

Fire Policy Committee Minutes February 27, 2013

The Fire Policy Committee of the Board on Public Safety Standards and Training held a regular meeting at 9:00 a.m. on February 27, 2013, at the Oregon Public Safety Academy in Salem, Oregon. Chair Joe Seibert called the meeting to order at 9:00 a.m.

Attendees

Committee Members:

Alan Ferschweiler, Oregon State Fire Fighters Council – via teleconference
Dave Jones, Oregon Fire District Directors Association
Erin Janssens, Portland Fire & Rescue – via teleconference
Johnny Mack, Community College Fire Programs
Jamie Paul, Oregon Department of Forestry
Dan Petersen, Oregon Fire Instructors Association – via teleconference
Joe Seibert, Non-Management Firefighter, Chair
Scott Stanton, Oregon Volunteer Firefighters Association – via teleconference
Michelle Stevens, Oregon Fire Marshals Association – via teleconference
Mark Wallace, Oregon State Fire Marshal

Committee Members Absent:

Jeff Jones, Oregon Fire Chiefs Association, Vice Chair

DPSST Staff:

Eriks Gabliks - Director
Todd Anderson, Training Division Director
Julie Olsen-Fink, Fire Certification Supervisor
Tina Diehl, Fire Certification Specialist
Allison Sebern, Fire Certification Coordinator
Kristen Turley, Standards & Compliance Coordinator
Linsay Hale, Compliance Coordinator
Mark Ayers, Fire Training Program Supervisor



1. Minutes from November 28, 2012 meeting

Dave Jones moved to approve the minutes from the November 28, 2012 Fire Policy Committee meeting. Johnny Mack seconded the motion. The motion carried in a unanimous vote.

2. **Revisions to OAR 259-009-0062**

NFPA 1003 Standard for Airport Fire Fighter Professional Qualifications
Presented by Julie Olsen-Fink

BACKGROUND:

The Fire Certification Program of the Department of Public Safety Standards and Training (DPSST) was authorized by the Fire Policy Committee (FPC) to review the NFPA 1003 Standard for Airport Fire Fighter Professional Qualifications, 2010 Edition. At the direction of Chair John Klum, public notification was posted for those fire service professionals who had an interest in participating.

TASK FORCE MEMBERS:

Craig Andresen (Chair)	Kingsley Field Fire Department
Paul Reynolds (Vice Chair)	Southwestern Community College
Christopher Penno	United States Coast Guard
Joe Seibert	Eugene Fire Department
Hector Blanco	Keizer Fire District

DPSST STAFF:

Julie Olsen-Fink	Fire Certification Supervisor
Mark Ayers	Regional Fire Training Supervisor
Allison Sebern	Fire Certification Coordinator

The Task Force met and concluded their work on November 19, 2012 at the Oregon Public Safety Academy. The Task Force unanimously determined, after reviewing the 2005 and 2010 Editions, it would benefit Oregon fire service professionals to adopt the 2010 standard and remain current with the NFPA standards. They recognized this update will have a minimal impact on the majority of Oregon fire departments and will only impact those who offer this type of specialized training and services.

RECOMMENDATION:

The NFPA Airport Fire Fighter Task Force recommends the standard be approved as there were no substantive changes noted between the two standards that would create issues for the Oregon fire service. The Task Force is recommending their request be presented to the Board for final approval.

The following language for OAR-259-009-0062 contains recommended deletions (~~striketrough~~) and additions (**bold and underlined text**). For ease of review, only the recommended new language has been included. (If proposed language is adopted subsequent sections of the current rule will be renumbered as required).

OAR 259-009-0062

Fire Service Personnel Certification

(c) The provisions of the NFPA Standards ~~1003~~ **2010**, 2005 Edition, entitled "Standard for Airport Fire Fighter Professional Qualifications,"

(A) 6.1 General. Prior to certification as a Fire Service Agency NFPA 1003 Airport Fire Fighter, the requirements of NFPA 1001 Fire Fighter II and NFPA 1002 Aircraft Rescue and Fire Fighting Apparatus Operator (ARFF), as specified by the Department, and the job performance requirements defined in sections 6.1 5.1 through 6.4 5.4 must be met.

(B) All applicants for certification must complete either a Task Performance Evaluation or a Department-approved Task Book for Airport Fire Fighter, and signed off The Task Book must be approved by the Agency Head or Training Officer before an applicant can qualify for certification.

ACTION ITEM I: Determine whether to recommend approval to the Board to file the proposed rule language for OAR 259-009-0062 with the Secretary of State as a proposed rule. (Note: the remaining definitions would be numbered sequentially.)

ACTION ITEM II: Determine whether to recommend filing the proposed language for OAR 259-009-0062 with the Secretary of State as permanent rule if no comments are received.

ACTION ITEM III: Pursuant to ORS 183.333, determine whether there is a significant fiscal impact on small business. *No fiscal impact by consensus.*

Dave Jones moved to recommend to the Board filing the proposed language for OAR 259-009-0062 with the Secretary of State as proposed rule and as permanent rule if no comments are received. Johnny Mack seconded the motion. The motion carried in a unanimous vote.

3. **Revocation/Denial Case Review for Thomas A. Davidson #25426 – Jackson County Fire District No. 3 and Rural Metro Fire Department**

Presented by Kristen Turley

ISSUE:

Should Thomas Davidson's fire certifications be revoked and his application for NFPA Fire Fighter II be denied based on his discretionary disqualifying criminal conviction defined in OAR 259-009-0070(4)?

BACKGROUND and OVERVIEW:

This case involves the following actions and processes related to DAVIDSON:

DAVIDSON has served as a fire service professional since 2008, and he obtained the following certifications:

1. *NFPA Fire Fighter I*
2. *Wildland Interface Fire Fighter*

The following certifications were issued in error without the Fire Policy Committee's review to determine eligibility:

- 1. Wildland Interface Engine Boss*
- 2. NFPA Apparatus Equipped with Fire Pump*
- 3. NFPA Fire Instructor I*
- 4. NFPA Driver*
- 5. NFPA Wildland Fire Operator*
- 6. NFPA Mobile Water Supply Operator*

On December 4, 2012, DAVIDSON applied for a NFPA Fire Fighter II certification.

*On or about March 15, 2006, DAVIDSON was convicted of Criminal Conspiracy – Second Degree Theft. **Criminal Conspiracy – Second Degree Theft is a discretionary disqualifying crime, for purposes of certification.***

This conviction was compared to administrative rules relating to discretionary disqualifying criminal convictions for fire service personnel. This matter must be reviewed by the Fire Policy Committee (FPC).

On December 19, 2012, TURLEY mailed DAVIDSON a letter advising him that his case would be heard before the FPC and allowed him an opportunity to provide mitigating circumstances for the Committee's consideration. As a policy, DPSST also provides a Stipulated Order Revoking and/or Denying Certification to individuals whose cases are to be heard by a Policy Committee. Some individuals elect to sign a Stipulated Order, which ends the denial or revocation process.

On or about January 11, 2013, DAVIDSON provided information for the FPC's consideration.

DISCUSSION:

Oregon law requires that DPSST, through its Board, identify in Oregon Administrative Rules (OAR) the conduct or criminal convictions that require denial or revocation. For all other conduct or convictions, denial or revocation is discretionary, based on Policy Committee and Board review.

DISCRETIONARY DISQUALIFYING MISCONDUCT:

OAR 259-009-0070(4) specifies discretionary disqualifying conduct, which includes criminal convictions and falsification issues. Subsection 4 of the rule identifies a list of discretionary disqualifying crimes that must be reviewed by the FPC.

In OAR 259-009-0070(4)(b) The Department, through the Fire Policy Committee and Board, has defined core values that are integral to the fire service profession. These values are:

- (a) Category I: **Honesty**. Honesty includes straightforwardness of conduct; integrity, adherence to the facts; freedom from subterfuge or duplicity; truthfulness and sincerity.

(b) Category II: **Professionalism**. Professionalism includes the conduct, aims, or qualities that characterize or mark a profession or a professional person; extreme competence in an occupation or pursuit.

(c) Category III: **Justice**. Justice includes just treatment, the quality or characteristics of being just, impartial, or fair.

Staff Explanation: The above rule creates a presumption that if an individual has been convicted of any of the discretionary crimes, they have violated the core values of the fire service profession and may not be fit to receive or hold certification. To determine that the applicant may hold certification means that the FPC has determined that in the case of the subject individual, these convictions do not violate the core values.

SPECIFIC TO THIS CASE:

OAR 259-009-0070(4) specifies the discretionary disqualifying conviction of Criminal Conspiracy – Second Degree Theft [ORS 161.450] [ORS 164.045] as violating Category I, Honesty, based on the elements of the crime.

POLICY COMMITTEE AND BOARD REVIEW:

In making a decision to authorize initiation of proceedings based on discretionary disqualifying misconduct, OAR 259-009-0070(7)(d) provides that the FPC and Board will consider aggravating and mitigating circumstances including, but not limited to the following:

(A) When the conduct occurred in relation to the fire service professional's or instructor's service as a fire service professional or instructor (i.e., before, during, after);

(B) Whether the fire service professional or instructor served time in prison/jail; and if so, for how long;

(C) Whether restitution was involved, and if so, whether the fire service professional or instructor met all obligations;

(D) Whether the fire service professional or instructor was on parole or probation, and if so, when the parole or probation ended;

(E) Whether the fire service professional or instructor has been convicted of the same conduct more than once, and if so, over what period of time;

(F) Whether the conduct involved domestic violence;

(G) Whether the fire service professional or instructor self reported the conduct;

(H) Whether the conduct involved dishonesty, fraud, deceit, or misrepresentation;

(I) Whether the conduct was prejudicial to the administration of justice;

(J) Whether the conduct adversely reflects on a fire service professional's or instructor's fitness to perform as a fire service professional or instructor; and

(K) Whether the conduct makes the fire service professional or instructor otherwise unfit to render effective service because of the agency's or public's loss of confidence that the fire service professional or instructor possesses the core values integral to the fire service profession.

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.

ACTION ITEM 1:

Staff requests the Fire Policy Committee review the matter and make a recommendation to the Board whether or not to revoke and deny DAVIDSON's certifications by votes on the following:

1. By vote, the Fire Policy Committee *adopts/does not adopt* the Staff report as the record on which their recommendations are based.
2. By discussion and consensus:
 - a. Identify and articulate the **misconduct that is specific to this case**.
 - b. The identified conduct *did/did not* violate the core value of **Honesty**.
 - c. The identified conduct *did/did not* violate the core value of **Professionalism**.
 - d. The identified conduct *did/did not* violate the core value of **Justice**.
3. By discussion and consensus, the Policy Committee must identify and consider any mitigating and aggravating circumstances.
4. By vote, the Fire Policy Committee finds that DAVIDSON's conduct, including the criminal conviction(s) and all mitigating and aggravating circumstances identified by the committee, *does/does not* rise to the level to warrant revocation and denial of his certification(s), and therefore recommends to the Board that DAVIDSON's certifications be *revoked & denied/not revoked & denied*.

ACTION ITEM 2: (to be considered if denial and revocation are recommended)

According to OAR 259-009-0070(5) upon determination to proceed with the revocation and/or denial of a fire service professional's or instructor's certification based on discretionary disqualifying misconduct, the Fire Policy Committee and Board will determine an initial minimum period of ineligibility to re-apply for certification. The initial minimum period of ineligibility will range from 30 days to 7 (seven) years.

By vote, the Fire Policy Committee recommends a minimum initial period of ineligibility of *time to be determined*.

Joe Seibert moved that the Committee adopts the staff report as the record on which their recommendations are based. Jamie Paul seconded the motion. The motion carried unanimously.

By discussion and consensus:

- a. Identify and articulate the misconduct that is specific to this case. *Criminal Conspiracy – Second Degree Theft is a discretionary disqualifying crime, for purposes of certification.*
- b. The identified conduct **did** violate the core value of Honesty.
- c. The identified conduct **did** violate the core value of Professionalism.
- d. The identified conduct **did** violate the core value of Justice.

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

The FPC identified the following conduct as mitigating circumstances:

- His letters of support.
- He completed his probation and all of the associated requirements.
- The incident occurred prior to his service as a fire fighter.
- His record shows that he slipped up and has taken responsibility for his actions.

The FPC identified the following conduct as aggravating circumstances:

- He resisted arrest and tried to flee the scene.

Johnny Mack moved that the Committee finds that DAVIDSON's conduct, after considering the mitigating and aggravating circumstances identified by the committee, does not rise to the level to warrant revocation and denial of his certifications, and therefore recommends to the Board that DAVIDSON's certifications not be revoked and denied. Dave Jones seconded the motion. The motion carried unanimously.

4. Round Table/Staff Update

Mark Ayers reported:

- DPSST just completed the 2013 Winter Fire School. It was very successful with 324 Fire Fighters attending for two days of training with 10 different classes offered. Oregon has the record of being number one in the country for two-day deliveries.
- Fire Training will be attending the Oregon Fire Instructors Association (OFIA) in Klamath Falls.
- On March 13, 2013 Fire Training will be conducting an Assessment Center with a panel of 14 to hire a PSTS-2 Fire Training Coordinator. There are six applicants.

Julie Olsen-Fink reported:

- There are a number of upcoming task forces:
 - NFPA 1001, Standard for Fire Fighter Professional Qualification, 2013 Edition

- *(Still looking for participants)* NFPA 1035, Standard for Fire and Life Safety Educator, NFPA Public Information Officer and Juvenile Firesetter, 2010 Edition
- Oregon Standard Maritime Fire Service Operator
- Oregon Standard Urban Search and Rescue
- NFPA 472, Standard for Competence of Responders to Hazardous Materials/Weapons of Mass Destruction Incidents, 2013 Edition
- Tina Diehl is making great progress with the Maintenance Re-Certification processing. She has projected to be completed by the end of April. This encompasses approximately 13,000 pieces of paper to be processed.
- The Fire Certification section is down one staff position, the OS1. We are very fortunate that the Standards and Certifications section has shared their limited duration employee to help with the data entry.
- There are well over 100 applications that have been submitted for the OS1 position. It will be narrowed down to 10 people to interview.
- The very generous participants at Winter Fire School raised \$847 for the Fallen Fire Fighter Memorial. The memorial this year is on September 19. We are still looking for another ladder truck to hold one end of the flag to hang over the thoroughfare. DPSST will cover the other end.

Eriks Gabliks reported:

- The AFG Safer Grant Program for FEMA was approved and signed by the President in January.
- DPSST is always seeking people that want to go to the National Fire Academy (NFA) and evaluate grant applications. Over the last decade, Oregon has received more than 80 million dollars' worth of grants for equipment and safety programs.
- Nationally, there is a discussion with NFPA 1521 for Safety Officer training. That is going to be flipped to a Proqual type standard and is being completely re-written.
- On a National level, there has been unhappiness with the revised NFPA 1001 standard that was recently released because it deletes all the references to the current safety or medical evaluation that is conducted for entry level Fire Fighters.
- DPSST's budget is scheduled to be up in the next few weeks at the Legislature. One big item we are following, along with the State Fire Marshal, is the Fire Insurance Premium Tax. There is currently a vacancy in the Pendleton field office that is not being filled because of the uncertainty of the Fire Insurance Premium Tax. Statewide, we have requested that the tax increase from 1% to 1.15% just to stay at the current service level. If that happens the Pendleton position will be brought back on. The Legislature understands the importance and the insurance industry supports the need.
- We are working with the National Fallen Fighters Foundation. They have released a new class working with fire departments and giving them resources to deal with suicide prevention strategies. Last year, there were two Fire Fighter suicides in the state of Oregon. DPSST will host the class.
- The training section is working with the Federal Bureau of Alcohol, Tobacco and Firearms (ATF). They have offered to provide the National Fire Academy a two-week investigation class in Oregon free of charge. We are working on a prop that can do burns at the Chemeketa campus. That will give us a statewide capacity to

provide that training and the students going through it will receive a NFA certificate and the college credit that goes with it.

- Julie Olsen-Fink followed up with the Astoria Fire Department on the issues that were happening there. She reports they have a “clean bill of health”. She looked at all the records and all the things we had concerns about. Their staff has stepped up to the plate and everything that was a concern has been resolved. We are comfortable that they have done everything and we are moving forward.
- Portland Fire & Rescue, Tualatin Valley Fire & Rescue, Eugene Fire and EMS, Springfield Fire and Life Safety, and a number of other metro agencies have participated in the past in the Urban Search and Rescue Program (USAR) that was part of the Office of State Fire Marshal. Through budget reductions, that program is no longer state sustained so it has become a local resource. Those people and the equipment still exist and the training is still needed. However, that standard has not been looked at for a number of years. DPSST should bring a workgroup together and have them look at the USAR Training and Certification standard to see if changes need to be made. The original model was under the FEMA USAR Program.

Michelle Stevens stated it has been an honor and an absolute pleasure to serve on the FPC for the last four years and she’s going to miss everyone.

Joe Seibert commented it’s sad to see her go, but thanked her for all her years of service and everything that she’s done.

The next scheduled meeting is May 22, 2013.

Meeting adjourned at 9:42 a.m.