordered, and whether the public safety professional or instructor met all obligations;*
 - (vi) Whether the public safety professional or instructor has ever been on parole or probation. If so, the date on which the parole/probation period expired or is set to expire;*
 - (vii) Whether the public safety professional or instructor has more than one conviction and if so, over what period of time;*
- (C) Whether the public safety professional or instructor has engaged in the same misconduct more than once, and if so, over what period of time;*

- (D) Whether the actions of the public safety professional or instructor reflect adversely on the profession, or would cause a reasonable person to have substantial doubts about the public safety professional's or instructor's honesty, fairness, respect for the rights of others, or for the laws of the state or the nation;
- (E) Whether the misconduct involved domestic violence;
- (F) Whether the public safety professional or instructor self reported the misconduct;
- (G) Whether the conduct adversely reflects on the fitness of the public safety professional or instructor to perform as a public safety professional or instructor;
- (H) Whether the conduct renders the public safety professional or instructor otherwise unfit to perform their duties because the agency or public has lost confidence in the public safety professional or instructor;
- (I) What the public safety professional's or instructor's physical or emotional condition was at the time of the conduct.

STANDARD OF PROOF:

The standard of proof on this matter is a *preponderance of evidence*; evidence that is of greater weight and more convincing than the evidence offered in opposition to it; more probable than not. [Ref ORS 183.450(5)]

ACTION ITEM 1:

Staff requests the Policy Committee review the matter and recommend to the Board whether or not to revoke MIRANDA's certification(s) based on violation of the established moral fitness standards:

- 6. By vote, the Policy Committee *adopts/does not adopt* the Staff report as the record upon which its recommendations are based.
- 7. By discussion and consensus:
 - a. Identify and articulate the **misconduct that is specific to this case**.

- b. The identified conduct *did/did not* involve **Dishonesty**.

c. The identified conduct *did/did not* involve **Disregard for the Rights of Others**.

d. The identified conduct *did/did not* involve **Misuse of Authority**.

e. The identified conduct *did/did not* involve **Gross Misconduct**.

f. The identified conduct *did/did not* involve **Misconduct**.

g. The identified conduct *did/did not* involve **Insubordination**.

8. By discussion and consensus, the Policy Committee must identify and consider any mitigating and aggravating circumstances.

9. By vote, the Policy Committee finds MIRANDA's conduct *does/does not* rise to the level to warrant the revocation of his certification(s), and therefore recommends to the Board that these certification(s) *be revoked/not be revoked*.

ACTION ITEM 2 (required only if the Committee recommends to the Board that certification be denied or revoked):

Under OAR 259-008-0070(4)(d), upon determining to proceed with the denial or revocation of a public safety professional's certification based on discretionary disqualifying misconduct, the Policy Committee and Board must determine an *initial* minimum period of ineligibility to apply for certification, using the following ineligibility grid:

- (A) Category I: Dishonesty (5 years to Lifetime).
- (B) Category II: Disregard for Rights of Others (5 years to 15 years).
- (C) Category III: Misuse of Authority (5 years to 10 years).
- (D) Category IV: Gross Misconduct (5 years to 10 years).
- (E) Category V: Misconduct (3 years to 7 years).
- (F) Category VI: Insubordination (3 years to 7 years).

By vote, the Policy Committee recommends to the Board that the minimum period of ineligibility to reapply for certification will be *identify period of time* from the date of revocation.

Attachments

Information Only - SUBSEQUENT DUE PROCESS:

Each Oregon public safety professional is entitled to due process when revocation or denial action is considered.

- *If the Policy Committee recommends revocation, DPSST will issue a Notice of Intent to Revoke to the officer. The officer will have twenty (20) days to request a hearing to contest the revocation action.*
- *The Policy Committee's recommendation will be forwarded to the Board. Upon review the Board will either affirm the Policy Committee's decision, or overturn it with a 2/3 vote. If the Board determines that revocation action is not appropriate, DPSST will close the case and issue a Notice of Withdrawal and Termination of Proceedings.*

Due process is an important part of the contested case hearing. Every public safety professional has the right to:

- *Appear in person.*
- *Examine reports and evidence against them as a part of discovery.*
- *Call witnesses.*
- *Face or cross-examine their accuser.*
- *Be represented by counsel.*

The case will be heard before an Administrative Law Judge (ALJ) who is assigned the case through the Office of Administrative Hearings. All hearings are subject to the Administrative Procedures ACT. The hearing is similar to a trial; full discovery is provided and each side calls witnesses and offers evidence. The ALJ issues a Proposed Order; each side may review it and file legal exceptions. A Final Order is then issued. Due process allows for a judicial review to the Court of Appeals where three Oregon justices will review the case.

Appendix E

**Department of Public Safety Standards and Training
Memorandum**

DATE: August 13, 2013

TO: Corrections Policy Committee

FROM: Leon S. Colas
Professional Standards Investigator/Coordinator

**SUBJECT: GARY W. PRUITT DPSST #31228
Department of Corrections – Oregon State Penitentiary**

ISSUE:

Should Gary W. Pruitt's Basic Corrections certification be revoked, and his application for Intermediate Corrections certification be denied, based on discretionary disqualifying misconduct as defined in OAR 259-008-0070(4) and as referenced in OAR 259-008-0010?

This case involves Pruitt's conduct surrounding his 2012 conviction for Failure to Perform the Duties of a Driver Involved in an Accident, ORS 811.700.

BACKGROUND and OVERVIEW:

10. *On July 1, 1995, PRUITT was hired by the Department of Corrections as a corrections officer.³⁰ He attended training, signed his Code of Ethics,³¹ and obtained a Basic Corrections certification.³²*
11. *In June 2012, DPSST received information via LEDS that PRUITT had been arrested for Reckless Driving and Failure to Perform the Duties of a Driver in an Accident. DPSST sought and obtained the information relating to the arrest.³³*
12. *DPSST monitored the case through the Salem Municipal Court, and learned that PRUITT eventually was convicted of Failure to Perform the Duties of a Driver in an Accident upon his plea of guilty. The Reckless Driving charge was dismissed.³⁴*

³⁰ Ex A1

³¹ Ex A2

³² Ex A1

³³ Ex A3, A4

³⁴ Ex A5, A6

13. In February 2013, DPSST notified PRUITT via certified mail that his case would be heard before the Corrections Policy Committee (CPC), and gave him the opportunity to provide mitigating circumstances for the Committee's consideration.³⁵
14. PRUITT did not provide a response.
15. This matter was held pending the results of the agency's review of the matter and any resulting discipline.³⁶ On July 10, 2013 DPSST received a copy of a letter of reprimand that the agency issued to PRUITT for this incident.³⁷
16. Subsequent to the publication of this case for the CPC meeting, DPSST staff discovered an Application for Certification, Form F-7, in which PRUITT is seeking an Intermediate Corrections certification.³⁸ Denial of this application must be included in the CPC's consideration.
17. On August 8, 2013, PRUITT contacted me by telephone and told me that he had never received any notification that his case would be heard by the Corrections Policy Committee. I pointed out that the letter from us had been signed for by a Gavin Pruitt, whom PRUITT acknowledged is his son.³⁹ Additionally, the first class mail that was sent at the same time was never returned as a not proper address or for any reason. PRUITT acknowledged that he had moved and had not changed his address, but stated he had never received those mailings.
18. PRUITT and I agreed that, to avoid further delay in this case, I would accept a written response from him and present it to the committee with an amended exhibit list. On August 12, 2013, Mr. Pruitt e-mailed to me his response for the committee's consideration.⁴⁰

DISCUSSION:

ORS 181.640 requires that DPSST, through its Board, identify in Oregon Administrative Rules (OAR) the conduct that requires denial or revocation (mandatory disqualifying misconduct). For all other misconduct, denial or revocation is discretionary, based on Policy Committee and Board review. (ref. OAR 259-008-0070(4), (9))

DISCRETIONARY DISQUALIFYING MISCONDUCT:

OAR 259-008-0070 specifies discretionary disqualifying misconduct as:

(4)(a)(A) The public safety professional or instructor falsified any information submitted on the application for certification or on any documents submitted to the Board or Department;

³⁵ Ex A8

³⁶ Ex A7

³⁷ Ex A10

³⁸ Ex A11

³⁹ Ex A8

⁴⁰ Ex A12

(B) The public safety professional or instructor fails to meet the applicable minimum standards, minimum training or the terms and conditions established under ORS 181.640; or

(C) The public safety professional or instructor has been convicted of an offense, punishable as a crime, other than a mandatory disqualifying crime listed in section (3) of this rule, in this state or any other jurisdiction. Presumptive categories have been identified for the crimes listed in subsection (4), based solely on the elements of the crime. Other categories may apply based on the conduct leading to the conviction; . . .

** * **

(b) For purposes of this rule, discretionary disqualifying misconduct includes misconduct falling within the following categories:

(A) Category I: Dishonesty: Includes untruthfulness, dishonesty by admission or omission, deception, misrepresentation, falsification;

(B) Category II: Disregard for the Rights of Others: Includes violating the constitutional or civil rights of others, and conduct demonstrating a disregard for the principles of fairness, respect for the rights of others, protecting vulnerable persons, and the fundamental duty to protect and serve the public.

(C) Category III: Misuse of Authority: Includes abuse of public trust, obtaining a benefit, avoidance of detriment, or harming another, and abuses under the color of office.

(D) Category IV: Gross Misconduct: Means an act or failure to act that creates a danger or risk to persons, property, or to the efficient operation of the agency, recognizable as a gross deviation from the standard of care that a reasonable public safety professional or instructor would observe in a similar circumstance;

(E) Category V: Misconduct: Misconduct includes conduct that violates the law, practices or standards generally followed in the Oregon public safety profession.

NOTE: It is the intent of this rule that “Contempt of Court” meets the definition of Misconduct within this category; or

(F) Category VI: Insubordination: Includes a refusal by a public safety professional or instructor to comply with a rule or order, where the order was reasonably related to the orderly, efficient, or safe operation of the agency, and where the public safety professional’s or instructor’s refusal to comply with the rule or order constitutes a substantial breach of that person’s duties. (Note: There are no category VI crimes.)

(c) For discretionary disqualifying misconduct, the applicable category will be determined based on the facts of each case. Discretionary disqualifying misconduct under (a)(C) includes, but is not limited to, the following list, which identifies the applicable category for each listed discretionary offense, based on the elements of the crime:

** * **

ORS 811.700 Hit and Run – Property – Category V

** * **

SPECIFIC TO THIS CASE:

OAR 259-008-0070(4) specifies the discretionary disqualifying misconduct of Failure to Perform the Duties of a Driver When Property is Damaged as Category V, Misconduct, based on the elements of the crime. It carries a presumptive length of ineligibility for reconsideration for certification of three to seven years.

POLICY COMMITTEE AND BOARD REVIEW:

In making a decision to authorize initiation of proceedings based on discretionary disqualifying misconduct, (criminal or non-criminal) OAR 259-008-0070(9)(d) requires the Policy Committee and the Board to consider mitigating and aggravating circumstances, including, but not limited to:

- (A) When the misconduct occurred in relation to the public safety professional’s or instructor’s employment in public safety (i.e., before, during after);*
- (B) If the misconduct resulted in a conviction:*
 - (i) Whether it was a misdemeanor or violation;*
 - (ii) The date of the conviction(s);*

- (iii) *Whether the public safety professional or instructor was a minor at the time and tried as an adult;*
- (iv) *Whether the public safety professional or instructor served time in prison/jail and, if so, the length of incarceration;*
- (v) *Whether restitution was ordered, and whether the public safety professional or instructor met all obligations;*
- (vi) *Whether the public safety professional or instructor has ever been on parole or probation. If so, the date on which the parole/probation period expired or is set to expire;*
- (vii) *Whether the public safety professional or instructor has more than one conviction and if so, over what period of time;*
- (C) *Whether the public safety professional or instructor has engaged in the same misconduct more than once, and if so, over what period of time;*
- (D) *Whether the actions of the public safety professional or instructor reflect adversely on the profession, or would cause a reasonable person to have substantial doubts about the public safety professional's or instructor's honesty, fairness, respect for the rights of others, or for the laws of the state or the nation;*
- (E) *Whether the misconduct involved domestic violence;*
- (F) *Whether the public safety professional or instructor self reported the misconduct;*
- (G) *Whether the conduct adversely reflects on the fitness of the public safety professional or instructor to perform as a public safety professional or instructor;*
- (H) *Whether the conduct renders the public safety professional or instructor otherwise unfit to perform their duties because the agency or public has lost confidence in the public safety professional or instructor;*
- (I) *What the public safety professional's or instructor's physical or emotional condition was at the time of the conduct.*

STANDARD OF PROOF:

The standard of proof on this matter is a *preponderance of evidence*; evidence that is of greater weight and more convincing than the evidence offered in opposition to it; more probable than not. [Ref ORS 183.450(5)]

ACTION ITEM 1:

Staff requests the Policy Committee review the matter and recommend to the Board whether or not to revoke PRUITT's certification, and deny his application for Intermediate certification, based on violation of the established moral fitness standards:

10. By vote, the Policy Committee *adopts/does not adopt* the Staff report as the record upon which its recommendations are based.
11. By discussion and consensus:

a. Identify and articulate the **misconduct that is specific to this case.**

b. The identified conduct *did/did not* involve **Dishonesty.**

c. The identified conduct *did/did not* involve **Disregard for the Rights of Others.**

d. The identified conduct *did/did not* involve **Misuse of Authority.**

e. The identified conduct *did/did not* involve **Gross Misconduct.**

f. The identified conduct *did/did not* involve **Misconduct.**

g. The identified conduct *did/did not* involve **Insubordination**.

12. By discussion and consensus, the Policy Committee must identify and consider any mitigating and aggravating circumstances.

13. By vote, the Policy Committee finds PRUITT's conduct *does/does not* rise to the level to warrant the revocation of his certification and the denial of his application for Intermediate certification, and therefore recommends to the Board that these certification(s) *be revoked/not be revoked* and *denied/not denied*.

ACTION ITEM 2 (required only if the Committee recommends to the Board that certification be denied or revoked):

Under OAR 259-008-0070(4)(d), upon determining to proceed with the denial or revocation of a public safety professional's certification based on discretionary disqualifying misconduct, the Policy Committee and Board must determine an *initial* minimum period of ineligibility to apply for certification, using the following ineligibility grid:

- (A) Category I: Dishonesty (5 years to Lifetime).
- (B) Category II: Disregard for Rights of Others (5 years to 15 years).
- (C) Category III: Misuse of Authority (5 years to 10 years).
- (D) Category IV: Gross Misconduct (5 years to 10 years).
- (E) Category V: Misconduct (3 years to 7 years).
- (F) Category VI: Insubordination (3 years to 7 years).

By vote, the Policy Committee recommends to the Board that the minimum period of ineligibility to reapply for certification will be *identify period of time* from the date of revocation.

Attachments

*Information Only - **SUBSEQUENT DUE PROCESS:***

Each Oregon public safety professional is entitled to due process when revocation or denial action is considered.

- *If the Policy Committee recommends revocation, DPSST will issue a Notice of Intent to Revoke to the officer. The officer will have twenty (20) days to request a hearing to contest the revocation action.*
- *The Policy Committee's recommendation will be forwarded to the Board. Upon review the Board will either affirm the Policy Committee's decision, or overturn it with a 2/3 vote. If the Board determines that revocation action is not appropriate, DPSST will close the case and issue a Notice of Withdrawal and Termination of Proceedings.*

Due process is an important part of the contested case hearing. Every public safety professional has the right to:

- *Appear in person.*
- *Examine reports and evidence against them as a part of discovery.*
- *Call witnesses.*
- *Face or cross-examine their accuser.*
- *Be represented by counsel.*

The case will be heard before an Administrative Law Judge (ALJ) who is assigned the case through the Office of Administrative Hearings. All hearings are subject to the Administrative Procedures ACT. The hearing is similar to a trial; full discovery is provided and each side calls witnesses and offers evidence. The ALJ issues a Proposed Order; each side may review it and file legal exceptions. A Final Order is then issued. Due process allows for a judicial review to the Court of Appeals where three Oregon justices will review the case.

Appendix F

**Department of Public Safety Standards and Training
Memorandum**

DATE: August 13, 2013

TO: Corrections Policy Committee

FROM: Leon S. Colas
Professional Standards Investigator/Coordinator

SUBJECT: JOHN REMMELL DPSST #19465

ISSUE:

Should John Rimmell's Basic Corrections certification be revoked, based on discretionary disqualifying misconduct as defined in OAR 259-008-0070(4) and as referenced in OAR 259-008-0010?

This case involves Rimmell's conduct surrounding his 2003 conviction for DUII.

BACKGROUND and OVERVIEW:

19. From June 1986 to June 1987, 2000, REMMELL was employed with the Marion County Sheriff's Office as a deputy sheriff, and from July 1987 to July 1988 he was employed with the Marion County Department of Community Corrections as a corrections officer.⁴¹ In November, 1989, REMMELL was hired by the Clackamas County Department of Community Corrections as a corrections officer.⁴² He attended training, signed his Code of Ethics,⁴³ and obtained a Basic Corrections certification.⁴⁴ In December 1990 REMMELL resigned from the Clackamas County Department of Community Corrections and was hired by the Clackamas County Sheriff's Office as a deputy sheriff.⁴⁵
20. In November 2012, DPSST received a Form F-4 Personnel Action Report showing that REMMELL retired from the Clackamas County Sheriff's Office effective November 17, 2012.⁴⁶ While conducting our standard OJIN check, DPSST learned that REMMELL had

⁴¹ Ex A1

⁴² Ex A1

⁴³ Ex A2

⁴⁴ Ex A1

⁴⁵ Ex A1

⁴⁶ Ex A3

been convicted of Driving Under the Influence of Intoxicants in 2003.⁴⁷ DPSST sought and obtained the information relating to the conviction.⁴⁸ Due to the age of the case, only the court judgment and a ‘skeleton record’ of the arrest were available.⁴⁹

21. In May 2013, DPSST notified REMMELL via certified mail that his case would be heard before the Corrections Policy Committee (CPC), and gave him the opportunity to provide mitigating circumstances for the Committee’s consideration.⁵⁰

22. REMMELL provided a response.⁵¹

DISCUSSION:

ORS 181.640 requires that DPSST, through its Board, identify in Oregon Administrative Rules (OAR) the conduct that requires denial or revocation (mandatory disqualifying misconduct). For all other misconduct, denial or revocation is discretionary, based on Policy Committee and Board review. (ref. OAR 259-008-0070(4), (9))

DISCRETIONARY DISQUALIFYING MISCONDUCT:

OAR 259-008-0070 specifies discretionary disqualifying misconduct as:

(4)(a)(A) The public safety professional or instructor falsified any information submitted on the application for certification or on any documents submitted to the Board or Department;

(B) The public safety professional or instructor fails to meet the applicable minimum standards, minimum training or the terms and conditions established under ORS 181.640; or

(C) The public safety professional or instructor has been convicted of an offense, punishable as a crime, other than a mandatory disqualifying crime listed in section (3) of this rule, in this state or any other jurisdiction. Presumptive categories have been identified for the crimes listed in subsection (4), based solely on the elements of the crime. Other categories may apply based on the conduct leading to the conviction; . . .

⁴⁷ Ex A4

⁴⁸ Ex A5 – A6

⁴⁹ Ex A6

⁵⁰ Ex A7

⁵¹ Ex A8

* * *

(b) For purposes of this rule, discretionary disqualifying misconduct includes misconduct falling within the following categories:

(A) Category I: Dishonesty: Includes untruthfulness, dishonesty by admission or omission, deception, misrepresentation, falsification;

(B) Category II: Disregard for the Rights of Others: Includes violating the constitutional or civil rights of others, and conduct demonstrating a disregard for the principles of fairness, respect for the rights of others, protecting vulnerable persons, and the fundamental duty to protect and serve the public.

(C) Category III: Misuse of Authority: Includes abuse of public trust, obtaining a benefit, avoidance of detriment, or harming another, and abuses under the color of office.

(D) Category IV: Gross Misconduct: Means an act or failure to act that creates a danger or risk to persons, property, or to the efficient operation of the agency, recognizable as a gross deviation from the standard of care that a reasonable public safety professional or instructor would observe in a similar circumstance;

(E) Category V: Misconduct: Misconduct includes conduct that violates the law, practices or standards generally followed in the Oregon public safety profession.

NOTE: It is the intent of this rule that "Contempt of Court" meets the definition of Misconduct within this category; or

(F) Category VI: Insubordination: Includes a refusal by a public safety professional or instructor to comply with a rule or order, where the order was reasonably related to the orderly, efficient, or safe operation of the agency, and where the public safety professional's or instructor's refusal to comply with the rule or order constitutes a substantial breach of that person's duties. (Note: There are no category VI crimes.)

(c) For discretionary disqualifying misconduct, the applicable category will be determined based on the facts of each case. Discretionary disqualifying misconduct under (a)(C) includes, but is not limited to, the following list, which identifies the applicable category for each listed discretionary offense, based on the elements of the crime:

** * **

ORS 813.010 (DUII) – Category IV

** * **

SPECIFIC TO THIS CASE:

OAR 259-008-0070(4) specifies the discretionary disqualifying misconduct of DUII as Category IV, Gross Misconduct, based on the elements of the crime. It carries a presumptive length of ineligibility for reconsideration for certification of five to ten years.

POLICY COMMITTEE AND BOARD REVIEW:

In making a decision to authorize initiation of proceedings based on discretionary disqualifying misconduct, (criminal or non-criminal) OAR 259-008-0070(9)(d) requires the Policy Committee and the Board to consider mitigating and aggravating circumstances, including, but not limited to:

- (A) When the misconduct occurred in relation to the public safety professional's or instructor's employment in public safety (i.e., before, during after);*
- (B) If the misconduct resulted in a conviction:*
 - (i) Whether it was a misdemeanor or violation;*
 - (ii) The date of the conviction(s);*
 - (iii) Whether the public safety professional or instructor was a minor at the time and tried as an adult;*
 - (iv) Whether the public safety professional or instructor served time in prison/jail and, if so, the length of incarceration;*
 - (v) Whether restitution was ordered, and whether the public safety professional or instructor met all obligations;*
 - (vi) Whether the public safety professional or instructor has ever been on parole or probation. If so, the date on which the parole/probation period expired or is set to expire;*
 - (vii) Whether the public safety professional or instructor has more than one conviction and if so, over what period of time;*
- (C) Whether the public safety professional or instructor has engaged in the same misconduct more than once, and if so, over what period of time;*

- (D) Whether the actions of the public safety professional or instructor reflect adversely on the profession, or would cause a reasonable person to have substantial doubts about the public safety professional's or instructor's honesty, fairness, respect for the rights of others, or for the laws of the state or the nation;
- (E) Whether the misconduct involved domestic violence;
- (F) Whether the public safety professional or instructor self reported the misconduct;
- (G) Whether the conduct adversely reflects on the fitness of the public safety professional or instructor to perform as a public safety professional or instructor;
- (H) Whether the conduct renders the public safety professional or instructor otherwise unfit to perform their duties because the agency or public has lost confidence in the public safety professional or instructor;
- (I) What the public safety professional's or instructor's physical or emotional condition was at the time of the conduct.

STANDARD OF PROOF:

The standard of proof on this matter is a *preponderance of evidence*; evidence that is of greater weight and more convincing than the evidence offered in opposition to it; more probable than not. [Ref ORS 183.450(5)]

ACTION ITEM 1:

Staff requests the Policy Committee review the matter and recommend to the Board whether or not to revoke REMMELL's certification(s) based on violation of the established moral fitness standards:

14. By vote, the Policy Committee *adopts/does not adopt* the Staff report as the record upon which its recommendations are based.

15. By discussion and consensus:

a. Identify and articulate the **misconduct that is specific to this case**.

b. The identified conduct *did/did not* involve **Dishonesty**.

c. The identified conduct *did/did not* involve **Disregard for the Rights of Others**.

d. The identified conduct *did/did not* involve **Misuse of Authority**.

e. The identified conduct *did/did not* involve **Gross Misconduct**.

f. The identified conduct *did/did not* involve **Misconduct**.

g. The identified conduct *did/did not* involve **Insubordination**.

16. By discussion and consensus, the Policy Committee must identify and consider any mitigating and aggravating circumstances.

17. By vote, the Policy Committee finds REMMELL's conduct *does/does not* rise to the level to warrant the revocation of his certifications(s), and therefore recommends to the Board that these certification(s) *be revoked/not be revoked*.

ACTION ITEM 2 (required only if the Committee recommends to the Board that certification be denied or revoked):

Under OAR 259-008-0070(4)(d), upon determining to proceed with the denial or revocation of a public safety professional's certification based on discretionary disqualifying misconduct, the Policy Committee and Board must determine an *initial* minimum period of ineligibility to apply for certification, using the following ineligibility grid:

- (A) Category I: Dishonesty (5 years to Lifetime).
- (B) Category II: Disregard for Rights of Others (5 years to 15 years).
- (C) Category III: Misuse of Authority (5 years to 10 years).
- (D) Category IV: Gross Misconduct (5 years to 10 years).
- (E) Category V: Misconduct (3 years to 7 years).
- (F) Category VI: Insubordination (3 years to 7 years).

By vote, the Policy Committee recommends to the Board that the minimum period of ineligibility to reapply for certification will be *identify period of time* from the date of revocation.

Attachments

Information Only - SUBSEQUENT DUE PROCESS:

Each Oregon public safety professional is entitled to due process when revocation or denial action is considered.

- *If the Policy Committee recommends revocation, DPSST will issue a Notice of Intent to Revoke to the officer. The officer will have twenty (20) days to request a hearing to contest the revocation action.*
- *The Policy Committee's recommendation will be forwarded to the Board. Upon review the Board will either affirm the Policy Committee's decision, or overturn it with a 2/3 vote. If the Board determines that revocation action is not appropriate, DPSST will close the case and issue a Notice of Withdrawal and Termination of Proceedings.*

Due process is an important part of the contested case hearing. Every public safety professional has the right to:

- *Appear in person.*
- *Examine reports and evidence against them as a part of discovery.*
- *Call witnesses.*
- *Face or cross-examine their accuser.*
- *Be represented by counsel.*

The case will be heard before an Administrative Law Judge (ALJ) who is assigned the case through the Office of Administrative Hearings. All hearings are subject to the Administrative Procedures ACT. The hearing is similar to a trial; full discovery is provided and each side calls witnesses and offers evidence. The ALJ issues a Proposed Order; each side may review it and file legal exceptions. A Final Order is then issued. Due process allows for a judicial review to the Court of Appeals where three Oregon justices will review the case.

Appendix G

Department of Public Safety Standards and Training Memorandum

DATE: August 13, 2013

TO: Corrections Policy Committee

FROM: Leon S. Colas
Professional Standards Investigator/Coordinator

SUBJECT: LISA C. ROBERTSON DPSST #32346

ISSUE:

Should Lisa C. Robertson's Basic and Intermediate Corrections certifications be revoked, based on discretionary disqualifying misconduct as defined in OAR 259-008-0070(4) and as referenced in OAR 259-008-0010?

This case involves Robertson's conduct surrounding her 2013 conviction for Theft 3, ORS 164.043, a Class C misdemeanor.

BACKGROUND and OVERVIEW:

23. In April 1996, ROBERTSON was hired by the Department of Corrections as a corrections officer.⁵² She attended training, signed her Code of Ethics,⁵³ and obtained Basic and Intermediate Corrections certifications.⁵⁴ ROBERTSON resigned from the Department of Corrections in February 2008 and has not been employed in a certified public safety position since that time.⁵⁵
24. In March 2013, DPSST received information via LEDS that ROBERTSON had been arrested for Theft 3 on December 3, 2012. DPSST sought and obtained the information relating to the arrest.⁵⁶ We learned through OJIN that ROBERTSON had been convicted of the offense on January 7, 2013 after pleading guilty to the charge.⁵⁷

⁵² Ex A1

⁵³ Ex A2

⁵⁴ Ex A1

⁵⁵ Ex A1

⁵⁶ Ex A3, A4

⁵⁷ Ex A5

25. *In May 2013, DPSST notified ROBERTSON via certified mail that her case would be heard before the Corrections Policy Committee (CPC), and gave her the opportunity to provide mitigating circumstances for the Committee's consideration.*⁵⁸

26. *ROBERTSON did not provide a response.*

DISCUSSION:

ORS 181.640 requires that DPSST, through its Board, identify in Oregon Administrative Rules (OAR) the conduct that requires denial or revocation (mandatory disqualifying misconduct). For all other misconduct, denial or revocation is discretionary, based on Policy Committee and Board review. (ref. OAR 259-008-0070(4), (9))

DISCRETIONARY DISQUALIFYING MISCONDUCT:

OAR 259-008-0070 specifies discretionary disqualifying misconduct as:

(4)(a)(A) The public safety professional or instructor falsified any information submitted on the application for certification or on any documents submitted to the Board or Department;

(B) The public safety professional or instructor fails to meet the applicable minimum standards, minimum training or the terms and conditions established under ORS 181.640; or

(C) The public safety professional or instructor has been convicted of an offense, punishable as a crime, other than a mandatory disqualifying crime listed in section (3) of this rule, in this state or any other jurisdiction. Presumptive categories have been identified for the crimes listed in subsection (4), based solely on the elements of the crime. Other categories may apply based on the conduct leading to the conviction; . . .

** * **

(b)For purposes of this rule, discretionary disqualifying misconduct includes misconduct falling within the following categories:

(A) Category I: Dishonesty: Includes untruthfulness, dishonesty by admission or omission, deception, misrepresentation, falsification;

⁵⁸ Ex A6

(B) Category II: Disregard for the Rights of Others: Includes violating the constitutional or civil rights of others, and conduct demonstrating a disregard for the principles of fairness, respect for the rights of others, protecting vulnerable persons, and the fundamental duty to protect and serve the public.

(C) Category III: Misuse of Authority: Includes abuse of public trust, obtaining a benefit, avoidance of detriment, or harming another, and abuses under the color of office.

(D) Category IV: Gross Misconduct: Means an act or failure to act that creates a danger or risk to persons, property, or to the efficient operation of the agency, recognizable as a gross deviation from the standard of care that a reasonable public safety professional or instructor would observe in a similar circumstance;

(E) Category V: Misconduct: Misconduct includes conduct that violates the law, practices or standards generally followed in the Oregon public safety profession. NOTE: It is the intent of this rule that "Contempt of Court" meets the definition of Misconduct within this category; or

(F) Category VI: Insubordination: Includes a refusal by a public safety professional or instructor to comply with a rule or order, where the order was reasonably related to the orderly, efficient, or safe operation of the agency, and where the public safety professional's or instructor's refusal to comply with the rule or order constitutes a substantial breach of that person's duties. (Note: There are no category VI crimes.)

(c) For discretionary disqualifying misconduct, the applicable category will be determined based on the facts of each case. Discretionary disqualifying misconduct under (a)(C) includes, but is not limited to, the following list, which identifies the applicable category for each listed discretionary offense, based on the elements of the crime:

** * **

Theft in the Third Degree ORS 164.043

** * **

SPECIFIC TO THIS CASE:

OAR 259-008-0070(4) specifies the discretionary disqualifying misconduct of Theft 3, ORS 164.043 as a Category V, Misconduct, based on the elements of the crime. It carries a presumptive length of ineligibility for reconsideration of certification of three to seven years.⁵⁹

POLICY COMMITTEE AND BOARD REVIEW:

In making a decision to authorize initiation of proceedings based on discretionary disqualifying misconduct, (criminal or non-criminal) OAR 259-008-0070(9)(d) requires the Policy Committee and the Board to consider mitigating and aggravating circumstances, including, but not limited to:

- (A) When the misconduct occurred in relation to the public safety professional's or instructor's employment in public safety (i.e., before, during after);*
- (B) If the misconduct resulted in a conviction:*
 - (i) Whether it was a misdemeanor or violation;*
 - (ii) The date of the conviction(s);*
 - (iii) Whether the public safety professional or instructor was a minor at the time and tried as an adult;*
 - (iv) Whether the public safety professional or instructor served time in prison/jail and, if so, the length of incarceration;*
 - (v) Whether restitution was ordered, and whether the public safety professional or instructor met all obligations;*
 - (vi) Whether the public safety professional or instructor has ever been on parole or probation. If so, the date on which the parole/probation period expired or is set to expire;*
 - (vii) Whether the public safety professional or instructor has more than one conviction and if so, over what period of time;*
- (C) Whether the public safety professional or instructor has engaged in the same misconduct more than once, and if so, over what period of time;*
- (D) Whether the actions of the public safety professional or instructor reflect adversely on the profession, or would cause a reasonable person to have substantial doubts about the public safety professional's or instructor's honesty, fairness, respect for the rights of others, or for the laws of the state or the nation;*
- (E) Whether the misconduct involved domestic violence;*
- (F) Whether the public safety professional or instructor self reported the misconduct;*
- (G) Whether the conduct adversely reflects on the fitness of the public safety professional or instructor to perform as a public safety professional or instructor;*
- (H) Whether the conduct renders the public safety professional or instructor otherwise unfit to perform their duties because the agency or public has lost confidence in the public safety professional or instructor;*
- (I) What the public safety professional's or instructor's physical or emotional condition was at the time of the conduct.*

⁵⁹ Ex A7

STANDARD OF PROOF:

The standard of proof on this matter is a *preponderance of evidence*; evidence that is of greater weight and more convincing than the evidence offered in opposition to it; more probable than not. [Ref ORS 183.450(5)]

ACTION ITEM 1:

Staff requests the Policy Committee review the matter and recommend to the Board whether or not to revoke ROBERTSON’s certification(s) based on violation of the established moral fitness standards:

18. By vote, the Policy Committee *adopts/does not adopt* the Staff report as the record upon which its recommendations are based.

19. By discussion and consensus:

a. Identify and articulate the **misconduct that is specific to this case**.

b. The identified conduct *did/did not* involve **Dishonesty**.

c. The identified conduct *did/did not* involve **Disregard for the Rights of Others**.

d. The identified conduct *did/did not* involve **Misuse of Authority**.

e. The identified conduct *did/did not* involve **Gross Misconduct**.

f. The identified conduct *did/did not* involve **Misconduct**.

g. The identified conduct *did/did not* involve **Insubordination**.

20. By discussion and consensus, the Policy Committee must identify and consider any mitigating and aggravating circumstances.

21. By vote, the Policy Committee finds ROBERTSON's conduct *does/does not* rise to the level to warrant the revocation of his certifications(s), and therefore recommends to the Board that these certification(s) *be revoked/not be revoked*.

ACTION ITEM 2 (required only if the Committee recommends to the Board that certification be denied or revoked):

Under OAR 259-008-0070(4)(d), upon determining to proceed with the denial or revocation of a public safety professional's certification based on discretionary disqualifying misconduct, the

Policy Committee and Board must determine an *initial* minimum period of ineligibility to apply for certification, using the following ineligibility grid:

- (A) Category I: Dishonesty (5 years to Lifetime).
- (B) Category II: Disregard for Rights of Others (5 years to 15 years).
- (C) Category III: Misuse of Authority (5 years to 10 years).
- (D) Category IV: Gross Misconduct (5 years to 10 years).
- (E) Category V: Misconduct (3 years to 7 years).
- (F) Category VI: Insubordination (3 years to 7 years).

By vote, the Policy Committee recommends to the Board that the minimum period of ineligibility to reapply for certification will be *identify period of time* from the date of revocation.

Attachments

Information Only - SUBSEQUENT DUE PROCESS:

Each Oregon public safety professional is entitled to due process when revocation or denial action is considered.

- *If the Policy Committee recommends revocation, DPSST will issue a Notice of Intent to Revoke to the officer. The officer will have twenty (20) days to request a hearing to contest the revocation action.*
- *The Policy Committee's recommendation will be forwarded to the Board. Upon review the Board will either affirm the Policy Committee's decision, or overturn it with a 2/3 vote. If the Board determines that revocation action is not appropriate, DPSST will close the case and issue a Notice of Withdrawal and Termination of Proceedings.*

Due process is an important part of the contested case hearing. Every public safety professional has the right to:

- *Appear in person.*
- *Examine reports and evidence against them as a part of discovery.*
- *Call witnesses.*
- *Face or cross-examine their accuser.*
- *Be represented by counsel.*

The case will be heard before an Administrative Law Judge (ALJ) who is assigned the case through the Office of Administrative Hearings. All hearings are subject to the Administrative Procedures ACT. The hearing is similar to a trial; full discovery is provided and each side calls witnesses and offers evidence. The ALJ issues a Proposed Order; each side may review it and file legal exceptions. A Final Order is then issued. Due process allows for a judicial review to the Court of Appeals where three Oregon justices will review the case.

Appendix H

Department of Public Safety Standards and Training
Memorandum

DATE: August 13, 2013

TO: Corrections Policy Committee

FROM: Leon S. Colas
Professional Standards Investigator/Coordinator

**SUBJECT: SHAWN D. SPEVACEK DPSST #22047
Benton County Sheriff's Office**

ISSUE:

Should Shawn D. Spevacek's Basic, Intermediate, Advanced and Supervisory Corrections certifications be revoked, based on discretionary disqualifying misconduct as defined in OAR 259-008-0070(4) and as referenced in OAR 259-008-0010?

This case involves Spevacek's conduct surrounding his 2013 conviction for Harassment, ORS 166.065.

BACKGROUND and OVERVIEW:

27. *In September 1988, SPEVACEK was hired by the Benton County Sheriff's Office as a deputy sheriff.⁶⁰ He attended training, signed his Code of Ethics,⁶¹ and obtained Basic, Intermediate, Advanced and Supervisory Corrections certifications.⁶²*
28. *In May 2012, DPSST received a Form F-4 Personnel Action Report showing that SPEVACEK resigned effective May 15, 2012 while under investigation.⁶³ DPSST sought and obtained the information relating to the resignation.⁶⁴*
29. *The investigations in this matter included a criminal investigation in which SPEVACEK was charged with Assault IV and two counts of Official Misconduct I.⁶⁵ DPSST monitored the case through the Benton County Circuit Court and learned that SPEVACEK was eventually convicted in January 2013 of Harassment, ORS 166.065.⁶⁶*

⁶⁰ Ex A1

⁶¹ Ex A2

⁶² Ex A1

⁶³ Ex A3

⁶⁴ Ex A4 – A6

⁶⁵ Ex A7

⁶⁶ Ex A7

30. In May 2013, DPSST notified SPEVACEK via certified mail that his case would be heard before the Corrections Policy Committee (CPC), and gave him the opportunity to provide mitigating circumstances for the Committee's consideration.⁶⁷

31. SPEVACEK did not provide a response.

DISCUSSION:

ORS 181.640 requires that DPSST, through its Board, identify in Oregon Administrative Rules (OAR) the conduct that requires denial or revocation (mandatory disqualifying misconduct). For all other misconduct, denial or revocation is discretionary, based on Policy Committee and Board review. (ref. OAR 259-008-0070(4), (9))

DISCRETIONARY DISQUALIFYING MISCONDUCT:

OAR 259-008-0070 specifies discretionary disqualifying misconduct as:

(4)(a)(A) The public safety professional or instructor falsified any information submitted on the application for certification or on any documents submitted to the Board or Department;

(B) The public safety professional or instructor fails to meet the applicable minimum standards, minimum training or the terms and conditions established under ORS 181.640; or

(C) The public safety professional or instructor has been convicted of an offense, punishable as a crime, other than a mandatory disqualifying crime listed in section (3) of this rule, in this state or any other jurisdiction. Presumptive categories have been identified for the crimes listed in subsection (4), based solely on the elements of the crime. Other categories may apply based on the conduct leading to the conviction; . . .

** * **

(b)For purposes of this rule, discretionary disqualifying misconduct includes misconduct falling within the following categories:

⁶⁷ Ex A8

(A) Category I: Dishonesty: Includes untruthfulness, dishonesty by admission or omission, deception, misrepresentation, falsification;

(B) Category II: Disregard for the Rights of Others: Includes violating the constitutional or civil rights of others, and conduct demonstrating a disregard for the principles of fairness, respect for the rights of others, protecting vulnerable persons, and the fundamental duty to protect and serve the public.

(C) Category III: Misuse of Authority: Includes abuse of public trust, obtaining a benefit, avoidance of detriment, or harming another, and abuses under the color of office.

(D) Category IV: Gross Misconduct: Means an act or failure to act that creates a danger or risk to persons, property, or to the efficient operation of the agency, recognizable as a gross deviation from the standard of care that a reasonable public safety professional or instructor would observe in a similar circumstance;

(E) Category V: Misconduct: Misconduct includes conduct that violates the law, practices or standards generally followed in the Oregon public safety profession. NOTE: It is the intent of this rule that "Contempt of Court" meets the definition of Misconduct within this category; or

(F) Category VI: Insubordination: Includes a refusal by a public safety professional or instructor to comply with a rule or order, where the order was reasonably related to the orderly, efficient, or safe operation of the agency, and where the public safety professional's or instructor's refusal to comply with the rule or order constitutes a substantial breach of that person's duties. (Note: There are no category VI crimes.)

(c) For discretionary disqualifying misconduct, the applicable category will be determined based on the facts of each case. Discretionary disqualifying misconduct under (a)(C) includes, but is not limited to, the following list, which identifies the applicable category for each listed discretionary offense, based on the elements of the crime:

** * **

SPECIFIC TO THIS CASE:

OAR 259-008-0070(4) does not specify a category for the crime of Harassment. Pursuant to 4(c) the committee may determine the applicable category based on the facts of the case. However, conviction of any crime will constitute at least Category V, Misconduct, which carries a presumptive initial period of ineligibility of three to seven years.⁶⁸

POLICY COMMITTEE AND BOARD REVIEW:

In making a decision to authorize initiation of proceedings based on discretionary disqualifying misconduct, (criminal or non-criminal) OAR 259-008-0070(9)(d) requires the Policy Committee and the Board to consider mitigating and aggravating circumstances, including, but not limited to:

- (A) When the misconduct occurred in relation to the public safety professional's or instructor's employment in public safety (i.e., before, during after);*
- (B) If the misconduct resulted in a conviction:*
 - (i) Whether it was a misdemeanor or violation;*
 - (ii) The date of the conviction(s);*
 - (iii) Whether the public safety professional or instructor was a minor at the time and tried as an adult;*
 - (iv) Whether the public safety professional or instructor served time in prison/jail and, if so, the length of incarceration;*
 - (v) Whether restitution was ordered, and whether the public safety professional or instructor met all obligations;*
 - (vi) Whether the public safety professional or instructor has ever been on parole or probation. If so, the date on which the parole/probation period expired or is set to expire;*
 - (vii) Whether the public safety professional or instructor has more than one conviction and if so, over what period of time;*
- (C) Whether the public safety professional or instructor has engaged in the same misconduct more than once, and if so, over what period of time;*
- (D) Whether the actions of the public safety professional or instructor reflect adversely on the profession, or would cause a reasonable person to have substantial doubts about the public safety professional's or instructor's honesty, fairness, respect for the rights of others, or for the laws of the state or the nation;*
- (E) Whether the misconduct involved domestic violence;*
- (F) Whether the public safety professional or instructor self reported the misconduct;*
- (G) Whether the conduct adversely reflects on the fitness of the public safety professional or instructor to perform as a public safety professional or instructor;*
- (H) Whether the conduct renders the public safety professional or instructor otherwise unfit to perform their duties because the agency or public has lost confidence in the public safety professional or instructor;*
- (I) What the public safety professional's or instructor's physical or emotional condition was at the time of the conduct.*

⁶⁸ Ex A9

STANDARD OF PROOF:

The standard of proof on this matter is a *preponderance of evidence*; evidence that is of greater weight and more convincing than the evidence offered in opposition to it; more probable than not. [Ref ORS 183.450(5)]

ACTION ITEM 1:

Staff requests the Policy Committee review the matter and recommend to the Board whether or not to revoke SPEVACEK’s certification(s) based on violation of the established moral fitness standards:

22. By vote, the Policy Committee *adopts/does not adopt* the Staff report as the record upon which its recommendations are based.

23. By discussion and consensus:

a. Identify and articulate the **misconduct that is specific to this case**.

b. The identified conduct *did/did not* involve **Dishonesty**.

c. The identified conduct *did/did not* involve **Disregard for the Rights of Others**.

d. The identified conduct *did/did not* involve **Misuse of Authority**.

e. The identified conduct *did/did not* involve **Gross Misconduct**.

f. The identified conduct *did/did not* involve **Misconduct**.

g. The identified conduct *did/did not* involve **Insubordination**.

24. By discussion and consensus, the Policy Committee must identify and consider any mitigating and aggravating circumstances.

25. By vote, the Policy Committee finds SPEVACEK's conduct *does/does not* rise to the level to warrant the revocation of his certifications(s), and therefore recommends to the Board that these certification(s) *be revoked/not be revoked*.

ACTION ITEM 2 (required only if the Committee recommends to the Board that certification be denied or revoked):

Under OAR 259-008-0070(4)(d), upon determining to proceed with the denial or revocation of a public safety professional's certification based on discretionary disqualifying misconduct, the Policy Committee and Board must determine an *initial* minimum period of ineligibility to apply for certification, using the following ineligibility grid:

- (A) Category I: Dishonesty (5 years to Lifetime).
- (B) Category II: Disregard for Rights of Others (5 years to 15 years).
- (C) Category III: Misuse of Authority (5 years to 10 years).
- (D) Category IV: Gross Misconduct (5 years to 10 years).
- (E) Category V: Misconduct (3 years to 7 years).
- (F) Category VI: Insubordination (3 years to 7 years).

By vote, the Policy Committee recommends to the Board that the minimum period of ineligibility to reapply for certification will be *identify period of time* from the date of revocation.

Attachment:

*Information Only - **SUBSEQUENT DUE PROCESS:***

Each Oregon public safety professional is entitled to due process when revocation or denial action is considered.

- *If the Policy Committee recommends revocation, DPSST will issue a Notice of Intent to Revoke to the officer. The officer will have twenty (20) days to request a hearing to contest the revocation action.*
- *The Policy Committee's recommendation will be forwarded to the Board. Upon review the Board will either affirm the Policy Committee's decision, or overturn it with a 2/3 vote. If the Board determines that revocation action is not appropriate, DPSST will close the case and issue a Notice of Withdrawal and Termination of Proceedings.*

Due process is an important part of the contested case hearing. Every public safety professional has the right to:

- *Appear in person.*
- *Examine reports and evidence against them as a part of discovery.*
- *Call witnesses.*
- *Face or cross-examine their accuser.*
- *Be represented by counsel.*

The case will be heard before an Administrative Law Judge (ALJ) who is assigned the case through the Office of Administrative Hearings. All hearings are subject to the Administrative Procedures ACT. The hearing is similar to a trial; full discovery is provided and each side calls witnesses and offers evidence. The ALJ issues a Proposed Order; each side may review it and file legal exceptions. A Final Order is then issued. Due process allows for a judicial review to the Court of Appeals where three Oregon justices will review the case.