

OFFICE OF THE SECRETARY OF STATE

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ARCHIVES DIVISION

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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 585
COMMISSION FOR THE BLIND

FILED
12/28/2020 4:02 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Updates rules to reflect use of person-first language and current business best practices

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 01/29/2021 5:00 PM

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

CONTACT: Maximilian West
971-673-1580
max.west@state.or.us

535 SE 12th Ave
Portland,OR 97214

Filed By:
Maximilian West
Rules Coordinator

HEARING(S)

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

DATE: 01/29/2021

TIME: 1:00 PM

OFFICER: Maximilian West

ADDRESS: Oregon Commission for the
Blind

535 SE 12th Ave

Portland, OR 97214

SPECIAL INSTRUCTIONS:

This hearing will be held by
videoconference. Attend the meeting
using the Zoom.com platform, or by
telephone call-in.

Per Executive Order 20-12, the OCB
office is closed to the public

Zoom Meeting information:

<https://us02web.zoom.us/j/84422600371?pwd=MDIIVkFXWTJBWkZmdHpCS2F4N0IUQT09>

Meeting ID: 844 2260 0371

Passcode: 322074

One tap mobile

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Meeting ID: 845 6350 1737

Find your local number:

<https://us02web.zoom.us/j/kc0Nhc2R>

AI

NEED FOR THE RULE(S):

The rules are being updated to reflect current use of person-first language and Commission's current best practices

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

None

FISCAL AND ECONOMIC IMPACT:

The Commission for the Blind anticipates no fiscal impact as a result of amending these rules.

COST OF COMPLIANCE:

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

1. None
2. Effect on small businesses: (a) 0; (b) 0; (c) 0

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

Small businesses were not involved.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

The rules were originally developed in the 1970's and never updated. The new rule language points to the OARs and best practices that apply in the current environment.

RULES PROPOSED:

585-001-0000, 585-001-0005, 585-001-0006, 585-001-0007, 585-001-0008, 585-001-0010, 585-001-0011, 585-001-0015, 585-005-0020, 585-005-0025, 585-005-0030, 585-005-0035, 585-005-0040, 585-005-0045, 585-005-0050, 585-005-0055, 585-005-0060, 585-005-0065, 585-005-0070, 585-005-0075, 585-010-0020, 585-010-0030, 585-010-0040, 585-010-0050, 585-010-0100, 585-010-0105, 585-010-0110, 585-010-0115, 585-010-0120, 585-

010-0125, 585-010-0130, 585-010-0135, 585-010-0140, 585-010-0145, 585-010-0150, 585-010-0200, 585-010-0205, 585-010-0210, 585-010-0215, 585-010-0220, 585-010-0225, 585-010-0230, 585-010-0235, 585-010-0240, 585-010-0245, 585-010-0250, 585-010-0260, 585-010-0265, 585-010-0310, 585-020-0005, 585-020-0010, 585-020-0015, 585-020-0020, 585-020-0025, 585-020-0030, 585-020-0035, 585-020-0040, 585-020-0045, 585-020-0050, 585-020-0060, 585-020-0065, 585-030-0001, 585-030-0010, 585-030-0015, 585-030-0020, 585-030-0025, 585-030-0030, 585-030-0035, 585-030-0040, 585-030-0045, 585-030-0050, 585-030-0055

AMEND: 585-001-0000

RULE SUMMARY: Delineates schedule and who to notify of proposed action to adopt, amend, or repeal rule(s)

CHANGES TO RULE:

585-001-0000

Procedure for Notification of Proposed Action ¶¶

- (1) ~~What this rule does. This establishes a procedure for notifying interested persons of the Commission for the Blind's proposed action to adopt, amend, or repeal any rule.¶¶~~
- (2) ~~Statutory Authority. This rule is authorized by ORS 346.150, 346.180, and Oregon Laws, Chapter 758, Section 6. Public notice of rule making was given by the Commission in Oregon Administrative Rules Bulletin of October 15, 1975, published October 29, 1975. The rule was adopted November 19, 1975, and filed December 17, 1975.¶¶~~
- (3) ~~Effective date. This rule is effective December 17, 1975.¶¶~~
- (4) ~~Procedure for notification. Prior to the adoption, amendment, or repeal of any rule, the Commission for the Blind shall give notice of the proposed adoption, amendment, or repeal as follows:¶¶~~
- (a) ~~1) By publication in the Secretary of State's Bulletin referred to in ORS 183.360 at least 215 days prior to effective date of the proposed action;¶¶~~
- (b) ~~2) By mailing or e-mailing a copy of the notice of proposed action to persons on the Commission for the Blind's mailing list established pursuant to ORS 183.335(6)8) at least 28 days before the effective date of the proposed action;¶¶~~
- (c) ~~3) By mailing or e-mailing a copy of the notice of proposed action to the following organizations or publications to the legislators specified in ORS 183.335(15) at least 49 days before the effective date of the proposed action; and¶¶~~
- (4) ~~By mailing or e-mailing, or furnishing a copy of the notice to the following organizations or publications at least 21 days prior to effective date of the proposed action:¶¶~~
- (A) ~~a) The American Council of the Blind of Oregon;¶¶~~
- (B) ~~b) The National Federation of the Blind of Oregon;¶¶~~
- (C) ~~The Blind Business Managers Association of Oregon;¶¶~~
- (D) ~~c) United Press International; and¶¶~~
- (E) ~~d) Associated Press.~~
- Statutory/Other Authority: ORS 183.335, ORS 346.150, ORS 183.341
- Statutes/Other Implemented: ORS 183.335, ORS 183.341

AMEND: 585-001-0005

RULE SUMMARY: Adopts AG model rules of Procedure for Contested Cases for practice and procedure

CHANGES TO RULE:

585-001-0005

Rules of Practice and Procedure ¶¶

~~(1) The Attorney General's Model Rules of Procedure under the Administrative Procedure Act as amended as adopted by the Attorney General and for Contested Cases filed with the Secretary of State, effective March 27, 2000 are adopted as the rules of practice and procedure of the Commission for the Blind, except that any fair hearing under the Model Rules shall be preceded by the following:¶¶~~

~~(2) An applicant or a person eligible for vocational rehabilitation services under ORS 346.180 may request review of a determination by the Commission that affects the provision of vocational rehabilitation services to the individual. The review shall consist of the right to mediation and/or the right to a due process hearing.¶¶~~

~~(3) Pursuant to 29 USC §722(c)(2), the Commission shall give written notice of an individual's rights to review when (a) the person applies for vocational services, (b) the person's vocational plan is developed, amended or (c) there is a reduction, suspension or cessation of the person's services.¶¶~~

~~(4) The Commission shall make mediation available at a minimum when a due process hearing has been requested. Mediation shall be voluntary and shall be conducted consistently with the provisions of 29 USC §722(c).¶¶~~

~~(5) The due process hearing shall be an evidentiary hearing that is conducted before an impartial hearing officer in conformance with the provisions of 29 USC §722(c). In addition to the Model Rules, the rules of procedure in Oregon Administrative Rules Chapter 585, Division 25 shall apply.¶¶~~

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the office of the Attorney General or the Commission for the Blind.]

Statutory/Other Authority: ORS 346.150, ORS 183.341

Statutes/Other Implemented: ORS 183

AMEND: 585-001-0006

RULE SUMMARY: Commission will not pay certain fees in administrative review, mediation or fair hearing proceeding

CHANGES TO RULE:

585-001-0006

Payment of Legal Fees and Transportation Costs ¶

~~(1) What this rule does. This rule provides information to all interested persons that the Commission for the Blind will not pay for legal services fees or transportation costs for an applicant or client in connection with an Administrative Review, Mediation, or Fair Hearing proceeding.¶~~

~~(2) Assistance of Applicants or Clients;¶~~

~~(a) The Commission for the Blind will not pay for legal service~~Commission will not pay for attorney's fees or transportation costs for an applicant for vocational rehabilitation services or for a client receiving vocational rehabilitation services; in connection with an administrative review, ~~mediation, or fair hearing proceeding.¶~~

~~(b) Any Administrative Review, Mformal mediation; or Ffair Hearing Proceeding will be held at a time and place convenient and accessible to the requesting individual. Each applicant for or recipient of vocational rehabilitation services will be provided information as to their rights to and procedures concerning an Administrative Review, Mediation, or Fair hearhearing proceeding.~~

Statutory/Other Authority: ORS 346.150

Statutes/Other Implemented: ORS 346.150

CHANGES TO RULE:

585-001-0007

Definitions ¶¶

The following definitions shall apply to all Oregon Administrative Rules contained in OAR Chapter 585, Division 1, unless the context requires otherwise:¶¶

- (1) "Custodian" refers to a public body mandated, directly or indirectly, to create, maintain, care for or control a public record. "Custodian" does not include a public body that has custody of a public record as an agent of another public body that is the custodian, unless the public record is not otherwise available.¶¶
- (2) "~~Agency~~" refers to the Oregon Commission for the Blind.¶¶
- (~~3~~) "Designee" refers to any officer or employee of the ~~Agency~~, Commission appointed by the Executive Director to respond to requests for public records of the ~~Oregon Commission for the Blind~~ Commission.¶¶
- (~~4~~) "Executive Director" refers to the Executive Director of the ~~Oregon Commission for the Blind~~ Commission.¶¶
- (~~5~~) "Duplication" or "Duplicating" refers to the process of reproducing a public record or writing in any format.¶¶
- (5) "Commission" refers to the Oregon Commission for the Blind.¶¶
- (6) "Person" includes any natural person, corporation, partnership, firm or association.¶¶
- (7) "Photocopy(ing)" includes a photograph, microphotograph and any other reproduction on paper or film in any scale, or the process of reproducing, in the form of a photocopy, a public record or writing.¶¶
- (8) "Public body" includes every state officer, agency, department, division, bureau, board and commission; every county and city governing body, school district, municipal corporation, and any board, department, commission, council, or agency thereof; and any other public agency of this state.¶¶
- (9) "Public record or writing" includes a document, book, paper, photograph, file, sound recording, machine readable electronic record or other material regardless of physical form or characteristics, made, received, filed or recorded in pursuance of law or in connection with the transaction of public business, whether or not confidential or restricted in use.¶¶
- (10) "Requestor" refers to the person requesting inspection, copies, or other reproduction of a public record of the ~~Agency~~. Requests to Inspect or Obtain Copies of Public Records.¶¶
- (~~11~~) A request to inspect or obtain copies of a public record of the Agency shall be made in writing to the Executive Director, and shall include:¶¶
 - (~~a~~) The name, address and telephone number and e-mail address of the requestor;¶¶
 - (~~b~~) Identification of the records from which information is requested, if known.¶¶
 - (~~c~~) The time period the records were produced and officials involved in producing the records or other relevant information, if known;¶¶
 - (~~d~~) The format in which the information is needed (i.e. photocopies, audio or video cassette, machine readable, or electronic format, etc.);¶¶
 - (~~e~~) The number of copies needed, if copies are requested; and¶¶
 - (~~f~~) Instruction to the Agency to certify copies, if necessary.¶¶
- (~~12~~) The Executive Director or designee may waive the requirement, under paragraph (1) of this rule, for a request to be in writing, if it is determined that effective administration is aided by the waiver.¶¶
- (~~13~~) A review of the requested records will be conducted by the Agency as necessary to determine whether the records are exempt from disclosure, in accordance with ORS 192.410 to 192.505 and any other references establishing an exemption to disclosure of public records.¶¶
- (~~14~~) The Executive Director or designee will advise the requestor, within a reasonable amount of time, whether the records may be disclosed, the date, time, and place they may be inspected or obtain copies of the records, and the estimated cost of inspection, duplication, and other related fees as described in OAR 585-001-0008.¶¶
- (~~15~~) If the requested records contain information exempt from disclosure, the requestor will be furnished a copy

of the record with the exempt material removed.¶¶

~~(16) The Executive Director or designee may require and designate an Agency employee to supervise the inspection of requested records. Applicability of Rules.¶¶~~

~~(17) The Administrative Rules set forth in chapter 585, division 1 shall apply to all public records for which the Agency is custodian. Access to Public Records The Executive Director or designee, in carrying out responsibilities of ORS 192.430, as custodian of public records:¶¶~~

~~(a) Shall allow access to and disclosure of the public records subject to ORS 192.410 to 192.505.¶¶~~

~~(b) Shall make restrictions and take precautions necessary to protect the integrity of the records and prevent interference with the regular discharge of the Agency's duties; and¶¶~~

~~(c) Shall allow for inspection of the Agency's public records during normal working days and hours at the location which the records reside, or any other reasonable location designated by the Executive Director or designee~~

~~Commission.~~

Statutory/Other Authority: ORS 346.150, ~~183.341~~

Statutes/Other Implemented: ORS 346.150 ~~10-346.270~~ & ~~192.311-192.478~~

AMEND: 585-001-0008

RULE SUMMARY: Delineates process to inspect or obtain copies of the public record

CHANGES TO RULE:

585-001-0008

~~Fees for Public Records and Other Services~~ Request to Inspect or Obtain Copies of Public Records

~~(1) The Agency will establish fees and miscellaneous charges, for providing access to or~~ A request to inspect or obtain copies of a public records in paper, electronic, or other format, bas of Commission shall be made in writing and submitted to ~~on the Agency's actual costs of preparing and providing the records. Costs associated with a request for public records may include per page copy and facsimile fees, postage when applicable, staff time to locate, review, remove information exempt from disclosure, and/or transfer the material to a requested electronic or other necessary format appropriate for releasing the public record(s).~~

~~(2) No additional fee will be charged for providing records in an alternative format when "Custodian of Records" at Commission's central office located at: 535 SE 12th, Portland 97214. The request shall include the following information:~~

~~(a) The name, address and telephone number and e-mail address of the requestor;~~

~~(b) Identification of the records from which information is requested, if known.~~

~~(c) The time period the records were produced and officials involved in producing the records or other relevant information, if known;~~

~~(d) The format in which the information is needed (i.e. photocopies, machine readable, or electronic format, etc.);~~

~~(e) The number of copies needed, if copies are required by the Americans with Disabilities Act tested; and~~

~~(f) Instruction to Commission to certify copies, if necessary.~~

~~(3) The Executive Director or designee may reduce or waive fees when:~~

~~(a) Time spent making the records available for inspection or preparation for photocopying was negligible; or waive the requirement, under section (1) of this rule, for a request to be in writing, if it is determined that effective administration is aided by the waiver.~~

~~(b) Supplying A review of the requested records is within the normal scope of an Agency activity; or~~

~~(c) Making will be conducted by Commission as necessary to determine whether the records available primarily benefits the general public.~~

~~(4) All fees and charges must be paid in advance of releasing the requested public records for inspection or before photocopies are provided. Payments must be made by check or money order and made payable to the Oregon Commission for the Blind.~~

~~(5) Consistent with ORS 279.550, to conserve and protect the State's resources, photocopies will be produced on recycled paper in double-sided print format whenever feasible to reduce costs and paper waste.~~

~~(6) Due to the threat of computer virus, the Agency will not permit requestors to provide diskettes for electronic reproduction of computer records. Requests for other electronic reproduction will be evaluated at the time of the request and a determination made as to the feasibility and accessibility of the requested electronic format. The Agency may require the requestor to prere exempt from disclosure, in accordance with ORS 192.311 to 192.478 and any other references establishing an exemption to disclosure of public records.~~

~~(4) The Executive Director or designee shall respond to a public records request by acknowledging receipt of the request and disclosing the requested materials, subject to the exemptions set forth in ORS 192.311 to 192.478, within the timelines established in ORS 192.324 and 192.329. The Executive Director or designee shall advise the requestor whether the records may be disclosed, the date, time, and place they may be inspected or obtain copies of the records, and the estimated fees that the requester must pay as a condition of receiving the public records, if any. Additional time to respond to a request may be based upon the need to clarify the intent of the request, to locate and assemble the information requested, to notify third persons or agencies affected by the request, or to determine whether any of the information requested is exempt and that a denial should be made as to all or part of the request.~~

~~(5) If the requested records contain information exempt from disclosure, the requestor will be furnished a copy of~~

the record with the exempt material redacted. If the Executive Director or designee determines that any exemptions apply, they shall identify the specific grounds for exemption.

(6) The Executive Director or designee may require and designate a Commission employee to supervise the electronic media to which the record(s) will be copied.

(7) The Agency limits the transmission of facsimile copies for public record requests to 30 pages.

(8) Fees:

(a) Photocopies (single or double-sided): 25 cents per page;

(b) Facreview of requested records.

(7) The Administrative Rules set forth in OAR Chapter 585, Division 1 shall apply to all public records for which Commission is custodian.

(8) The Executive Director or designee, in carrying out responsibilities of ORS 192.318, as custodian of public records:

(c) CD - \$2 each;

(d) Audio Cassette - 90 min.: \$2 each;

(e) Video Cassette - 2 hrs.: \$6 each. Shall allow access to and disclosure of the public records subject to ORS 192.311 to 192.478;

(f) Postage/Freight: First Class or Bulk rate based on weight;

(g) Staff Time: Calculated based on employee(s) hourly rate of pay;

(h) Indirect Costs/Third Party Charges: Based on actual/invoiced fees; Shall make restrictions and take precautions necessary to protect the integrity of the records and prevent interference with the regular discharge of Commission's duties; and

(i) Publications: Fees Shall allow for inspecific publications will be based on actual costs of development, printing and distribution, and determined by the Division distributing of Commission's public records during normal working days and hours at the location which the records reside, or any other releasing the publication;

(j) Certification of Public Reasonable location designated by the Executive Director: \$5 or designee.

Statutory/Other Authority: ORS 346.150, 192.311-192.478

Statutes/Other Implemented: ORS 346.150

AMEND: 585-001-0010

RULE SUMMARY: Delineates Violence-free Workplace Policy, its parameters, reporting requirements, and investigation of reported occurrences

CHANGES TO RULE:

585-001-0010

Violence-Free Workplace Policy ¶

(1) It is the policy of ~~the state of Oregon Commission for the Blind~~Commission to provide and maintain a workplace and facilities open to the public that are free from violence and the threat of violence.¶

~~(a) Employees and the public are advised that the Commission for the blind has a violence-free work place policy. Violence in any form will not be tolerated.¶~~

~~(b2) Instances of violence or the threat of violence by employees shall be subject to disciplinary action, up to and including dismissal. Instances of violence or the~~This policy prohibits violence, which is behavior that to a reasonable person is intimidating, hostile, threat of ening, violence by active clients could result in immediate case closure. Instances of violence or the threat of violence by members of the general public could result in criminal charges.¶

~~(c) Weapons are not permitted on Commission for the Blind property (including vehicles). Employees, clients, and members of the general public, including those with concealed weapons permits, are prohibited from bringing weapt or abusive. Such behavior may include:¶~~

~~(a) Threats and threatening behavior such as physical, verbal, or written acts that express or are reasonably perceived to imply intent to cause physical or psychological harm against a person or persons, onto any agency premises, including vehicles. Law enforcement officers are excepted from this policy.¶~~

~~(d) Any employee, client, or other citizen who brings a weapon onto agency premises will be asked to leave immediately. Persons who fail to leave under these circumstances may ber cause damage to property;¶~~

~~(b) Statements, gestures, or expressions that communicate a direct or indirect threat of physical or psychological harm;¶~~

~~(c) Violent behavior such as charged with the crime of rying out threspass. Any employee who possesses a weapon in the workplace may be subject to discipline, including dismissal at or threatening behavior.¶~~

~~(e3) To prevent incidents of violence, Commission staff and managers are responsible for immediately notifying their supervisor and/or the agency administra~~Executive Director when they have any knowledge of implied or direct threats (including possession of weapons on agency~~Commission~~ premises) against agency~~Commission~~ staff. This notification includes threats from other employees, clients, and members of the general public.¶

~~(fa) If a staff member is threatened by another employee, a client, or a member of the general public, they should terminate the interaction immediately and notify their supervisor or the agency administra~~Executive Director.¶

~~(gb) Once a report has been made, the incident will be investigated by the agency administra~~Executive Director, personnel director or such additional persons as the agency administrator may designate~~Executive Director may designate. Any threats or assaults that require the immediate attention of law enforcement or security shall be reported to the appropriate security or police entity.¶~~

~~(hc) Following incidents of violence or threats of violence, the agencyCommission may utilize the Employee Assistance pProgram for group and/or individual debriefing.¶~~

~~(24) Definitions:¶~~

~~(a) Violence includes any action~~Instances of violence or the threat of violence by employees shall be subject to disciplinary action, up to and including dismissal. Instances of violence or the threat of violence by active clients could result in immediate case closure. Instances of violence or the threat of action directed towards persons or property with the intent of causing injury or damageviolence by members of the general public could result in criminal charges.¶

~~(5) Retaliating against staff or managers who report or experience workplace violence or who participate in an investigation of workplace violence is prohibited. Any staff member found to have engaged in retaliatory action or~~

behavior may be subject to discipline, up to and including dismissal.

(6) Weapons are prohibited on Commission property (including vehicles).

(a) The term "weapons" includes any firearm as defined under ORS 166.210(2) or other weapon, device, animal, instrument, material or substance which, under the circumstances in which it is used, attempted to be used, or threatened to be used, is readily capable of causing death or serious physical injury, or serious damage to property.

(b) Employees, clients, and members of the general public, including those with concealed weapons permits, are prohibited from bringing weapons onto any Commission premises, including vehicles. Law enforcement officers who are on duty are excepted from this policy.

(c) Any employee, client, or other citizen who brings a weapon onto Commission premises will be asked to leave immediately. Persons who fail to leave under these circumstances may be charged with the crime of trespass. Any employee who possesses a weapon in the workplace may be subject to discipline, including dismissal.

Statutory/Other Authority: ORS 346.150

Statutes/Other Implemented: ORS 346.150, DAS 50-010-02 eff. 02/01/2019

ADOPT: 585-001-0011

RULE SUMMARY: Delineates fees for fulfilling requests for public records

CHANGES TO RULE:

585-001-0011

Fees for Public Records and Other Services

(1) Commission shall establish a fee schedule and assess fees for fulfilling requests for public records that are reasonably calculated to reimburse Commission for its actual cost of making public records available, including costs for per page copy and facsimile fees, postage when applicable, staff time to locate, review, remove information exempt from disclosure, and/or transfer the material to a requested electronic or other necessary format appropriate for releasing the public record(s).

(2) If Commission can fulfill a request for records using less than 30 minutes of staff time, Commission will not charge the requester for that time.

(3) No additional fee will be charged for providing records in an alternative format when required by the Americans with Disabilities Act.

(4) The Executive Director or designee may reduce or waive fees or other charges under this rule if the Executive Director or designee determines that:

(a) Time spent making the records available for inspection or preparation for photocopying was negligible;

(b) Supplying the requested records is within the normal scope of a Commission activity;

(c) Payment would cause extreme or undue financial hardship upon the requestor; or

(d) Making the record available primarily benefits the general public.

(5) The requestor will be notified of the initial cost estimate for fulfilling the request. Commission shall seek approval from the requestor, prior to initiating work to fulfill a request. Commission will work with requester to refine the scope of their request, if necessary, to reduce costs.

(6) All fees and charges must be paid in advance of releasing the requested public records for inspection or before photocopies are provided. Payments must be made by check or money order and made payable to the "Oregon Commission for the Blind."

(7) To reduce costs and paper waste, photocopies will be produced on recycled paper in double-sided print format whenever feasible.

(8) Due to the threat of computer virus, Commission will not permit requestors to provide their own media storage devices for electronic reproduction of computer records. Requests for other electronic reproduction will be evaluated at the time of the request and a determination made as to the feasibility and accessibility of the requested electronic format. There is no charge to send documents by email or other electronic transfer method.

Statutory/Other Authority: ORS 346.150, ORS 192.324

Statutes/Other Implemented: ORS 192.324

RULE SUMMARY: Delineates confidentiality and inadmissibility of mediation communications in dispute resolution

CHANGES TO RULE:

585-001-0015

~~Confidentiality and Inadmissibility of Mediation Communications~~

~~(1) The words and phrases used in this rule have the same meaning as given to them in ORS 36.110 and 36.234.~~

~~(2) Nothing in this rule affects any confidentiality created by other law. Nothing in this rule relieves a public body from complying with the Public Meetings Law, ORS 192.610 to 192.690. Whether or not they are confidential under this or other rules of the agency, mediation communications are exempt from disclosure under the Public Records Law to the extent provided in ORS 192.410 to 192.505.~~

~~(3) This rule applies only to mediations in which the agency is a party or is mediating a dispute as to which the agency has regulatory authority. This rule does not apply when the agency is acting as the "mediator" in a matter in which the agency also is a party as defined in ORS 36.234.~~

~~(4) To the extent mediation communications would otherwise be compromise negotiations under ORS 40.190 (OEC Rule 408), those mediation communications are not admissible as provided in ORS 40.190 (OEC Rule 408), notwithstanding any provisions to the contrary in section (9) of this rule.~~

~~(5) Mediations Excluded. Sections (6)-(10) of this rule do not apply to:~~

~~(a) Mediation of workplace interpersonal disputes involving the interpersonal relationships between this agency's employees, officials or employees and officials, unless a formal grievance under a labor contract, a tort claim notice or a lawsuit has been filed; or~~

~~(b) Mediation in which the person acting as the mediator will also act as the hearings officer in a contested case involving some or all of the same matters;~~

~~(c) Mediation in which the only parties are public bodies;~~

~~(d) Mediation involving two or more public bodies and a private party if the laws, rule or policies governing mediation confidentiality for at least one of the public bodies provide that mediation communications in the mediation are not confidential;~~

~~(e) Mediation involving 15 or more parties if the agency has designated that another mediation confidentiality rule adopted by the agency may apply to that mediation.~~

~~(6) Disclosures by Mediator. A mediator may not disclose or be compelled to disclose mediation communications in a mediation and, if disclosed, such communications may not be introduced into evidence in any subsequent administrative, judicial or arbitration proceeding unless:~~

~~(a) All the parties to the mediation and the mediator agree in writing to the disclosure; or~~

~~(b) The mediation communication may be disclosed or introduced into evidence in a subsequent proceeding as provided in subsections (c)-(d), (j)-(l) or (o)-(p) of section (9) of this rule.~~

~~(7) Confidentiality and Inadmissibility of Mediation Communications. Except as provided in sections (8)-(9) of this rule, mediation communications are confidential and may not be disclosed to any other person, are not admissible in any subsequent administrative, judicial or arbitration proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent proceeding, or introduced as evidence by the parties or the mediator in any subsequent proceeding.~~

~~(8) Written Agreement. Section (7) of this rule does not apply to a mediation unless the parties to the mediation agree in writing, as provided in this section, that the mediation communications in the mediation will be confidential and/or non-discoverable and inadmissible. If the mediator is the employee of and acting on behalf of a state agency, the mediator or an authorized agency representative must also sign the agreement. The parties' agreement to participate in a confidential mediation must be in substantially the following form. This form may be used separately or incorporated into an "agreement to mediate."~~

~~Agreement to Participate in a Confidential Mediation~~

~~The agency and the parties to the mediation agree to participate in a mediation in which the mediation communications are confidential and/or non-discoverable and inadmissible to the extent authorized by OAR 585-~~

001-0015(7) and this agreement. This agreement relates to the following mediation:¶¶

a) _____¶¶

(Identify the mediation to which this agreement applies)¶¶

b) To the extent authorized by OAR 585-001-0015(7), mediation communications in this mediation are: (check one or more)¶¶

Confidential and may not be disclosed to any other person;¶¶

Not admissible in any subsequent administrative proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent administrative proceeding, or introduced as evidence by the parties or the mediator in any subsequent administrative proceeding;¶¶

Not admissible in any subsequent administrative, judicial or arbitration proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent administrative, judicial or arbitration proceeding, or introduced as evidence by the parties or the mediator in any subsequent administrative, judicial or arbitration proceeding.¶¶

c) _____¶¶

Name of Agency¶¶

_____¶¶

Signature of Agency's authorized representative Date¶¶

(when agency is a party) or Agency employee acting as the mediator (when Agency is mediating the dispute)¶¶

d) _____¶¶

Name of party to the mediation¶¶

_____¶¶

Signature of party's authorized representative Date¶¶

e) _____¶¶

Name of party to the mediation¶¶

_____¶¶

Signature of party's authorized representative Date¶¶

(9) Exceptions to confidentiality and inadmissibility:¶¶

(a) Any statements, memoranda, work products, documents and other materials, otherwise subject to discovery that were not prepared specifically for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding;¶¶

(b) Any mediation communications that are public records, as defined in ORS 192.410(4), and were not specifically prepared for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential or privileged under state or federal law;¶¶

(c) A mediation communication is not confidential and may be disclosed by any person receiving the communication to the extent that person reasonably believes that disclosing the communication is necessary to prevent the commission of a crime that is likely to result in death or bodily injury to any person. A mediation communication is not confidential and may be disclosed in a subsequent proceeding to the extent its disclosure may further the investigation or prosecution of a felony crime involving physical violence to a person;¶¶

(d) Any mediation communication related to the conduct of a licensed professional that is made to or in the presence of a person who, as a condition of his or her professional license, is obligated to report such communication by law or court rule is not confidential and may be disclosed to the extent necessary to make such a report;¶¶

(e) The parties to the mediation may agree in writing that all or part of the mediation communications are not confidential or that all or part of the mediation communications may be disclosed and may be introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential, privileged or otherwise prohibited from disclosure under state or federal law;¶¶

(f) A party to the mediation may disclose confidential mediation communications to a person if the party's communication with that person is privileged under ORS Chapter 40 or other provision of law. A party to the

mediation may disclose confidential mediation communications to a person for the purpose of obtaining advice concerning the subject matter of the mediation, if all the parties agree;¶¶

(g) An employee of the agency may disclose confidential mediation communications to another agency employee so long as the disclosure is necessary to conduct authorized activities of the agency. An employee receiving a confidential mediation communication under this subsection is bound by the same confidentiality requirements as apply to the parties to the mediation;¶¶

(h) A written mediation communication may be disclosed or introduced as evidence in a subsequent proceeding at the discretion of the party who prepared the communication so long as the communication is not otherwise confidential under state or federal law and does not contain confidential information from the mediator or another party who does not agree to the disclosure;¶¶

(i) In any proceeding to enforce, modify or set aside a mediation agreement, a party to the mediation may disclose mediation communications and such communications may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of mediation communications or agreements to persons other than the parties to the agreement;¶¶

(j) In an action for damages or other relief between a party to the mediation and a mediator or mediation program, mediation communications are not confidential and may be disclosed and may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of the mediation communications or agreements;¶¶

(k) When a mediation is conducted as part of the negotiation of a collective bargaining agreement, the following mediation communications are not confidential and such communications may be introduced into evidence in a subsequent administrative, judicial or arbitration proceeding:¶¶

(A) A request for mediation; or¶¶

(B) A communication from the Employment Relations Board Conciliation Service establishing the time and place of mediation; or¶¶

(C) A final offer submitted by the parties to the mediator pursuant to ORS 243.712; or¶¶

(D) A strike notice submitted to the Employment Relations Board.¶¶

(l) To the extent a mediation communication contains information the substance of which is required to be disclosed by Oregon statute, other than ORS 192.410 to 192.505, that portion of the communication may be disclosed as required by statute;¶¶

(m) Written mediation communications prepared by or for the agency or its attorney are not confidential and may be disclosed and may be introduced as evidence in any subsequent administrative, judicial or arbitration proceeding to the extent the communication does not contain confidential information from the mediator or another party, except for those written mediation communications that are:¶¶

(A) Attorney-client privileged communications so long as they have been disclosed to no one other than the mediator in the course of the mediation or to persons as to whom disclosure of the communication would not waive the privilege; or¶¶

(B) Attorney work product prepared in anticipation of litigation or for trial; or¶¶

(C) Prepared exclusively for the mediator or in a caucus session and not given to another party in the mediation other than a state agency; or¶¶

(D) Prepared in response to the written request of the mediator for specific documents or information and given to another party in the mediation; or¶¶

(E) Settlement concepts or proposals, shared with the mediator or other parties.¶¶

(n) A mediation communication made to the agency may be disclosed and may be admitted into evidence to the extent the agency director determines that disclosure of the communication is necessary to prevent or mitigate a serious danger to the public's health or safety, and the communication is not otherwise confidential or privileged under state or federal law;¶¶

(o) The terms of any mediation agreement are not confidential and may be introduced as evidence in a subsequent proceeding, except to the extent the terms of the agreement are exempt from disclosure under ORS 192.410 to

~~192.505, a court has ordered the terms to be confidential under ORS 17.095 or state or federal law requires the terms to be confidential;¶¶~~

~~(p) The mediator may report the disposition of a mediation to the agency at the conclusion of the mediation so long as the report does not disclose specific confidential mediation communications. The agency or the mediator may use or disclose confidential mediation communications for research, training or educational purposes, subject to the provisions of ORS 36.232(4).¶¶~~

~~(10) When a mediation is subject to section (7) of this rule, the agency will provide to all parties to the mediation and the mediator a copy of this rule or a citation to the rule and an explanation of where a copy of the rule may be obtained. Violation of this provision does not waive confidentiality or inadmissibility.¶¶~~

~~[ED. NOTE: Forms referenced are available from the agency.]~~

~~Statutory/Other Authority: ORS 36.224~~

~~Statutes/Other Implemented: ORS 36.224, 36.228, 36.230, 36.232~~

AMEND: 585-005-0020

RULE SUMMARY: Defines terms used in Oregon Administrative Rules chapter 585, Division 5

CHANGES TO RULE:

585-005-0020

Definitions ¶¶

As used in OAR ~~Chapter 585, Division 5~~, unless the context of the rule requires otherwise, the following definitions apply:¶¶

- (1) "Approved" means that, pursuant to a preliminary or final fitness determination ~~fitness, an, the Executive Director or~~ authorized designee ~~(AD)~~ has determined that the subject individual is fit to be an employee, volunteer, or contractor ~~in a position covered by OAR 585-005-0030.~~¶¶
- (2) "Authorized Designee" means an ~~OCB~~ Commission employee authorized to obtain and review criminal offender information and other relevant information about a subject individual through criminal records checks ~~and other means~~, and to conduct a fitness determination in accordance with these rules.¶¶
- (3) "Conviction" or "Convicted of" means that a court of law has entered a final judgment on a verdict or a finding of guilty, a plea of guilty, or a plea of nolo contendere (no contest) against a subject individual in a criminal case, unless that judgment has been reversed or set aside by a subsequent court decision.¶¶
- (4) "Criminal Offender Information" means records and related data as to physical description and vital statistics, fingerprints received and compiled by the Oregon Department of State Police (DOSP) ~~Bureau of Criminal Identification~~ for purposes of identifying criminal offenders and alleged offenders, records of arrests and the nature and disposition of criminal charges, including conviction, pleas, sentencing, confinement, probation, parole, and release.¶¶
- (5) "Crime Relevant to a Fitness Determination" means a crime listed or described in OAR 585-005-0050.¶¶
- (6) "Criminal Records Check and Fitness Determination Rules" or "These Rules" means OAR ~~Chapter 585, Division 5.~~¶¶
- (7) "Criminal Records Check" ~~or "CRC"~~ means one or more of the following three processes undertaken to check the criminal history of a subject individual:¶¶
 - (a) A name-based check of criminal offender information and motor vehicle registration and driving records conducted through use of the Law Enforcement Data System (LEDS) maintained by ~~the Oregon Department of State Police~~ OSP, in accordance with the rules adopted and procedures established by ~~the Oregon Department of State Police~~ OSP (LEDS Criminal Records Check);¶¶
 - (b) A check of Oregon criminal offender information, including through fingerprint identification, conducted by ~~the Oregon Department of State Police at OCB~~ OSP at Commission's request (Oregon Criminal Records Check); or¶¶
 - (c) A nationwide check of federal criminal offender information, including through fingerprint identification, ~~conducted by the Oregon Department of State Police through the Federal Bureau of Investigation or otherwise at OCB~~ by OSP through the FBI at Commission's request (Nationwide Criminal Records Check).¶¶
- (8) "Denied" means that, pursuant to a preliminary fitness determination under OAR 585-005-0035 or a final fitness determination under OAR 585-005-0045, the Executive Director or an authorized designee has determined that the subject individual is not fit to be an employee, volunteer, or contractor ~~in a position covered by OAR 585-005-0030.~~¶¶
- (9) "OCB" means ~~the Oregon Commission for the Blind or any subdivision thereof.~~ "OCB" ~~does not include a criminal justice agency as defined in ORS 181.534(1)(a)(B).~~ of Commission.¶¶
- (9) "Executive Director" refers to the Executive Director of Commission.¶¶
- (10) "FBI" means the Federal Bureau of Investigation.¶¶
- (10~~1~~) "False Statement" means that, in association with an activity governed by these rules, a subject individual either:¶¶
 - (a) Provided ~~OCB~~ Commission with materially false information about ~~his or her~~ their criminal history, such as, but

not limited to, materially false information about ~~his or their~~ identity or conviction record; or¶

(b) Failed to provide to ~~OCB~~Commission information material to determining ~~his or their~~ criminal history.¶

(112) "Fitness Determination" means a determination made by the Executive Director or an authorized designee pursuant to the process established in OAR 585-005-0035 (preliminary fitness determination) or 585-005-0045 (final fitness determination) that a subject individual is or is not fit to be an ~~OCB employee in a position covered by 585-005-0030~~ Commission employee, volunteer, or contractor.¶

(123) "Family Member" means a spouse, domestic partner, natural parent, foster parent, adoptive parent, stepparent, child, foster child, adopted child, stepchild, sibling, stepbrother, stepsister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, grandparent, grandchild, aunt, uncle, niece, nephew or first cousin.¶

(134) "Commission" means the Oregon Commission for the Blind or any subdivision thereof. Commission does not include a criminal justice agency as defined in ORS 181A.195(1)(a)(B).¶

(15) "Subject Individual" means an individual identified as someone from whom ~~OCB~~Commission may require fingerprints for the purpose of conducting a criminal records check because the person:¶

(a) Is applying for employment with Commission; or¶

(b) Provides services or seeks to provide services to Commission as a volunteer, paid agent, or contractor; and¶

(c) Is, or will be, working or providing services in a position in which the person:¶

(A) Is providing information technology services and has control over, or access to, information technology systems that would allow the person to harm the information technology systems or the information contained in the systems;¶

(B) Has access to information, the disclosure of which is prohibited by state or federal laws, rules or regulations, or information that is defined as confidential under state or federal laws, rules or regulations; or¶

(C) Has access to personal information about employees or members of the public, including Social Security numbers, dates of birth, driver license numbers, medical information, personal financial information or criminal history information.

Statutory/Other Authority: ORS ~~181.534, 346.300~~346.300, ORS 181A.195

Statutes/Other Implemented: ORS ~~181.534(9)~~346.300, ORS 181A.195

REPEAL: 585-005-0025

RULE SUMMARY: Delineates "subject individual" in criminal records check and fitness determination

CHANGES TO RULE:

~~585-005-0025~~

~~Subject Individual~~

~~"Subject Individual" means a person from whom OCB may require fingerprints for the purpose of conducting a criminal records check because the person:~~

~~(1)(a) Is applying for employment with OCB; or~~

~~(b) Provides services or seeks to provide services to OCB as a volunteer, paid agent, or contractor; and~~

~~(2) Is, or will be, working or providing services in a position in which the person:~~

~~(a) Is providing information technology services and has control over, or access to, information technology systems that would allow the person to harm the information technology systems or the information contained in the systems;~~

~~(b) Has access to information, the disclosure of which is prohibited by state or federal laws, rules or regulations or information that is defined as confidential under state or federal laws, rules or regulations; or~~

~~(c) Has access to personal information about employees or members of the public including Social Security numbers, dates of birth, driver license numbers, medical information, personal financial information or criminal history information.~~

~~Statutory/Other Authority: ORS 181.534, 346.300~~

~~Statutes/Other Implemented: ORS 181.534(9)~~

AMEND: 585-005-0030

RULE SUMMARY: Delineates criminal records check process and requirements

CHANGES TO RULE:

585-005-0030

Criminal Records Check Process ¶

(1) Disclosure of Information by Subject Individual: ¶

(a) Preliminary to a criminal records check, a subject individual, ~~if requested,~~ shall complete and sign the ~~OCB Commission~~ Criminal Records Request form ~~and, if requested by OCB, a fingerprint card.~~ The Criminal Records Request form shall require the following information: ~~name,~~ ¶

~~(A) Legal name and aliases;~~ ¶

~~(B) Date of birth;~~ ¶

~~(C) Social Security Number, driver's license, or other identification card number;~~ ¶

~~(D) Prior residency in other states; and a~~ ¶

~~(E) Any other identifying information deemed necessary by the authorized designee.~~ ¶

~~(F) The OCB Commission Criminal Records Request form may also require details concerning any circumstance listed in OAR 585-005-0035-(3)(a)-(f);~~ ¶

(b) A subject individual shall complete and submit to ~~OCB the OCB Commission the Commission~~ Criminal Records Request form ~~and, if requested, a fingerprint card~~ within three (3) business days of receiving the forms. An authorized designee may extend the deadline for good cause; ¶

~~(c) OCB shall not request a fingerprint card from~~ A subject individual shall submit to fingerprint identification as part of Commission's criminal records check process. The authorized designee will direct the subject individual to an authorized facility to complete the fingerprint identification. ¶

~~(d) Commission shall not request~~ a subject individual under the age of 18 years ~~unless OCB submit to fingerprint identification unless Commission~~ also requests the written consent of a parent or guardian. In such case, such parent or guardian and youth must be informed that they are not required to consent. Failure to consent, however, may be construed as a refusal to consent under OAR 585-005-0045(3)(d)(B); ¶

~~(de)~~ Within a reasonable period of time as established by an authorized designee, a subject individual shall disclose additional information as requested by ~~OCB Commission~~ in order to resolve any issue(s) hindering the completion of a criminal records check. ¶

~~(2) When a Criminal Records Check is Conducted.~~ An authorized designee may conduct, or request that a criminal records check be conducted by OSP for non-criminal justice purposes when: ¶

(a) An individual meets the definition of "subject individual;" or ¶

(b) Required by federal law or regulation, or as a condition of federal funding, by state law or administrative rule, or by contract or written agreement with ~~OCB.~~ ¶

~~(3) Which Criminal Records Check(s) is Conducted.~~ Commission. ¶

(3) When an authorized designee determines under subsection (2) of this rule that a criminal records check is needed, the authorized designee shall proceed as follows: ¶

~~(a) LEADS Criminal Records Check.~~ The authorized designee shall conduct ~~or request~~ a LEADS criminal records check on a subject individual as part of any fitness determination ~~conducted in regard to a subject individual.~~ ¶

~~(b) Oregon Criminal Records Check.~~ ¶

~~(b)~~ The authorized designee may request that ~~the Oregon Department of State Police~~ OSP conduct an Oregon criminal records check ~~when:~~ ¶

~~(A) The authorized designee determines that an Oregon~~ a nationwide criminal records check on a subject individual for non-criminal records check is warranted a justice purposes when: ¶

~~(A)~~ After review of the information provided by the subject individual, the results of a LEADS criminal records check, or review of any other information deemed relevant to the inquiry; ~~or~~ ¶

~~(B) T~~ the authorized designee requests a nationwide determines an Oregon criminal records check. ¶

~~(C) Nationwide Criminal Records Check. The authorized designee may request that the Oregon Department of State Police conduct a nationwide criminal records check when: are appropriate.~~

(A) A subject individual has lived outside Oregon for 60 or more consecutive days during the previous three (3) years;

(B) Information provided by the subject individual or the results of a LEADS or Oregon criminal records check provide reason to believe, as determined by an authorized designee, that the subject individual has a criminal history outside of Oregon;

~~(D) As determined by an~~ The authorized designee, determines that there is reason to question the identity of, or information provided by, a subject individual. Reasonable grounds to question the information provided by a subject individual include, but are not limited to: the subject individual fails to disclose a Social Security Number; the subject individual discloses a Social Security Number that appears to be invalid; or the subject individual does not have an Oregon driver's license or identification card; or

(E) A check is required by federal law or regulation, by state law or administrative rule, or by contract or written agreement with ~~OCB~~ Commission.

Statutory/Other Authority: ORS 181.534, ORS 346.300, ORS 181A.195

Statutes/Other Implemented: ORS 181.534(9), 346.300, ORS 181.534(9), ORS 181A.195

AMEND: 585-005-0035

RULE SUMMARY: Delineates preliminary fitness determination pending final fitness determination

CHANGES TO RULE:

585-005-0035

Preliminary Fitness Determination ¶¶

(1) ~~A~~The Executive Director or an authorized designee may conduct a preliminary fitness determination if ~~OCB Commission~~ is interested in hiring or appointing a subject individual on a preliminary basis, pending a final fitness determination.¶¶

(2) If the Executive Director or an authorized designee elects to make a preliminary fitness determination about a subject individual, pending a final fitness determination, the Executive Director or authorized designee shall make that preliminary fitness determination based on information disclosed by the subject individual and a LEDS criminal records check.¶¶

(3) The Executive Director or the authorized designee ~~shall~~may approve a subject individual as fit on a preliminary basis if the authorized designee has no reason to believe that the subject individual has made a false statement and the information available to the Executive Director or the authorized designee does not disclose that the subject individual:¶¶

(a) Has pled nolo contendere (or no contest) to, been convicted of, found guilty except for insanity (or comparable disposition) of, or has a pending indictment for a crime listed under OAR 585-005-0050;¶¶

(b) Has been arrested for or charged with a crime listed under; OAR 585-005-0050;¶¶

(c) Is being investigated for, or has an outstanding warrant for a crime listed under OAR 585-005-0050.¶¶

(d) Is currently on probation, parole, or any form of post-prison supervision for a crime listed under OAR 585-005-0050;¶¶

(e) Has a deferred sentence or conditional discharge or is participating in a diversion program in connection with a crime listed under OAR 585-005-0050; or¶¶

(f) Has been adjudicated in a juvenile court and found to be within the court's jurisdiction for an offense that would have constituted a crime listed in OAR 585-005-0050 if committed by an adult.¶¶

(4) If the information available to the Executive Director or the authorized designee discloses one or more of the circumstances identified in section (3), the Executive Director or the authorized designee may nonetheless approve a subject individual as fit on a preliminary basis if the Executive Director or the authorized designee concludes, after evaluating all available information, that hiring or appointing the subject individual on a preliminary basis does not pose a risk of harm to ~~OCB Commission~~, its client entities, the State, or members of the public.¶¶

(5) If a subject individual is either approved or denied on the basis of a preliminary fitness determination, Executive Director or an authorized designee thereafter shall conduct a fitness determination under OAR 585-005-0045.¶¶

(6) A subject individual may not appeal a preliminary fitness determination, under the processes provided under OAR 585-005-0060 or otherwise.

Statutory/Other Authority: ORS ~~181.534, 346.300~~346.300, ORS 181A.195

Statutes/Other Implemented: ORS ~~181.534(9)~~346.300, ORS 181A.195

AMEND: 585-005-0040

RULE SUMMARY: Delineates hiring or appointment on preliminary basis

CHANGES TO RULE:

585-005-0040

Hiring or Appointing on a Preliminary Basis ¶¶

(1) ~~OCB~~Commission may hire or appoint a subject individual on a preliminary basis if the Executive Director or an authorized designee has approved the subject individual on the basis of a preliminary fitness determination under OAR 585-005-0035.¶

(2) A subject individual hired or appointed on a preliminary basis under this rule may participate in training, orientation, or work activities as assigned by ~~OCB~~Commission.¶

(3) A subject individual hired or appointed on a preliminary basis is deemed to be on trial service and, if terminated before completion of a final fitness determination under OAR 585-005-0045, may not appeal the termination under the processes provided under 585-005-0060.¶

(4) If a subject individual hired or appointed on a preliminary basis is denied upon completion of a final fitness determination, then ~~OCB~~Commission shall immediately terminate the subject individual's employment in or appointment to a position covered by 585-005-0030.

Statutory/Other Authority: ORS ~~181.534, 346.300~~346.300, ORS 181A.195

Statutes/Other Implemented: ORS ~~181.534(9)~~346.300, ORS 181A.195

AMEND: 585-005-0045

RULE SUMMARY: Delineates final fitness determination

CHANGES TO RULE:

585-005-0045

Final Fitness Determination ¶

(1) ~~If OCB elects to conduct a criminal check, or~~ The Executive Director or an authorized designee shall make a fitness determination about a subject individual based on information provided by the subject individual under OAR 585-005-0030(1), the criminal records check(s) conducted, if any, and any false statements made by the subject individual.¶

(2) In making a fitness determination about a subject individual, the Executive Director or an authorized designee shall also consider the factors in subsections (a)-(f) in relation to information provided by the subject individual under OAR 585-005-0030(1), any LEDS report or criminal offender information obtained through a criminal records check, and any false statement made by the subject individual. To assist in considering these factors, the Executive Director or the authorized designee may obtain any other information deemed relevant from the subject individual or any other source, including law enforcement and criminal justice agencies or courts within or outside of Oregon. To acquire other relevant information from the subject individual, the Executive Director or an authorized designee may request to meet with the subject individual, to receive written materials, or both. The subject individual shall meet with the Executive Director or the authorized designee if requested and provide additional information within a reasonable period of time, as established by the ~~authorized designee.~~ Executive Director or the authorized designee. The Executive Director or the authorized designee will use all collected information in considering:¶

(a) Whether the subject individual has been arrested, pled nolo contendere (or no contest) to, been convicted of, found guilty except for insanity (or a comparable disposition) of, or has a pending indictment for a crime listed in OAR 585-005-0050;¶

(b) The nature of any crime identified under subsection (a);¶

(c) The facts that support the arrest, conviction, finding of guilty except for insanity, or pending indictment;¶

(d) The facts that indicate the subject individual made a false statement;¶

(e) The relevance, if any, of a crime identified under subsection (a) or of a false statement made by the subject individual to the specific requirements of the subject individual's present or proposed position, services or employment; and¶

(f) Intervening circumstances, to the extent that they are relevant to the responsibilities and circumstances of the services or employment for which the fitness determination is being made, including, but not limited to, the following:¶

(A) The passage of time since the commission or alleged commission of a crime identified under subsection (a);¶

(B) The age of the subject individual at the time of the commission or alleged commission of a crime identified under subsection (a);¶

(C) The likelihood of a repetition of offenses or of the commission of another crime;¶

(D) The subsequent commission of another crime listed in OAR 585-005-0050;¶

(E) Whether a conviction identified under subsection (a) has been set aside or pardoned, and the legal effect of setting aside the conviction or of a pardon; and¶

(F) A recommendation of an employer.¶

(3) ~~Possible Outcomes of a Final F~~ Upon completion of the fitness determination, one of the following outcomes shall be made and the subject individual shall be provided written notice of the outcome and will be informed when appeal rights are afforded or when a fitness D ~~determination:~~¶

~~(a) Automatic Approval. A is not completed:~~¶

(a) Approval. The Executive Director or an authorized designee shall ~~may~~ approve as fit a subject individual if the information described in sections (1) and (2) shows none of the following:¶

(A) Evidence that the subject individual has pled nolo contendere (or no contest) to, been convicted of, or found guilty except for insanity (or comparable disposition) of a crime listed in OAR 585-005-0050;¶

(B) Evidence that the subject individual has a pending indictment for any crime listed in OAR 585-005-0050;¶

(C) Evidence that the subject individual has been arrested for any crime listed in OAR 585-005-0050;¶

(D) Evidence of the subject individual having made a false statement; or¶

(E) Any discrepancy between the criminal offender information and other information obtained from the subject individual.¶

(b) Evaluative Approval. If a fitness determination under this rule shows evidence of any of the factors identified in paragraphs (3)(a)(Ai)-(Ev) of this rule, the Executive Director or an authorized designee may approve as fit the subject individual only if, in evaluating the information described in sections (1) and (2), the Executive Director or the authorized designee determines ~~(i);¶~~

(A) that the evidence is not credible; or ~~(ii);¶~~

(B) that the subject individual acting in the position for which the fitness determination is being conducted would not pose a risk of harm to ~~OCB~~Commission, its client entities, the State, or members of the public;¶

(c) Restricted Approval:¶

(A) If ~~the Executive Director or~~ an authorized designee approves as fit a subject individual, the Executive Director or the authorized designee may restrict the approval to specific activities or locations;¶

~~(B). An authorized designee shall complete a new criminal records check and fitness determination under this rule on the subject individual prior to removing a restriction.¶~~

(d) Denial:¶

~~(A) If a fitness determination under this rule shows credible evid~~ The Executive Director or the authorized designee may, after conducting a fitness determination under this rule, deny as fit a subject individual when:¶

(A) There is credible evidence showing the presence of any of the factors identified in paragraphs (3)(a)(Ai)-(Ev) of this rule and, after evaluating the information described in sections (1) and (2) of this rule, the Executive Director or an authorized designee concludes that the subject individual acting in the position for which the fitness determination is being conducted would pose a risk of harm to ~~OCB~~Commission, its client entities, the State, or members of the public, the Executive Director or the authorized designee shall deny the subject individual as not fit for the position; or¶

~~(B) Refusal to Consent.¶ Pursuant to ORS 181A.195(13), if a subject individual refuses to submit or consent to a criminal records check, including fingerprint identification, The Executive Director or the authorized designee shall deny the subject individual as not fit without further assessment under the fitness determination process;¶~~

~~(C) If a subject individual is denied as not fit, the subject individual may not be employed by ~~or provide services as a volunteer or contractor to OCB.~~¶~~

~~(4) Expunged Juvenile Record Commission.¶~~

(4) Under no circumstances shall a subject individual be denied as being fit under these rules on the basis of the existence or contents of a juvenile record that has been expunged pursuant to ORS 419A.260 and 419A.262.¶

~~(5) Final Fitness Determination. A completed final fitness determination is final unless the affected subject individual appeals by requesting a contested case hearing as provided by OAR 585-005-0060.~~

Statutory/Other Authority: ORS ~~181.534, 346.300~~346.300, ORS 181A.195

Statutes/Other Implemented: ORS ~~181.534(9)~~346.300, ORS 181A.195

AMEND: 585-005-0050

RULE SUMMARY: Delineates relevant crimes considered during fitness determination

CHANGES TO RULE:

585-005-0050

Crimes Relevant to a Fitness Determination ¶¶

The following are crimes relevant to a fitness determination made under OAR Chapter 585, Division 5.¶¶

- (1) Active Warrants.¶¶
- (2) Restraining Orders.¶¶
- (3) Sex Offender Registration.¶¶
- (4) Any Felony Conviction.¶¶
- (5) Any Sex Offense Conviction.¶¶
- (6) Any Controlled Substance Conviction within the past five years.¶¶
- (7) Any Violent Crimes against Persons within the past ten years.

Statutory/Other Authority: ORS 181.534, 346.300, 346.300, ORS 181A.195

Statutes/Other Implemented: ORS 181.534(9), 346.300, ORS 181A.195

AMEND: 585-005-0055

RULE SUMMARY: Delineates condition(s) and closure of an incomplete fitness determination

CHANGES TO RULE:

585-005-0055

Incomplete Fitness Determination ¶¶

- (1) ~~OCBC~~Commission will close a preliminary or final fitness determination as incomplete when:¶¶
- (a) Circumstances change so that a person no longer meets the definition of a "subject individual" under OAR 585-005-0030~~20~~(14);¶¶
 - (b) The subject individual does not provide materials or information under OAR 585-005-0030 (1) within the timeframes established under that rule;¶¶
 - (c) An authorized designee cannot locate or contact the subject individual;¶¶
 - (d) The subject individual fails or refuses to cooperate with the Executive Director or an authorized designee's attempts to acquire other relevant information under OAR 585-005-0045(2);¶¶
 - (e) ~~OCBC~~Commission determines that the subject individual is not eligible or not qualified for the position of employee, volunteer, or contractor for a reason unrelated to the fitness determination process; or¶¶
 - (f) The position is no longer open.¶¶
- (2) A subject individual does not have a right to a contested case hearing under OAR 585-005-0060 to challenge the closing of an incomplete fitness determination.

Statutory/Other Authority: ORS ~~181.534, 346.300~~346.300, ORS 181A.195

Statutes/Other Implemented: ORS ~~181.534(9)~~A.195

AMEND: 585-005-0060

RULE SUMMARY: Delineates appeal of a final fitness determination

CHANGES TO RULE:

585-005-0060

Appealing a Fitness Determination ¶¶

(1) ~~Model Rules of Procedure~~ A subject individual may contest a final fitness determination made under OAR 585-005-0045 that they are not fit to hold a position with or provide services to Commission in a contested case hearing before the Office of Administrative Hearings (OAH). In addition to the Model Rules of Procedure adopted by the Attorney General, the procedures set forth in this rule shall apply.¶¶

(2) Process:¶¶

(a) A subject individual may appeal a final fitness determination by submitting a written request for a contested case hearing to the address ~~provided~~ specified in the final fitness determination provided under OAR 585-05-0045. Any such request for a hearing must be received by ~~OCB~~ Commission within 14 calendar days of the date of the notice;¶¶

(b) When a timely request is received by ~~OCB~~ Commission under subsection (a), a contested case hearing shall be conducted by a ~~hearing officer appointed by the Attorney General~~ Administrative Law Judge (ALJ) appointed by OAH.¶¶

(3) Time and Place of Hearings. The time and place of hearing will be set by the ~~hearing officer~~ ALJ. Notice of the hearing shall be served on ~~the Director of Human Resources and interested parties at least ten days in advance of the hearing date~~.¶¶

(4) ~~Discovery. OCB or the hearing officer~~ Commission and interested parties.¶¶

(4) Discovery. Commission or the ALJ may protect information made confidential by ORS 181.534A.195(152) or other applicable laws and rules.¶¶

(5) Disclosure of LEDS Information. Information obtained through LEDS shall be disclosed only in a manner consistent with ~~Oregon State Police~~ SP rules and regulations set forth under OAR Chapter 257, Division 15.¶¶

(6) No Public Attendance. Contested case hearings on fitness determinations are closed to non-participants.¶¶

(7) Proposed Order, Exceptions and Default:¶¶

(a) Proposed Order. After a hearing, the ~~person appointed by the Attorney General~~ ALJ shall issue a proposed order;¶¶

(b) Exceptions. Exceptions, if any, shall be filed within 14 calendar days after service of the proposed order. The proposed order shall provide an address to which exceptions must be sent;¶¶

(c) Default. A completed final fitness determination made under OAR 585-005-0045 becomes final:¶¶

(A) Unless the subject individual makes a timely request for hearing; or¶¶

(B) When a party withdraws a hearing request, notifies ~~the agency or the hearing officer~~ Commission or the ALJ that the party will not appear, or fails to appear for the hearing.¶¶

(8) Remedy. The only remedy that may be awarded is a determination that the subject individual is fit, or fit with restrictions pursuant to OAR 585-005-0045(3)(c), and that, at the request of the subject individual, the subject individual's employment application will be kept on file. ~~OCB~~ Commission shall not be required to place a subject individual in any position or to enter into a contract or otherwise accept services.¶¶

(9) Challenging Criminal Offender Information. A subject individual may not use the appeals process established by this rule to challenge the accuracy or completeness of information provided by ~~the Oregon Department of State Police, the Federal Bureau of Investigation~~ OSP, the FBI, or agencies reporting information to ~~the Oregon Department of State Police or the Federal Bureau of Investigation~~ OSP or the FBI.¶¶

(a) To challenge the accuracy or completeness of information identified in this subsection ~~(9)~~, a subject individual may use any process made available by the agency that provided the information;¶¶

(b) If the subject individual successfully challenges the accuracy or completeness of information provided by ~~the Oregon Department of State Police, the Federal Bureau of Investigation~~ OSP, the FBI, or an agency reporting

information to the ~~Oregon Department of State Police or the Federal Bureau of Investigation~~ OSP or the FBI, the subject individual may request that ~~OCB Commission~~ OCB Commission conduct a new criminal records check and re-evaluate the original fitness determination made under OAR 585-005-0045 by submitting a new ~~OCB Commission~~ OCB Commission Criminal Records Request form.¶

(10) Appealing a fitness determination under subsection (2) of this rule, challenging criminal offender information with the agency that provided the information, or requesting a new criminal records check and re-evaluation of the original fitness determination under subsection (9) of this rule, will not delay or postpone ~~OCB Commission's~~ OCB Commission's hiring process or employment decisions except when the Executive Director or an authorized designee in consultation with ~~the Commission's DAS Human Resources Section~~ Business Partner decides that a delay or postponement should occur.

Statutory/Other Authority: ORS ~~181.534, 346.300~~ 346.300, ORS 181A.195

Statutes/Other Implemented: ORS ~~181.534(9)~~ 346.300, ORS 181A.195

AMEND: 585-005-0065

RULE SUMMARY: Delineates documentation and retention of fitness determination and provision of outcome to subject individual

CHANGES TO RULE:

585-005-0065

Recordkeeping and Confidentiality ¶

(1) LEDS Reports.¶

~~(a) Confidentiality. All LEDS reports are confidential and must be maintained by the The Executive Director or an authorized designee in accordance with applicable Oregon State Police requirements in ORS Chapter 181 and the rules adopted pursuant thereto.¶~~

~~NOTE: See OAR Chapter 257, Division 15.¶~~

~~(A) Authorized Designee Access. LEDS reports are confidential and may only be shared with another authorized designee if there is a need to know consistent with these rules.¶~~

~~(B) Sshall document a preliminary or final fitness determination, or the closing of a fitness determination file due to incompleteness in writing. Written documentation of the notice of outcome of fitness determination shall be provided to the subject ¶individual Access. Tand, if the subject individual may not inspect or receive copies of the LEDS report.¶~~

~~NOTE: Photocopies of the LEDS report should not be made under any circumstances.¶~~

~~(b) Retention. LEDS reports must be retained and destroyed in accordance with records retention schedules published by Oregon State Archives.¶~~

(2) National (FBI) Information.¶

~~(a) Confidentiality and Dissemination. Nationis approved for employment with Commission following a preliminary or final fitness determination, shall be retained in the subject individual's file until the expiration of the six-month trial period of employment with Commission.¶~~

(2) Records Received from Commission and OSP:¶

~~(a) Records Commission receives from a criminal records check, including but not limited to LEDS reports and state or federal criminal offender information provided byoriginating with OSP or the FBIis, are confidential and may not be disseminated by the OCB with following exceptions:¶~~

~~(A) If a fingerprint-basedpursuant to ORS 181A.195(12) and federal laws and regulations:¶~~

~~(b) Only Commission's authorized designees shall have access to records Commission receives in response to a criminal history check was conducted on the subject individual, the subject individual will be provided a copy of the records if requested.¶~~

~~(B) If requested by the subject individual, the records check, including records obtained from OSP:¶~~

~~(c) An authorized designee shall have access to records received in response to a criminal records check, including from OSP, only if the authorized designee has a demonstrated and national criminal offender information shall be provided as exhibits durlegitimate need to know the information contained in the contested case hearing.¶~~

~~(b) Retention. FBI reports must be rerecords:¶~~

~~(d) Authorized designees shall maintained and destroyed in accordance with records retention schedules published by Oregon State Archives and in accordance with federal law.¶~~

(3) OCB Forms and Other Documentation.¶

~~(a) Confidentiality. All completed OCB Criminal History Request forms must be kept confidential and disseminated only on a need-to-know basis.¶~~

~~(b) Retentionisclouse records received in response to a criminal records check in accordance with applicable requirements and restrictions in ORS Chapter 181A and other applicable federal and state laws, rules adopted by OSP pursuant thereto, these rules, federal regulations, and any written agreement between Commission and OSP:¶~~

~~NOTE: See OAR Chapter 257, Division 15.¶~~

~~(Ae) OCB forms and other records documenting the fingerprint-based criminal history records check and used in the fitness determination must be retained and destroyed in accordance with records retention schedule conducted with regard to a subject individual. Commission shall permit that subject individual to inspect his or her own state and federal criminal offender information, unless published by Oregon State Archives, prohibited by state or federal law.~~

~~(Bf) Documentation must be retained by the qualified entity to demonstrate that the fitness determination was completed pursuant to these rules.~~

~~(5) An authorized designee shall document a preliminary or final fitness determination, or the closing of a fitness determination due to incompleteness, in writing. If a subject individual with a right to inspect criminal offender information under subsection (e) requests, Commission shall provide the subject individual with a copy of the individual's own state and federal criminal offender information, unless prohibited by state or federal law. Commission may require sufficient identification from the subject individual to determine his or her identity prior to providing this criminal offender information to him or her.~~

~~(63) Other Records:~~

~~(a) OCB Commission shall treat all criminal offender information received or created under these rules that concern the criminal history of a subject individual, other than records covered under section (2) of this rule, including Department of Justice Criminal Records Request forms and fingerprint cards, as confidential pursuant to ORS 181.534, 195(152);~~

~~(b) Within OCB Commission, only authorized designees shall have access to the records identified under subsection (a);~~

~~(c) An authorized designee shall have access to records identified under subsection (a) only if the authorized designee has a demonstrated and legitimate need to know the information contained in the records;~~

~~(d) Except as otherwise provided by law, a subject individual shall have access to records identified under subsection (a) pursuant to and only to the extent required by the terms of the Public Records Law.~~

~~Statutory/Other Authority: ORS 181.534, 346.300, ORS 181A.195~~

~~Statutes/Other Implemented: ORS 181.534(9), 346.300, ORS 181A.195~~

AMEND: 585-005-0070

RULE SUMMARY: Delineates what constitutes an acceptable designee for the purposes of fitness determination, taking into account possible conflicts of interest , position and legal standing

CHANGES TO RULE:

585-005-0070

Authorized Designees ¶

(1) Appointment: ¶

(a) ~~OCB~~The Executive Director or their designee shall designate the positions that include the responsibilities of an authorized designee; ¶

(b) Appointments shall be made by ~~OCB~~the Executive Director or their designee at ~~his or her~~their sole discretion. ¶

(2) Conflict of Interests. An authorized designee shall not participate in a fitness determination or review any information associated with a fitness determination for a subject individual if either of the following is true: ¶

(a) The authorized designee is a family member of the subject individual; or ¶

(b) The authorized designee has a financial or close personal relationship with the subject individual. If an authorized designee is uncertain of whether a relationship with a subject individual qualifies as a financial or close personal relationship under this subsection (b), the authorized designee shall consult with ~~his or her~~their supervisor prior to taking any action that would violate this rule if such a relationship were determined to exist. ¶

(43) Termination of Authorized Designee Status: ¶

(a) When an authorized designee's employment in a designated position ends, ~~his or her~~their status as an authorized designee is automatically terminated; ¶

(b) An authorized designee shall immediately report to ~~his or their~~ supervisor if ~~the or she is~~they are arrested for or charged with, is being investigated for, or has an outstanding warrant or pending indictment for a crime listed in OAR 585-005-0050. Failure to make the required report is grounds for termination of the individual's appointment to a designated position and thereby termination of ~~his or her~~their status as an authorized designee.

Statutory/Other Authority: ORS ~~181.534, 346.300~~346.300, ORS 181A.195

Statutes/Other Implemented: ORS ~~181.534(9)~~346.300, ORS 181A.195

AMEND: 585-005-0075

RULE SUMMARY: Commission may charge a fee for acquiring criminal offender information when making fitness determination

CHANGES TO RULE:

585-005-0075

Fees ¶

~~OCB~~Commission may charge a fee for acquiring criminal offender information for use in making a fitness determination of a subject individual. In any particular instance, the fee shall not exceed the fee(s) charged ~~OCB~~ by ~~the Oregon Department of State Police and the Federal Bureau of Investigation~~Commission by OSP and the FBI to obtain criminal offender information on the subject individual.

Statutory/Other Authority: ORS ~~181.534, 346.300~~346.300, ORS 181A.195

Statutes/Other Implemented: ORS ~~181.534(9)~~346.300, ORS 181A.195

AMEND: 585-010-0020

RULE SUMMARY: Defines terms used in Oregon Administrative Rules chapter 585, Division 10

CHANGES TO RULE:

585-010-0020

~~Definition of Blindness for Vocational Rehabilitation s~~

~~For purposes of vocational rehabilitation, a person shall be considered blind~~The following definitions shall apply to all Oregon Administrative Rules contained in OAR Chapter 585, Division 10, unless the context requires otherwise:¶

(1) "Client" refers to a person who is blind or visually impaired who receives vocational rehabilitation services through Commission.¶

(2) "Counselor" means the client's assigned vocational rehabilitation counselor who is a staff member of Commission.¶

(3) "IPE" means Individualized Plan for Employment.¶

(4) "Commission" means the Oregon Commission for the Blind.¶

(5) "OCCB" means Orientation and Career Center for the Blind.¶

(6) "Person who is blind" refers to an individual who has been diagnosed by a qualified physician to have a medical condition that is:¶

(1a) Congenital or organic in nature; and¶

(2b) Results in loss of sight to the extent that the person's central visual acuity does not exceed 20/200 in the better eye with best correction; or¶

(3c) The person's central visual acuity exceeds 20/200 but is accompanied by limitation of the visual field to such a degree that its widest diameter subtends an angle of no greater than 20 degrees.¶

(d) A person is not considered blind who has a functional disorder that does not have a known organic or structural cause is not considered to be a person who is blind for purposes of these rules.¶

(7) "Person with a visual impairment" includes a person who is blind or has seriously impaired vision, or who has a condition that might lead to blindness.¶

(8) "Vocational rehabilitation services" refers to any services necessary to enable a person who is blind to engage in educational and remunerative occupation or training opportunities.

Statutory/Other Authority: ORS 346.150, ORS 346.180

Statutes/Other Implemented: ORS 346.1510-346.270

AMEND: 585-010-0030

RULE SUMMARY: Delineates confidentiality of agency records, prohibits use except that of providing Agency program services

CHANGES TO RULE:

585-010-0030

Disclosure and Use of Records Limited ¶

Except for the purposes directly connected with the administration of the programs of services to ~~blind persons as provided for in ORS 346.060, 346.160-346.290, 346.310-346.360, and 346.510-346.570~~ persons who are blind or visually impaired as provided for in ORS Chapter 346 and these rules, no person shall solicit, disclose, receive, make use of, or authorize, knowingly permit, participate in, or acquiesce in the use of; any list ~~of ors~~, names ~~of~~, or any other information concerning persons that may become known to the Commission either by application for services, for purposes of the Register of the persons who are Blind, or for any other purpose directly or indirectly derived from the records, papers, files, or communications of the state, or subdivision or agencies thereof or acquired in the course of performance of official duties by any agency or department of government or person to which they may be furnished or acquired in the course of performance of official duties. Such records, papers, files and communications as identified herein are otherwise considered confidential.

Statutory/Other Authority: ORS 346.150(2), ORS 346.180, ORS 346.165-346.169

Statutes/Other Implemented: ORS 346.165-346.169

RULE SUMMARY: Delineates conditions when Commission may provide financial support to attend higher education

CHANGES TO RULE:

585-010-0040

Financial Support for Attendance at Institution of Higher Education

(1) Basic Criteria. Commission may provide financial support to a client for attendance at an institution of higher education. In addition to the comprehensive evaluation required under section (2), the following criteria apply to this rule:¶

(a) The planned attendance must be part of an approved IPE:¶

(b) The extent of the financial support provided by Commission to a client will be conditioned by the following:¶

(A) The client must present documentary evidence to indicate that a reasonable effort has been made to obtain cash grant assistance or non-merit scholarships from other sources to pay for the planned attendance, in whole or in part:¶

(B) Where cash grant assistance or scholarships are obtained to partially fund costs of attendance, the client must submit copies of the relevant correspondence to identify the extent that the costs will be funded from other sources including family resources. Awards and scholarships based on merit are not considered a comparable benefit:¶

(C) Where denial of cash grant assistance or scholarships is based on the availability of family resources, the client will be expected to utilize such family resources to fund that part of the planned attendance expenses involving tuition, books, and supplies:¶

(D) Financial support may be provided where the client is determined to be eligible for cash grant assistance or scholarships by the institution(s) but where denial of such assistance or scholarships is based solely on the non-availability of funds to the applicable institution(s). The client should secure a "No Funds" letter from the institution and submit it to their counselor at Commission promptly.¶

(2) Comprehensive evaluation.¶

(a) Except as provided in section (3) of this rule, financial support may be provided to a client to attend an institution of higher education only after they have completed a comprehensive evaluation. The evaluation must indicate that the client has an acceptable level of functioning in the following areas:¶

(A) Orientation and mobility:¶

(B) Communication skills:¶

(C) Personal management, i.e., techniques of daily living, personal grooming, and social competency:¶

(D) Use of the written language at a college level:¶

(E) Understanding of career alternatives and availability of jobs in the future labor market:¶

(F) Psychological adjustment to blindness; and¶

(G) Study skills, which will insure effective use of time and resources while in an academic program.¶

(b) The evaluation will be completed at OCCB, on an individual basis by Commission staff, or by alternative means approved by the client's counselor.¶

(3) Alternative to Comprehensive Evaluation. Subject to the basic criteria provided in section (1) of this rule, a comprehensive evaluation is not required to provide financial support to clients who have successfully completed one (1) academic year, of 12 credits per term or full-time equivalent, financed by personal or other resources.¶

(4) Remedial Training. Where comprehensive evaluation results indicate that a client is not ready to attend an institution of higher education, but where a potential for such attendance is present, remedial training will be made available. When remedial training progress indicates that the client is ready to attend an institution of higher education, financial support may be provided.¶

(5) Continuation of Financial Support.¶

(a) Continued financial support for a client's attendance at an institution of higher education will be dependent upon the client's maintaining a satisfactory academic record, as determined by the institution.¶

(b) Each client's progress will be reviewed at least annually to determine the appropriateness of continued

financial support, to evaluate whether any redirection of the client's course of study is required, and to identify and resolve any existing or potential problems.¶

(6) Submission of Grade Reports. Each client shall submit a copy of an official institution record of their grades to their counselor at Commission not later than 30 days following the completion of each term.¶

(7) Support for Attendance Outside the State of Oregon or at Private Institutions. When a course of study required by a client's IPE is not offered at a public institution of higher education within the State of Oregon, financial support for attendance at a private institution within the State of Oregon or at an institution outside of the State of Oregon may be provided, but only to the extent normally provided to clients who attend public institutions within the State of Oregon.¶

(8) Withdrawal from Institution. In the event that a client intends to withdraw completely from an institution of higher education where their attendance has been approved and financial support has been provided by Commission, the client is responsible for notifying their counselor at Commission of their intent to withdraw at least 30 days prior to the commencement of classes.¶

(9) Termination. Financial support to attend an institution of higher education will be terminated when the client qualifies at the entry level in the occupational field or profession for which they are studying, or when the client is determined to be ineligible for financial support under this rule.¶

(10) Advanced Study. At least one (1) year's work experience is required between completion of educational study at the baccalaureate level and the receipt of financial support for any advanced course of study. Requests for exceptions to this policy will be evaluated by Commission on an individual basis.¶

(11) The provision for financial support of attendance at an institution of higher education is contingent upon the availability of adequate funds to Commission for this purpose.

Statutory/Other Authority: ORS 346.150, ORS 346.180

Statutes/Other Implemented: ORS 346.180

RULE SUMMARY: Delineates financial support to fund clients' self-employment business ventures

CHANGES TO RULE:

585-010-0050

Policies for Funding Self-Employment Business Ventures

(1) Subject to the conditions provided under this rule, Commission may provide financial support to clients for funding self-employment business ventures. Clients who are entering the Business Enterprise Program do not meet the federal definition of self-employment under the Rehabilitation Act and are not subject to the requirements of this rule.

(2) The following definitions apply to this rule:

(a) "Equipment" means an item that is determined necessary for the individual's employment goal.

(b) "PASS" means Plan to Achieve Self-Support.

(c) "SBA" means the U.S. Small Business Administration.

(d) "SBDC" means Small Business Development Centers.

(3) The following basic criteria apply to this rule:

(a) A client must intend to establish or run a business to become financially independent. Financial support will only be available to establish or run a business that may reasonably be expected to provide income to the client, commensurate with the individual's strengths, abilities, capabilities and interests.

(A) Commission will not fund "hobby" businesses. A "hobby" business is defined as one that is casual or recreational in nature with no intention of earning income at or above a living wage; also referred to as a "not for profit" business.

(B) Commission will not fund businesses designated as tax-exempt by the Internal Revenue Services (IRS); also referred to as a "non-profit" business.

(b) If a client is involved with a business partnership, limited liability corporation (LLC) or corporation, they must present written evidence of being the controlling partner or controlling shareholder of the corporation. A provision in the Partnership Agreement must be made for the client to settle all debts should the business not succeed. Commission will assume no financial liability for debts incurred by the business partnership, LLC or corporation.

(c) Speculative or high-risk business ventures will not be considered by Commission. These include those which present a risk beyond the control of the business owner or those which are so subject to economic whims as to have an unpredictable future.

(d) The client must present documentary evidence to indicate that a reasonable effort has been made to obtain comparable financial support, when available. Evidence must include one or more of the following: application and rejection from a lending institution, PASS benefits sheet, request for investments, or list of personal assets to be used for the business.

(A) If financial support from another source(s) is identified to fund the business in part or in whole, a request to obtain financial support from that source(s) should be made before requesting financial support from Commission. If the request was denied because of an insufficient business plan, the client must revise the plan and resubmit it to the funding source.

(B) Where partial financial support is obtained elsewhere, the client must submit copies of the relevant documentation to identify the extent of that financial support.

(C) Where denial of financial support outside of Commission is based on the availability of personal or family resources, the client will be expected to utilize those resources before requesting agency funding support.

(D) When no comparable financial benefits or services are available, Commission may fund reasonable and necessary start-up costs for a business as part of a client's IPE. In order for a plan to be viable, other funding sources may be necessary to cover costs identified in the business plan that would not be covered by Commission.

(4) A client seeking financial support from Commission to become involved in a self-employment business venture

must complete a comprehensive assessment.¶

(a) Commission will provide or arrange for an assessment by Commission staff or by competent business persons outside of Commission to assess the business skills, background, and potential of the client seeking financial support. Portions of the assessment may be conducted by business persons, such as a representative of the Oregon Small Business Development Center.¶

(b) The comprehensive assessment will cover the following:¶

(A) Evaluation of previous work experience, especially in the same or a similar industry to the proposed business or in other self-employment;¶

(B) Understanding of other career options and availability of jobs in the present and future job market;¶

(C) Communications skills necessary in the proposed business (written and verbal skills, along with capability to maintain and interpret financial records for the business);¶

(D) Factors such as willingness to make personal financial investment in the business, ability to make appropriate decisions, dependability, follow-through, organizational ability, adequate travel skills as demonstrated by interaction with agency personnel and former business colleagues;¶

(E) Alternative skills of blindness adequate to function in the business; knowledge of technology, adaptive technology and software applications currently being used in the management of similar businesses;¶

(F) Demonstration of money/resource management skills consistent with running a viable small business; and¶

(G) Background or training in financial management skills required for managing a self-owned business.¶

(c) Where the comprehensive assessment results indicate that a client lacks some of the skills necessary for successful business management, Commission may make available and require training in those specific skill areas, especially the alternative skills dealing with blindness and financial management skills.¶

(5) The client must prepare a well-researched and written comprehensive business plan such as that required by a bank or the SBA. The client may seek assistance in developing a business plan from outside sources, such as the SBA or the SMDC at community colleges.¶

(a) The plan must include an itemized list of equipment or business-related expenses which the client requests Commission provide.¶

(b) The client must make a formal presentation of the plan to Commission. If the plan is accepted, the decisions made will lead to the development or amendment of the IPE. Any support by Commission must be a part of an agreed upon IPE.¶

(c) If the total request for financial support and technical assistance for business startup is less than \$3,500, the client's vocational rehabilitation counselor may not require a formal business plan. However, in providing assistance less than \$3,500, there still should be sufficient evidence that the business is viable. Financial support for business startup purposes must be clearly documented.¶

(d) Requests for financial support for an existing business, which exclusively involve adaptive equipment, may require documentation of the viability of the business rather than a formal business plan. Documentation may include one or more of the following: customer invoices, sales receipts, recent tax returns, or business financial statements.¶

(A) Vocational rehabilitation services for qualified individuals seeking assistance with an existing business may be provided under the following circumstances:¶

(i) The existing business is consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, career interests, and informed choice;¶

(ii) Disability-related barriers to work, as identified by the client in consultation with their counselor, affect the individual's ability to continue operating this business; and¶

(iii) Without vocational rehabilitation intervention, the individual will not be able to continue operating the business.¶

(B) Commission will not provide vocational rehabilitation services to a client solely to expand or update an existing business, including situations to make a business profitable, if there are no disability-related barriers. If an individual is requesting a service such as this, the client's counselor may provide the client with references for alternative community resources that the individual may seek out.¶

(C) Vocational rehabilitation services and the client's IPE will be designed to address disability specific barriers. The client's business plan also must address those barriers that make the business unsuitable.¶

(i) In the event the barriers cannot be removed, the business will not be supported by Commission and alternate goals should be explored by the client with the aid of their counselor.¶

(ii) In the event the client's business goal is viable, vocational rehabilitation services may be provided in order to make the business suitable.¶

(6) Financial support for any service provided under an IPE is contingent upon the availability of funds to Commission. Financial support should not place a burden on Commission's resources to the extent that Commission would be unable to provide services to other clients.¶

(7) A client who receives financial support or services from Commission to fund their business venture must provide timely, at a minimum semi-annually, financial statements and other documentation as requested by Commission showing progress toward becoming financially independent. Examples of documentation include, but are not limited to: business bank statements, profit/loss statements against business plan projections, progress against planned startup activities, and marketing plan execution.¶

(a) Commission's support is designed to assist in the initial startup of a business; it is not to be considered an ongoing resource, and in no case will business losses be reimbursed by Commission.¶

(b) Development of a comprehensive business plan is expected to adequately capitalize the business and limit the need for ongoing financial support by Commission.¶

(8) Any equipment for the business must be purchased in accordance with Commission's equipment policy provided for under OAR Chapter 585, Division 20.¶

(a) Under the criteria in OAR 585-020-0060, ownership of equipment may be transferred to the client. The client's counselor will determine appropriateness of this action. Regardless of ownership, the client is responsible for adequately maintaining the equipment.¶

(b) Any equipment whose title is not passed to the client will be returned to the agency when it is no longer required for the purpose for which it was procured.

Statutory/Other Authority: ORS 346.150, ORS 346.180

Statutes/Other Implemented:

REPEAL: 585-010-0100

RULE SUMMARY: Delineates reader's service payment procedure for students receiving training in an agreed-upon vocational rehabilitation plan

CHANGES TO RULE:

~~585-010-0100~~

~~What This Rule Does~~

~~This rule establishes the procedure for payment of reader's service for those blind students undergoing training through the Commission for the Blind under an agreed upon vocational rehabilitation plan.~~

~~Statutory/Other Authority: ORS 183, 346~~

~~Statutes/Other Implemented: ORS 346.150~~

REPEAL: 585-010-0105

RULE SUMMARY: This rule carries out and is authorized by ORS 346.150 and 346.180.

CHANGES TO RULE:

~~585-010-0105~~

~~Statutory Authority and Procedure~~

~~This rule carries out and is authorized by ORS 346.150 and 346.180. Public Notice of Rule Making was given by the Commission in Oregon Administrative Rules Bulletin of November 1, 1973. The rule was adopted November 21, 1973, and filed December 3, 1973, effective December 26, 1973.~~

~~Statutory/Other Authority:~~

~~Statutes/Other Implemented:~~

REPEAL: 585-010-0110

RULE SUMMARY: This rule applies to all payments for reader's service authorized after December 26, 1973.

CHANGES TO RULE:

~~585-010-0110~~

~~Effective Date:~~

~~This rule applies to all payments for reader's service authorized after December 26, 1973.~~

~~Statutory/Other Authority:~~

~~Statutes/Other Implemented:~~

REPEAL: 585-010-0115

RULE SUMMARY: Delineates standards for hours of reader's service authorized for students pursuing higher education

CHANGES TO RULE:

~~585-010-0115~~

~~Hours of Readers Service Authorized~~

~~(1) The number of hours of Reader's Service authorized will be based on the individual circumstances of the student, their specific course of study, and their overall individualized plan for employment. The following is a reasonable standard for the number of hours to be authorized for reader's services:¶¶~~

~~(a) An undergraduate student carrying a course load of at least 12 hours will likely need about 70 hours of reader's service per month. A proportionate share can be authorized where the course load is less than 12 hours.¶¶~~

~~(b) A graduate student carrying a course load of at least nine hours will likely need about 70 hours of reader's service per month. This amount can be reduced proportionately for those graduate students carrying a course load of less than nine hours.¶¶~~

~~(c) Exceptions may be made if the student demonstrates to the Commission that he/she is engaged in a special project or is conducting special research which is approved by the institution where he/she is matriculating or that he/she is writing a thesis for a degree at the master's level or above.¶¶~~

~~(2) Each student will make an effort to utilize alternate formats of materials in lieu of hiring readers and must be able to demonstrate such effort upon request.~~

~~Statutory/Other Authority: ORS 183, 346~~

~~Statutes/Other Implemented:~~

REPEAL: 585-010-0120

RULE SUMMARY: Restrictions on the Hourly Rate of Payment

CHANGES TO RULE:

~~585-010-0120~~

~~Restrictions on the Hourly Rate of Payment~~

~~The hourly rate of payment for reader's service is a matter to be agreed upon between the student and the reader, however, the rate should not exceed the prevailing state minimum wage. Exceptions to this limitation may be granted under unusual circumstances. Requests for such exceptions must be submitted in writing to the student's counselor at the Commission and the exceptional rate must be approved prior to authorizing any payments.~~

~~Statutory/Other Authority:~~

~~Statutes/Other Implemented:~~

REPEAL: 585-010-0125

RULE SUMMARY: Delineates requirements of invoices for blind student reader's service

CHANGES TO RULE:

585-010-0125

Invoices for Blind Student Readers Service

The Commission will supply each student with invoices, which the student will provide to each of his/her readers. These forms are to be completed by each reader and shall indicate the number of hours of service to the student, the hourly rate of payment agreed upon between the student and the reader, the social security number and address of the reader, and must be signed by the reader. The student will sign each invoice, thus certifying as to its accuracy. The student is responsible for forwarding copies 1 and 2 of each invoice to the Commission at least monthly. The student will return copy 3 of each completed and signed invoice to the reader. Each student is responsible for informing his/her readers that the service they are providing are services to the student and not to the Commission for the Blind, and further, that the readers are not employees of the Commission for the Blind. By signing and submitting the invoice, the student is verifying that the reader is able to demonstrate an adequate level of reading skills to efficiently read the required subject matter.

Statutory/Other Authority: ORS 183, 346

Statutes/Other Implemented:

REPEAL: 585-010-0130

RULE SUMMARY: Delineates documentation requirements of certified invoices

CHANGES TO RULE:

~~585-010-0130~~

~~Maintenance of Record of Certified Invoices~~

~~Each student shall maintain an itemized record of the dates and times when readers are used which should match the invoice statements that are submitted. The student should be able to provide these records when requested to do so.~~

~~Statutory/Other Authority: ORS 183, 346~~

~~Statutes/Other Implemented:~~

REPEAL: 585-010-0135

RULE SUMMARY: Delineates notification requirement for a student to withdraw from institution of higher education

CHANGES TO RULE:

~~585-010-0135~~

~~Withdrawal from Training~~

~~In the event that a student intends to withdraw completely from the institution and/or training program where his/her attendance has been approved, the student is responsible for notifying his/her counselor at the Commission of his/her intended termination and the projected termination date.~~

~~Statutory/Other Authority: ORS 183, 346~~

~~Statutes/Other Implemented:~~

REPEAL: 585-010-0140

RULE SUMMARY: Delineates requirements of clients' submission of grade reports

CHANGES TO RULE:

~~585-010-0140~~

~~Submission of Grade Reports~~

~~Each student shall submit a copy of an official institution or training program record of his/her grades to his/her counselor at the Commission for each completed term or training period, not later than 30 days following the completion of each term or training period.~~

~~Statutory/Other Authority: ORS 183, 346~~

~~Statutes/Other Implemented:~~

REPEAL: 585-010-0145

RULE SUMMARY: Delineates reader's services payments as contingent upon availability of funds

CHANGES TO RULE:

~~585-010-0145~~

~~Availability of Funds-~~

~~The provision for payment of reader's service is contingent upon the availability of adequate funds to the Commission for the Blind for this purpose.~~

~~Statutory/Other Authority:-~~

~~Statutes/Other Implemented:~~

REPEAL: 585-010-0150

RULE SUMMARY: Commission will provide each student with a copy of this rule

CHANGES TO RULE:

~~585-010-0150~~

~~Distribution of Copies of This Rule~~

~~The Commission will provide each student with a copy of this rule. Violation of this rule may result in discontinuance of payment for reader's service.~~

~~Statutory/Other Authority: ORS 183, 346~~

~~Statutes/Other Implemented:~~

REPEAL: 585-010-0200

RULE SUMMARY: Delineates conditions under which financial support for college training will be provided

CHANGES TO RULE:

~~585-010-0200~~

~~What This Rule Does~~

~~This rule establishes the conditions under which financial support for college training will be provided by the Commission for the Blind.~~

~~Statutory/Other Authority: ORS 346~~

~~Statutes/Other Implemented: ORS 346.150~~

REPEAL: 585-010-0205

RULE SUMMARY: This rule carries out and is authorized by ORS 346.150 and 346.180

CHANGES TO RULE:

~~585-010-0205~~

~~Statutory Authority and Procedure~~

~~This rule carries out and is authorized by ORS 346.150 and 346.180. Public Notice of Rule Making was given by the Commission in Oregon Administrative Rules Bulletin of November 1, 1973. The rule was adopted November 21, 1973, filed December 3, 1973, effective December 26, 1973.~~

~~Statutory/Other Authority:~~

~~Statutes/Other Implemented:~~

REPEAL: 585-010-0210

RULE SUMMARY: Delineates policy effective date December 26, 1973 for students entering college.

CHANGES TO RULE:

~~585-010-0210~~

~~Effective Date:~~

~~This rule is effective December 26, 1973, for those students entering college. The policies established by this rule will be utilized in evaluating continued support for those students presently in college.~~

~~Statutory/Other Authority:~~

~~Statutes/Other Implemented:~~

REPEAL: 585-010-0215

RULE SUMMARY: Delineates basic criteria of Agency financial support of attendance at institution of higher education

CHANGES TO RULE:

~~585-010-0215~~

~~Basic Criteria~~

~~(1) The planned training at an institution of higher education must be part of an approved Individualized Plan for Employment.~~

~~(2) The extent of the financial support provided will be conditioned by the following:~~

~~(a) The client must present documentary evidence to indicate that a reasonable effort has been made to obtain cash grant assistance or non-merit scholarships from other sources to pay for the planned training, in whole or in part;~~

~~(b) Where cash grant assistance or scholarships are obtained to partially fund training costs, the client must submit copies of the relevant correspondence to identify the extent that training costs will be funded from other sources including family resources. Awards and scholarships based on merit are not considered a comparable benefit.~~

~~(c) Where denial of cash grant assistance or scholarships is based on the availability of family resources, the client will be expected to utilize such family resources to fund that part of the planned training expenses involving tuition, books, and supplies;~~

~~(d) Financial support will be provided where client is determined to be eligible by the institution(s) but denial of cash grant assistance or scholarships is based solely on the non-availability of funds to the applicable institution(s). The client should secure a "No Funds" letter and submit it to his or her counselor at the Commission promptly.~~

~~Statutory/Other Authority: ORS 183, 346~~

~~Statutes/Other Implemented:~~

REPEAL: 585-010-0220

RULE SUMMARY: Delineates comprehensive evaluation requirement prior to financial support to attend college

CHANGES TO RULE:

~~585-010-0220~~

~~Comprehensive Evaluation Required~~

~~Except as provided for in OAR 585-010-0225, financial support will be provided to a blind person to attend college only after he/she has completed a comprehensive evaluation program. The evaluation must indicate that the client has an acceptable level of functioning in the following areas:~~

~~(1) Orientation and Mobility;~~

~~(2) Communication Skills;~~

~~(3) Personal Management, i.e., techniques of daily living, personal grooming, and social competency;~~

~~(4) Use of the written language on a college level;~~

~~(5) Understanding of career alternatives and availability of jobs in the future labor market;~~

~~(6) Psychological adjustment to blindness;~~

~~(7) Study skills which will insure effective use of time and resources while in an academic program. The~~

~~Commission is prepared to provide a structured and objective evaluation of each client. The evaluation will be accomplished at the Orientation and Career Center for the Blind, or on an individual basis by the professional staff of the Commission or by a means approved by the client's vocational rehabilitation counselor.~~

~~Statutory/Other Authority: ORS 183, 346~~

~~Statutes/Other Implemented:~~

REPEAL: 585-010-0225

RULE SUMMARY: Delineates conditional academic performance thresholds prior to providing college financial support

CHANGES TO RULE:

~~585-010-0225~~

~~Alternative to Comprehensive Evaluation-~~

~~Except as provided for in OAR 585-010-0215, financial support will be provided for those clients who have demonstrated capacity for college training by successfully completing one academic year, of 3 quarters of 12 hours each or equivalent, financed by personal or other resources.~~

~~Statutory/Other Authority:~~

~~Statutes/Other Implemented:~~

REPEAL: 585-010-0230

RULE SUMMARY: Delineates conditional remedial training before potential college training and financial support.

CHANGES TO RULE:

~~585-010-0230~~

~~Remedial Training~~

~~Where evaluation results indicate that a client is not ready for college, remedial training will be made available, if a potential for college training is present. When training progress indicates that the client is ready for a college, financial support may be provided.~~

~~Statutory/Other Authority:~~

~~Statutes/Other Implemented:~~

REPEAL: 585-010-0235

RULE SUMMARY: Delineates continued conditional academic performance thresholds prior to providing further college financial support

CHANGES TO RULE:

~~585-010-0235~~

~~Continuation of Financial Support~~

~~Continued financial support will be dependent upon the client's maintaining a satisfactory academic record, as determined by the educational institution. Each client's progress will be reviewed at least annually to determine the appropriateness of continued support, any required redirection of the client's program, or to resolve any existing problems.~~

~~Statutory/Other Authority:~~

~~Statutes/Other Implemented:~~

REPEAL: 585-010-0240

RULE SUMMARY: Delineates requirements of clients' submission of grade reports

CHANGES TO RULE:

~~585-010-0240~~

~~Submission of Grade Reports~~

~~Each student shall submit a copy of an official institution record of his/her grades to his/her counselor at the Commission not later than 30 days following the completion of each term.~~

~~Statutory/Other Authority: ORS 183, 346~~

~~Statutes/Other Implemented:~~

REPEAL: 585-010-0245

RULE SUMMARY: Delineates requirements before approval for attendance at a private institution within Oregon or another state

CHANGES TO RULE:

~~585-010-0245~~

~~Support for Attendance Outside the State of Oregon or at Private Institutions~~

~~Except where the required training is not available at a public institution within the State of Oregon, financial support for attendance at a private institution within the State of Oregon or an institution outside the State of Oregon will be provided only to the extent normally provided to clients in public institutions within the State of Oregon.~~

~~Statutory/Other Authority:~~

~~Statutes/Other Implemented:~~

REPEAL: 585-010-0250

RULE SUMMARY: Delineates threshold of education when funding will no longer be provided

CHANGES TO RULE:

~~585-010-0250~~

~~Termination~~

~~Financial support will be terminated when the client qualifies at the entry level in the occupational field or profession for which he/she is training.~~

~~Statutory/Other Authority: ORS 183, 346~~

~~Statutes/Other Implemented:~~

REPEAL: 585-010-0260

RULE SUMMARY: Requires minimum one-year work experience after baccalaureate before entering advanced study

CHANGES TO RULE:

~~585-010-0260~~

~~Advanced Study~~

~~At least one year's work experience is required between completion of training at the baccalaureate level and the support of any advanced study. Requests for exceptions to this policy will be evaluated on an individual basis.~~

~~Statutory/Other Authority:~~

~~Statutes/Other Implemented:~~

REPEAL: 585-010-0265

RULE SUMMARY: Financial support is contingent upon Agency's available funds for this purpose

CHANGES TO RULE:

~~585-010-0265~~

~~Availability of Funds-~~

~~The provision for financial support of college training is contingent upon the availability of adequate funds to the Commission for the Blind for this purpose.~~

~~Statutory/Other Authority:-~~

~~Statutes/Other Implemented:~~

REPEAL: 585-010-0310

RULE SUMMARY: Delineates conditions for financial support of business ventures for self-employment

CHANGES TO RULE:

585-010-0310

~~Business Policy~~

~~(1) What This Rule Does. This rule establishes the conditions under which financial support for funding business ventures will be provided by the Commission for the Blind. Clients who are entering into the Business Enterprise Program do not meet the federal definition of self-employment under the Rehabilitation Act and are not subject to the requirements of this rule.¶¶~~

~~(2) Statutory Authority. This rule is authorized by ORS 183.341 and 346.150.¶¶~~

~~(3) Definitions. The following definitions apply to this rule:¶¶~~

~~(a) "Agency" means the Commission for the Blind;¶¶~~

~~(b) "IPE" means Individualized Plan for Employment;¶¶~~

~~(c) "PASS" means Plan to Achieve Self-Support;¶¶~~

~~(d) "SBA" means the U. S. Small Business Administration;¶¶~~

~~(e) "SSA" means the U. S. Social Security Administration;¶¶~~

~~(f) "Counselor" means the client's assigned Vocational Rehabilitation Counselor who is a staff member of the Agency.¶¶~~

~~(4) Effective Date. This rule is effective upon publication for clients requesting assistance in becoming involved in a business venture.¶¶~~

~~(5) Basic Criteria:¶¶~~

~~(a) Intent to establish or run a business is to help an individual become financially independent. Agency involvement will be available to establish or run a business that can reasonably be expected to provide income to the client commensurate with the individual's strengths, abilities, capabilities and interests. The agency will not fund "hobby" businesses. A "hobby" business is defined as one that is casual or recreational in nature with no intention of earning income at or above a living wage, also referred to as a "not for profit" business. The agency will not fund businesses designated as tax-exempt by the Internal Revenue Services (IRS), also referred to as a "non-profit" business;¶¶~~

~~(b) If a client is involved with a business partnership or corporation, s/he must present written evidence of being the controlling partner or controlling shareholder of the corporation. Provision must be made in the Partnership Agreement for the client to settle all debts should the business not succeed. The agency will assume no financial liability for debts;¶¶~~

~~(c) Speculative or high-risk business ventures will not be considered. These include those which present a risk beyond the control of the business owner or those which are so subject to economic whims as to have an unpredictable future;¶¶~~

~~(d) The client must present documentary evidence to indicate that a reasonable effort has been made to obtain comparable benefits, when available. Evidence must include one or more of the following: application and rejection from a lending institution, PASS Plan benefits sheet, request for investments, or list of personal assets to be used for the business. If financial support from another source(s) is identified to fund the business in part or in whole, a request to obtain financial support from that source(s) should be made before requesting agency assistance. If the request was denied because of an insufficient business plan, the client must revise the plan and resubmit it to the funding source. When no comparable benefits and services are available, the agency may fund reasonable and necessary start-up costs for a business as part of a client's Individualized Plan for Employment. In order for a plan to be viable, other funding sources may be necessary to cover costs identified in the business plan that would not be covered by the agency;¶¶~~

~~(e) Where partial support is obtained elsewhere, the client must submit copies of the relevant documentation to identify the extent of that financial assistance;¶¶~~

~~(f) Where denial of financial support outside this agency is based on the availability of personal or family~~

resources, the client will be expected to utilize those resources before requesting agency funding support;¶¶

(g) The client may seek assistance in developing a business plan from outside sources such as the Small Business Administration or the Small Business Development Centers at community colleges.¶¶

(6) Comprehensive Assessment:¶¶

(a) Financial support will be provided to a client to become involved in a business only after the client has satisfied a comprehensive assessment. As a part of this, the agency is prepared to provide or arrange for an assessment by agency staff or competent business persons outside the agency to assess the business skills, background, and potential of the client seeking financial assistance. Portions of the assessment may be conducted by business persons such as a representative of the Oregon Small Business Development Center;¶¶

(b) The comprehensive assessment will cover the following:¶¶

(A) Evaluation of previous work experience, especially in the same or a similar industry to the proposed business or in other self-employment;¶¶

(B) Understanding of other career options and availability of jobs in the present and future job market;¶¶

(C) Communications skills necessary in the proposed business (written and verbal skills, along with capability to maintain and interpret financial records for the business);¶¶

(D) Factors such as willingness to make personal financial investment in the business, ability to make appropriate decisions, dependability, follow-through, organizational ability, adequate travel skills as demonstrated by interaction with agency personnel and former business colleagues;¶¶

(E) Alternative skills of blindness adequate to function in the business; knowledge of technology, adaptive technology and software applications currently being used in the management of similar businesses;¶¶

(F) Demonstration of money/resource management skills consistent with running a viable small business.¶¶

(G) Background or training in financial management skills required for managing a self-owned business.¶¶

(7) Comprehensive Business Plan:¶¶

(a) The client must prepare a well-researched and written comprehensive business plan such as that required by a bank or the Small Business Administration.¶¶

(b) The plan must include an itemized list of equipment or business-related expenses, which the client requests the agency to provide. The client must make a formal presentation of the plan to the agency. If the plan is accepted, the decisions made will lead to the development or amendment of the IPE. Any agency support must be a part of an agreed-upon IPE.¶¶

(c) If the total request for financial assistance and technical assistance for business startup is less than \$3,500, the counselor may not require a formal business plan. However, in providing assistance less than \$3,500, there still should be sufficient evidence that the business is viable. Financial assistance for business startup purposes must be clearly documented.¶¶

(d) Requests for an existing business, which exclusively involve adaptive equipment, may require documentation of the viability of the business rather than a formal business plan. Documentation must include one or more of the following: customer invoices, sales receipts, recent tax returns, or business financial statements.¶¶

(A) Self-Employment options for an Existing Business: Vocational Rehabilitation (VR) services for qualified individuals seeking assistance with an existing business may be provided under the following circumstances:¶¶

(i) The existing business is consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, career interests, and informed choice.¶¶

(ii) The individual's barriers to work, caused by disabilities, affect his/her ability to continue operating this business.¶¶

(iii) Without VR intervention, the individual will not be able to continue operating this business.¶¶

(B) VR services cannot provide services solely to expand or update an existing business, including situations to make a business profitable if there are no disability related barriers. In the event an individual is requesting a service such as this, the VRC can provide the client a reference of additional community resources.¶¶

(C) VR services and the IPE will be designed to address disability-specific barriers noted. The business plan must address those barriers that make the business unsuitable. In the event the barriers cannot be removed, the business will not be supported and alternate goals should be explored. In the event the self-employment goal is

viable, VR services may be provided in order to make the business suitable.¶¶

(8) Training. Where assessment results indicate that a client lacks some of the skills necessary for successful business management, the agency may make available and require training in those specific skill areas, especially the alternative skills dealing with blindness and financial management skills.¶¶

(9) Availability of Funds:¶¶

(a) Financial support for any service provided under an IPE is contingent upon the availability of funds to the agency;¶¶

(b) Financial assistance should not place a burden on agency resources to the extent that the agency would be unable to provide services to other clients.¶¶

(10) Financial Support:¶¶

(a) Client will provide timely, at a minimum quarterly, financial statements and other documentation as requested by the Commission showing progress toward becoming self-sufficient. Examples of documentation include, but are not limited to: business bank statements, profit/loss statements against business plan projections, progress against planned startup activities, marketing plan execution.¶¶

(b) Agency support is designed to assist in the initial startup of a business; it is not to be considered an on-going resource, and in no case will losses be reimbursed by the agency;¶¶

(c) The client and Counselor will jointly determine the limits of agency financial involvement and time limits. Development of a comprehensive business plan is expected to adequately capitalize the business and limit the need for ongoing financial support by the agency.¶¶

(11) Equipment:¶¶

(a) Any equipment for the business must be purchased in accordance with agency policy; i.e., preauthorized, with appropriate bids, where necessary, obtained by the client;¶¶

(b) Under the criteria in ORS 346.210, ownership of equipment may be transferred to the client. The Counselor will determine appropriateness of this action. Regardless of ownership, the client is responsible for adequately maintaining the equipment;¶¶

(c) Any equipment whose title is not passed to the client will be returned to the agency when it is no longer required for the purpose for which it was procured.

Statutory/Other Authority: ORS 183, 346

Statutes/Other Implemented: ORS 346.150

REPEAL: 585-020-0005

RULE SUMMARY: Delineates equipment purchase and maintenance for use by Agency clients

CHANGES TO RULE:

~~585-020-0005~~

~~Purpose-~~

~~These rules establish the conditions under which equipment will be purchased and maintained for the use of clients of the Oregon Commission for the Blind.~~

~~Statutory/Other Authority: ORS 183, 346~~

~~Statutes/Other Implemented:~~

AMEND: 585-020-0010

RULE SUMMARY: Defines terms used in Oregon Administrative Rules chapter 585, Division 20

CHANGES TO RULE:

585-020-0010

Definitions ¶¶

The following definitions apply to these rules:¶¶

(1) "Client" means a person who has applied for and been accepted for services under the rules of ~~the Oregon Commission for the Blind.~~¶¶

(2) "~~Equipment~~" means an item which is non-expendable, and could be assigned to another client and Commission.¶¶

(2) "Counselor" means the client's assigned vocational rehabilitation counselor who is a staff member of Commission.¶¶

(3) "Equipment" means an item that is determined necessary for the individual's employment goal.¶¶

(34) "~~Case Manager~~" means the client's assigned vocational rehabilitation counselor or rehabilitation instructor for the blind who is a staff member of the agency.¶¶

(4) "~~Agencyommission~~" means the Oregon Commission for the Blind.¶¶

(5) "Training" means preparation needed to prepare, qualify, and reach an employment goal.

Statutory/Other Authority: ORS ~~183, 346~~346.150

Statutes/Other Implemented: ORS 346.110-300

AMEND: 585-020-0015

RULE SUMMARY: Delineates conditions under which equipment may be provided

CHANGES TO RULE:

585-020-0015

Conditions Under Which Equipment May Be Provided ¶¶

(1) Vocational Training:¶¶

(a) ~~An agency~~ Commission staff member or the client's counselor in consultation with the client will perform an analysis prior to purchase of any equipment to ~~help~~ identify the most appropriate equipment needed to complete training to perform a job.¶¶

(b) Available equipment may be loaned or purchased for training.¶¶

(c) ~~The case manager~~ client's counselor will assist the client to obtain appropriate training in the use of equipment.¶¶

~~(2) Employment:¶¶~~

~~(a) An agency~~ d) Commission will fund the costs associated with training the client in the use of equipment, if any.¶¶

(2) Employment:¶¶

(a) After the client has obtained a job offer, a Commission staff member will perform a job analysis prior to purchase of any equipment to help identify the most appropriate equipment needed to perform the job. The employer's technical support staff or an outside consultant may be used to make technical recommendations.¶¶

(b) Available equipment may be loaned to an employer for demonstration purposes, or for use by a client, until permanent equipment is purchased or repaired.¶¶

(c) ~~The case manager~~ client's counselor will assist the client to obtain appropriate training in the use of equipment prior to the client beginning a job or once the client is on the job.

Statutory/Other Authority: ~~ORS 183, 346~~ ORS 346.150, ORS 346.180

Statutes/Other Implemented: ORS 346.180

AMEND: 585-020-0020

RULE SUMMARY: Delineates and prioritizes funding sources for purchase of equipment needed for clients' employment

CHANGES TO RULE:

585-020-0020

Financing Equipment ¶

~~Case managers and client~~ (1) Clients and their counselors will attempt to use all possible financial resources to pay for job-related equipment, such as before seeking financial support from Commission. Potential resources may include:¶

~~(1a)~~ Employer purchases equipment;¶

~~(2b)~~ Client purchases equipment and lists it as a work-related expense under the SSI or SSDI, Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI) programs;¶

~~(3c)~~ Client uses Social Security Plan for Achieving Self Support (PASS) to purchase equipment; or¶

~~(42)~~ Equipment that can may be categorized as "rehabilitation technology," as defined by the federal Rehabilitation Act, does not require the use of other resources. Although not required, other possible financial resources can be considered and utilized. Commission will fund the purchase of basic rehabilitation technology. Although not required, other possible financial resources available to the client may be considered by the client in consultation with their counselor and utilized to purchase rehabilitation technology.

Statutory/Other Authority: ~~ORS 183, 346~~ ORS 346.150, ORS 346.180

Statutes/Other Implemented: ORS 346.180

AMEND: 585-020-0025

RULE SUMMARY: Delineates issuance (to clients) and maintenance of Commission-owned equipment

CHANGES TO RULE:

585-020-0025

Maintenance of Equipment ¶¶

~~The agency may provide equipment and provide for its maintenance while the agency retains ownership of the equipment. After ownership of the equipment has been transferred to the client, the client will be expected to continue appropriate maintenance, unless the client demonstrates that the cost of repairs would be prohibitive and that the job would be jeopardized if equipment were not repaired. The case manager will explain these restrictions to the client and include them in the property receipt which the client signs:~~
(1) Commission may issue equipment for use by clients and provide for its maintenance while Commission retains ownership of the equipment. ¶¶

~~(12) Service Agreements.~~ If available, service or maintenance agreements ~~can~~may be considered when appropriate, depending on the job environment; and other related factors. ~~Case managers should try to buy~~
ounselors should look first to purchase equipment which has at least a one-year warranty. ¶¶

~~(23) Used Equipment.~~ Whenever available, used equipment in the ~~agency~~Commission's inventory will be issued to clients.

Statutory/Other Authority: ~~ORS 183, 346~~ORS 346.150, ORS 346.180

Statutes/Other Implemented: ORS 346.180

AMEND: 585-020-0030

RULE SUMMARY: Delineates signature for transfer of ownership when equipment provided to clients

CHANGES TO RULE:

585-020-0030

Property Receipts and Transfer of Ownership ¶

(1) Clients are required to sign property receipts for ~~non-expendable~~ equipment provided to them with a cost of \$5000 or more. Receipts verify that the client received the item and spells out the applicable conditions of this ~~policy~~ these rules. ¶

(2) When ownership of equipment and software are transferred to a client, ~~the clients are~~ is required to sign a transfer of ownership form. This verifies that equipment and software have been assigned to the client and spells out the applicable conditions of this policy.

Statutory/Other Authority: ~~ORS 183, 346~~ ORS 346.150, ORS 346.180

Statutes/Other Implemented: ORS 346.180

AMEND: 585-020-0035

RULE SUMMARY: Client or their Employer is responsible for upgrading any equipment

CHANGES TO RULE:

585-020-0035

Upgrading Equipment ¶

The client or their employer will be responsible for any upgrade. ~~The agency upgrading any equipment.~~ If upgrading equipment is necessary for the client to perform in their job and it is determined that the financial resources of the client or their employer are insufficient to fund the costs associated with upgrading equipment, Commission may provide financial support for upgrading equipment. Commission should be considered the last dollar payor of last resource.

Statutory/Other Authority: ~~ORS 183, 346~~ ORS 346.150, ORS 346.180

Statutes/Other Implemented: ORS 346.180

AMEND: 585-020-0040

RULE SUMMARY: Employer is responsible to purchase adaptive equipment required for client's employment

CHANGES TO RULE:

585-020-0040

Maintaining Equipment ¶

In cases where equipment is needed by a client or former client to maintain their job, the case manager's client's counselor will request that the employer provide the equipment as the or she would for any other employee. If the employer is unwilling or unable to provide the total equipment necessary to perform the job, and the client is unable to fund it, the agency the cost of the equipment, Commission may provide the adaptive equipment necessary to maintain employment. ~~This is, of course,~~ subject to client eligibility and availability of agency funds for such purchases.

Statutory/Other Authority: ~~ORS 183.346~~ ORS 346.150, ORS 346.180

Statutes/Other Implemented: ORS 346.180

AMEND: 585-020-0045

RULE SUMMARY: Delineates when equipment may be provided by Commission if client changes jobs

CHANGES TO RULE:

585-020-0045

Changing Jobs ¶

(1) If a client or former client changes from one job to another and needs additional equipment or different equipment from the previous job to perform the new job, the case manager/counselor will assess the situation, to determine whether such equipment will be provided by the Commission and to determine whether alternative options are available.¶

(2) If the job is in the same field, and equipment used on the original job will suffice for the new job, the equipment may be transferred to the new job.¶

(3) If additional or different equipment is needed, the case manager/counselor must assess the reasons for the job change and the willingness of the new employer to provide equipment. ~~Since the agency does not usually provide continuing services to persons already established in employment, agency involvement, other than technical assistance, may not be appropriate.~~

Statutory/Other Authority: ~~ORS 183, 346~~ ORS 346.150, ORS 346.180

Statutes/Other Implemented: ORS 346.180

AMEND: 585-020-0050

RULE SUMMARY: Delineates conditions by Commission purchases computers and related equipment for clients

CHANGES TO RULE:

585-020-0050

Considerations for Purchase of Computers or Computer Equipment ¶

(1) ~~The agency~~ Commission will not buy ~~the a~~ basic computer if it is used as a part of the job, which other employees at the same organization perform, unless it is impossible for ~~the~~ adaptive equipment to access ~~already existing equipment~~ the employer provided computer. The employer is otherwise expected to provide ~~the a~~ basic computer ~~unit~~ for an employee. ~~The agency~~ ¶

(a) Commission may provide adaptive equipment to make the employer's computer accessible to the ~~blind~~ employee; i.e., ent if the employer is unable to provide this as a reasonable accommodation. Such adaptive equipment may include hardware and software for large print, Braille, or voice output, ~~if the employer is unable to provide this as a reasonable accommodation.~~ ¶

(b) Computers will not be purchased for personal record keeping or to perform the minor functions of a job, where other, less expensive equipment could accomplish the same task. ¶

(2) Consultants with appropriate experience and expertise may be utilized to advise the client, agency Commission, and the employer in about the best equipment for a particular application. Consultants ~~would also be~~ appropriately may be used to install a system and to train a client in the use of the equipment for a the particular job. ¶

(3) Computer equipment will not be purchased by Commission unless it is used as an essential function of the job. ~~Computers will not be purchased for personal record keeping or to perform the minor functions of a job, where other, less expensive, equipment could accomplish the same task.~~ ¶

~~(4) Computers may be purchased for students and the employer is unable to provide accessible equipment for the client.~~ ¶

(4) Computers may be purchased for clients who are enrolled at an educational institution, provided that purchasing the equipment is not supplanting the responsibilities of the education system for transition students, as defined by the Rehabilitation Act.

Statutory/Other Authority: ~~ORS 183, 346~~ ORS 346.150, ORS 346.180

Statutes/Other Implemented: ~~ORS 346.1580~~

AMEND: 585-020-0060

RULE SUMMARY: Delineates process by which ownership of equipment may be transferred to clients

CHANGES TO RULE:

585-020-0060

Transfer of Equipment to Clients ¶

(1) For equipment valued at \$5000 or more, the ~~case manager~~counselor has the discretion of transferring ownership at successful closure ~~or up to~~of the client's file or after at least one year of employment. This will be done after it is determined that the client is using the equipment for the purpose for which it was intended and that the job appears stable.¶

~~(2) The agency can~~Once ownership is transferred to the client, Commission will have no further obligation to repair or maintain the equipment.¶

(2) Commission may transfer items valued under \$5,000 to clients at its discretion. This may be done only after determining that the client is using the equipment for the purpose for which it was intended.¶

(3) If the equipment is likely to be usable for other clients after the current client no longer requires it for employment, the ~~case manager~~counselor may determine that ~~the agency~~Commission will retain ownership. This determination will be made on an individual basis. ~~Once ownership is transferred to the client, the agency will have no further obligation to repair or maintain the equipment.~~¶

(4) Title for computer software will be transferred to clients at the time that they receive it.¶

(5) ~~Equipment Purchases by Agency: For equipment valued at \$5000 or more, after approval by the case manager, the specific recommendations, including information on all adaptive equipment to be used with the system, will be submitted to the agency purchasing agent for identification of~~The client's counselor may, subject to supervisor authorization, approve equipment to be purchased by Commission that is valued at \$5000 or more, including all adaptive equipment to be used with the system. The counselor will identify an appropriate vendor. The purchasing agent will identify for the equipment and appropriate vendor authorize the purchase in accordance with state purchasing regulations, using state purchasing agreements or, obtaining the necessary quotes or bids. After identifying the appropriate vendor, the purchasing agent will provide the case manager with the necessary information for do.¶

(6) After ownership of the equipment has been transferred to the client, the client will be expected to continue appropriate maintenance, unless the client demonstrates that the cost of repairs would be prohibitive and that the job would be jeopardized if equipment were not repaired. The counselor will explain these restrictions to the client verbally and include the restrictions in the authorization property receipt which the client signs.

Statutory/Other Authority: ~~ORS 183,346~~346.150, ORS 346.180

Statutes/Other Implemented: ORS 346.180

REPEAL: 585-020-0065

RULE SUMMARY: A copy of this rule will be made available to clients and employers upon request

CHANGES TO RULE:

~~585-020-0065~~

~~Availability of Rule~~

~~A copy of this rule will be made available to clients and employers upon request.~~

~~Statutory/Other Authority: ORS 183, 346~~

~~Statutes/Other Implemented:~~

ADOPT: 585-030-0001

RULE SUMMARY: Delineates procedure to resolve disputes between the Commission and its clients

CHANGES TO RULE:

585-030-0001

Dispute Resolution Procedure

(1) It is the intent of the Oregon Commission for the Blind to resolve disputes between the Commission and its clients quickly and fairly.¶

(2) Clients who are dissatisfied or disagree with a decision, action, or lack of action by the Commission that affects their vocational rehabilitation services or program shall have available dispute resolution options, including informal problem solving and formal mediation, prior to seeking an impartial fair hearing conducted by an Administrative Law Judge (ALJ) appointed by the Office of Administrative Hearings (OAH).¶

(3) The dispute resolution process is framed by the procedures provided under 29 U.S.C. ¶ 722(c) and 34 C.F.R. ¶ 361.57, relevant state statutes and regulations, the Oregon Administrative Procedures Act, the Attorney General's Model Rules of Procedure for Contested Cases, and Commission's administrative rules and policies.

Statutory/Other Authority: ORS 346.150, ORS 183.341, ORS 183.502

Statutes/Other Implemented: ORS 183.341, ORS 183.502

585-030-0010

Definitions

(1) "Action" means a decision by the Commission to deny, terminate, suspend, or reduce a client's eligibility or services. Action may include the Commission's delay in making a decision to deny, terminate, suspend, or reduce a client's eligibility or services.¶¶

(2) "ALJ" means Administrative Law Judge.¶¶

(3) "Client" means an applicant or individual eligible to receive services through the Commission.¶¶

(4) "Collaborative dispute resolution" means alternative methods to resolving a dispute between a client and the Commission prior to a final order issued by an ALJ following an impartial fair hearing.¶¶

(5) "Counselor" means the client's assigned vocational rehabilitation counselor who is a staff member of the Commission.¶¶

(6) "Delay" means:¶¶

(a) Commission failed to make a decision regarding an action within the timeframes specified in state or federal law; or¶¶

(b) If state or federal law does not impose a time limit, the client has made a dated, written request for a decision regarding an action and the Commission has unreasonably delayed in making that decision.¶¶

(7) "Good Cause" means due to unforeseen circumstances beyond the parties' control, including, but not limited to, the client's extended illness that requires significant medical care or the illness or death of a family member.¶¶

(8) "Impartial Fair hearing" or "hearing" means a contested case hearing conducted by an ALJ to review an action taken by the Commission that affects a provision of a client's vocational rehabilitation services.¶¶

(9) "Mediation" means the act or process of using a qualified and impartial third party, including an ALJ, to act as mediator, intermediary, or conciliator to assist individuals or parties in settling differences or disputes.¶¶

(10) "Mediation communication" means:¶¶

(a) All communications that are made, in the course of or in connection with a mediation, to a mediator, a mediation program or a party to, or any other person present at, the mediation proceedings; and¶¶

(b) All memoranda, work products, documents and other materials, including any draft mediation agreement, that are prepared for or submitted in the course of or in connection with a mediation or by a mediator, a mediation program or a party to, or any other person present at, mediation proceedings.¶¶

(11) "Commission" means the Oregon Commission for the Blind.¶¶

(12) "OAH" means the Office of Administrative Hearings.¶¶

(13) "Party" means, for purposes of the dispute resolution process, Commission or the client.¶¶

(14) "Problem-solving" means an informal process where the client discusses dissatisfaction with an action taken by Commission with the client's counselor the counselor's supervisor, or other assigned Commission employee. Problem-solving occurs before a Notice of Action is issued and the client requests formal mediation or a fair hearing. The client must request mediation or a hearing in order to preserve the client's appeal rights.¶¶

(15) "Representative" means an individual who represents the client in a fair hearing. The client may be represented by an attorney licensed by the Oregon State Bar or any other representative authorized by law, including but not limited to the Client Assistance Program.

Statutory/Other Authority: ORS 346.150, ORS 183.341, ORS 183.502

Statutes/Other Implemented: ORS 346.110 - 346-270, ORS 183

ADOPT: 585-030-0015

RULE SUMMARY: Establishes the option of informal problem solving in advance of written notice of action to the client

CHANGES TO RULE:

585-030-0015

Informal Problem Solving and Referral to Client Assistance Program

(1) Before a written Notice of Action is provided to the client, the client may request to engage in informal problem-solving with their vocational rehabilitation counselor to resolve a dispute regarding the client's vocational rehabilitation services. For purposes of this rule, a dispute that may be resolved through the problem-solving process does not necessarily involve an action by Commission that entitles the client to mediation or hearing rights. Commission may include a supervisor or other assigned Commission employee in the meeting to resolve the issue.¶

(2) The client may have a representative or support person present during the problem-solving discussions. Commission shall inform the client that they may seek assistance from the Client Assistance Program of Disability Rights of Oregon or other advocate during the problem-solving process.¶

(3) Problem-solving is voluntary and both parties must agree to participate in the process. Commission may decline to participate in problem-solving if the client refuses to cooperate in scheduling or to participate in a meeting to discuss the dispute, or the same dispute has been resolved by the dispute resolution process and no further appeal rights are available, or prior attempts to resolve the dispute have been unproductive.¶

(4) Problem-solving may occur at any time prior to the issuance of a Notice of Action by Commission or before the client requests mediation or a hearing. A client's request to engage in problem-solving does not exempt the client from complying with applicable legal timeframes to request a hearing or mediation.¶

(5) If the client and Commission are unable to resolve the dispute during the problem-solving process, the client retains the right to pursue any other dispute resolution options available to the client under these rules, subject to applicable legal timeframes.

Statutory/Other Authority: ORS 346.150, ORS 183.502

Statutes/Other Implemented: ORS 183.502

ADOPT: 585-030-0020

RULE SUMMARY: Delineates client notification process when Commission denies, terminates, or suspends client's eligibility or services

CHANGES TO RULE:

585-030-0020

Notice of Action and Notice of Procedural Rights

(1) Commission shall provide the client with a written Notice of Action when it makes a decision to deny, terminate, or suspend a client's eligibility or services.

(2) The Notice of Action must include the following:

(a) The date the notice is delivered to the client, if in person, otherwise the date the notice is mailed;

(b) The information provided in the Notice of Dispute Resolution Rights;

(c) A statement of the agency's authority and jurisdiction to have a hearing held on the matters asserted or charged, including reference to relevant state law and regulations and any applicable provisions under federal law as set out in 29 U.S.C. § 722 and 34 C.F.R. § 361.57;

(d) Either:

(A) A statement of the procedure and time to request a hearing, the agency address to which a hearing request should be sent, and a statement that if a request for hearing is not received by the agency within the time stated in the notice the person will have waived the right to a hearing; or

(B) A statement of the time and place of the hearing.

(e) A short and plain statement about the action Commission intends to take and the action effective date;

(f) Statement about the reason for the action, including citations to the statutes or rules involved;

(g) Statement indicating whether and under what circumstances an order by default may be entered;

(h) Statement regarding the right to stay the proceedings and assistance available to active duty service members; and

(i) Statement regarding the right to continuing benefits under federal law.

(3) Commission shall provide a written Notice of Procedural Rights to the client, or, the client's representative, when the client requests a hearing.

(a) The Notice shall include the information set forth in ORS 183.413, except to the extent that the information was already provided to the client in the Notice of Action.

(b) Commission's failure to give notice of any of the items in ORS 183.413, unless notice of that item is also required by another applicable state or federal law, does not invalidate any determination or order of the ALJ unless upon an appeal from or review of the determination or order, a court finds that the failure affects the substantial rights of the complainant. In the event of such finding, the court shall direct Commission as to what steps it shall take to remedy the prejudice to the rights of the complainant.

Statutory/Other Authority: ORS 346.150, ORS 183.341, ORS 183.413, ORS 183.415

Statutes/Other Implemented: ORS 183.413, ORS 183.415

ADOPT: 585-030-0025

RULE SUMMARY: Delineates practice of written Notice of Action to client regarding their dispute resolution rights

CHANGES TO RULE:

585-030-0025

Notice of Dispute Resolution Rights

(1) An applicant or a person eligible for vocational rehabilitation services under ORS 346 may, after receiving a Notice of Action, request review of an action taken by Commission that affects the provision of vocational rehabilitation services to the individual. The review shall consist of the right to formal mediation and/or the right to an impartial fair hearing.¶

(2) Commission shall provide a written Notice of Dispute Resolution Rights to the client or, if appropriate, the client's representative.¶

(a) At the time the client applies for vocational rehabilitation services.¶

(b) At the time the individualized plan for employment (IPE) is developed; and¶

(c) Whenever vocational rehabilitation services are reduced, suspended, denied or terminated.¶

(3) The Notice of Dispute Resolution Rights shall include the following information:¶

(a) Statement about the continuum of dispute resolution processes available to the client, including problem-solving, formal mediation, and an impartial fair hearing;¶

(b) Where and how to file the request, including the names and addresses of individuals with whom requests may be filed, and relevant timeframes;¶

(c) The procedures for the assignment of a mediator to a particular case;¶

(d) The availability of the Client Assistance Program of Disability Rights of Oregon to assist the client with mediation or a hearing, including contact information; and¶

(e) That interpreters and materials in alternative formats are available, if needed.¶

(4) Commission shall make mediation available, at a minimum, when an impartial fair hearing has been requested. Mediation shall be voluntary and shall be conducted consistently with the Attorney General's Model Rules of Collaborative Dispute Resolution, and the provisions set forth in 29 U.S.C. §722(c) and 34 C.F.R. § 361.57.¶

(5) The fair hearing shall be an evidentiary hearing that is conducted before an ALJ in conformance with the provisions of the Attorney General's Model Rules of Procedure for Contested Cases, and the provisions set forth in 29 U.S.C. §722(c) and 34 C.F.R. § 361.57.¶

(6) Any mediation or fair hearing proceeding will be held at a time and place convenient and accessible to the requesting individual. Each applicant for or recipient of vocational rehabilitation services will be provided information as to their rights to and procedures concerning mediation or a fair hearing.¶

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the office of the Attorney General or the Commission for the Blind.]

Statutory/Other Authority: ORS 346.150, ORS 183.341, ORS 183.502

Statutes/Other Implemented: ORS 183.341, ORS 183.502

RULE SUMMARY: Informs the rights of clients to request a hearing upon receiving a Notice of Action

CHANGES TO RULE:

585-030-0030

Request for Formal Mediation or Impartial Fair Hearing

(1) A client who is dissatisfied with an action taken by Commission that affects their rights to, or eligibility for vocational rehabilitation services, may, after receiving a Notice of Action, request to participate in collaborative dispute resolution as set forth in OAR 137-003-0565. Collaborative dispute resolution shall consist of formal mediation. A client may also request an impartial fair hearing.¶

(2) To be timely, a request for mediation or hearing shall be received by Commission's Director of Rehabilitation Services within 60 calendar days following the date of the Notice of Action, except as otherwise provided in this rule.¶

(3) The client's hearing request is also considered timely if Commission's Director of Rehabilitation Services:¶

(a) Receives a timely request for mediation under section (2) of this rule; and¶

(b) Receives a completed request for hearing within 60 calendar days following the date of Commission's written notice that it has either declined to participate in formal mediation or that the formal mediation process has ended.¶

(4) If the request for mediation or hearing is not timely under sections (2) or (3) of this rule, the client waives their right to a hearing, except as otherwise provided in this rule. If the client believes that there is good cause for failure to timely request mediation or hearing, the client may send a written request to Commission's Director of Rehabilitation Services requesting that Commission consider the client's untimely request. The client's request shall be supported with a written statement explaining why the request was late and why this qualifies as good cause. Commission shall review this information and determine whether the client demonstrated that they had good cause for the untimely request.¶

(a) Commission may conduct further inquiry, including requesting supporting documentation from the client. The client must cooperate with this inquiry and within the timeframes set by Commission.¶

(b) If Commission finds that the client has good cause for the untimely request, Commission may accept the request as timely and proceed as if the request was timely.¶

(5) When Commission has issued a Notice of Action and the client fails to request mediation or a hearing within required timeframes, Commission's Notice of Action is final and Commission shall issue no further order. Commission's file, including all materials submitted by a party, shall be considered the record of the matter, and the record shall constitute a prima facie case supporting Commission's action. The only exception is if the client demonstrates that there was good cause, under section (4) of this rule, for the untimely request.¶

(6) After the client requests a hearing, Commission or the ALJ shall dismiss the request for hearing, and Commission's Notice of Action becomes the final order in the case, as if the client never requested a hearing, if:¶

(a) The client withdraws the request for hearing;¶

(b) The client abandons the request for hearing by failing to respond to Commission's or ALJ's attempts to schedule a prehearing conference, hearing or other hearing-related proceeding; or¶

(c) The client was notified about the scheduled prehearing conference, hearing, or other hearing related proceeding and:¶

(A) The client fails to appear at the prehearing conference, hearing or other hearing-related proceeding without good cause;¶

(B) The client informs Commission or ALJ that the client will not appear at the prehearing conference, hearing or other hearing-related proceeding.¶

(7) If the client fails to appear at the scheduled prehearing conference, hearing or other hearing-related proceeding or appears to abandon the hearing request and before dismissing the request for hearing, the ALJ finds that the client had good cause, the ALJ may not dismiss the request for hearing. In this case, the ALJ shall schedule a new prehearing conference, hearing or other hearing-related proceeding. If the reasons for the client's failure to

appear are in dispute, the ALJ shall schedule a hearing on the reasons for the client's failure to appear.¶

(8) The client may withdraw a request for hearing at any time before the ALJ issues an order.¶

(a) If the request for hearing is withdrawn before the case is assigned to an ALJ, Commission shall issue the order dismissing the request for hearing.¶

(b) If the request for hearing is withdrawn after the case is assigned to an ALJ, the ALJ shall issue the order dismissing the request for hearing.¶

(9) The impartial fair hearing shall be held within 60 calendar days of the date Commission's Director of Rehabilitation Services received the client's timely request for formal mediation or hearing pursuant to 34 CFR 361.57(e)(1), unless a formal mediation agreement is achieved prior to the 60th day or the parties agree to a specific extension of time. ¶

(10) For purposes of these rules, when a rule describes:¶

(a) A deadline in calendar days and the last calendar day of a specified time period falls on a Saturday, Sunday, a legal holiday or Commission's central office is closed, the deadline shall be extended until the next working day.¶

(b) All requests or other documents must be sent to Commission's Director of Rehabilitation Services at Commission's central office.¶

(11) Commission shall offer assistance to help clients request mediation or a hearing and shall inform them that they may also request the assistance of the Client Assistance Program in making these requests.

Statutory/Other Authority: ORS 346.150, ORS 183.341, ORS 183.502

Statutes/Other Implemented: ORS 183.341, ORS 183.502

ADOPT: 585-030-0035

RULE SUMMARY: Commission may not withhold services during dispute resolution process except in limited cases.

CHANGES TO RULE:

585-030-0035

Continuation of Services

Commission may not suspend, reduce, or terminate vocational rehabilitation services being provided to a client, including evaluation and assessment services and IPE development, pending problem-solving discussions, a resolution through formal mediation, or a decision by the ALJ, unless:

(1) The client or client's representative requests suspension, reduction, or termination of services pending the outcome of dispute resolution process; or

(2) Commission has evidence that the services have been obtained through misrepresentation, fraud, collusion or criminal conduct on the part of the client or the client's representative.

Statutory/Other Authority: ORS 346.150, ORS 183.341, ORS 183.502

Statutes/Other Implemented: ORS 183.341, ORS 183.502

RULE SUMMARY: Delineates the option and process for formal mediation to resolve Notice of Action

CHANGES TO RULE:

585-030-0040

Formal Mediation

(1) When Commission issues a Notice of Action, Commission and the affected client may agree to participate in formal mediation to resolve any issues relevant to the notice. Neither the party's request, nor any agreement by Commission to participate in mediation extends the period for filing a timely request for an impartial fair hearing.

(2) Participation in the mediation process is voluntary. Both the client and the client's counselor or Commission employee directly involved in the dispute must be willing to participate in the mediation process before Commission can schedule a formal mediation.

(a) If Commission declines to participate following a request for mediation, Commission shall provide written notice to the client that mediation is declined and the client shall be advised of their right to request a hearing, if a request for a hearing is not already pending.

(b) If Commission agrees to participate in mediation, Commission may establish a deadline for the conclusion of the process.

(3) If Commission agrees to participate in mediation, the parties' mediation communications will only remain confidential and/or inadmissible in any subsequent proceeding if the parties agree in writing that such communications are confidential and/or non-discoverable and inadmissible.

(4) If Commission has agreed to participate in mediation and the client makes a timely request for an impartial fair hearing:

(a) The hearing shall be suspended until mediation is completed, Commission or the client opts out of the mediation process, or the deadline, if any, conclusion of mediation is reached.

(b) Commission shall proceed to schedule the impartial fair hearing if mediation terminates without settlement of the contested case, unless the client withdraws the hearing request.

(5) Commission shall select a mediator who has indicated an interest or expertise in disability-related issues, and who meets the requirements of a qualified and impartial mediator. Commission shall comply with all procurement and contracting rules provided by law.

(a) Upon receipt of a timely request for mediation from the client, Commission shall contact, on a rotating basis, a mediator who is geographically near Commission office of the client.

(b) Each party shall be given the opportunity to agree to or reject an identified mediator prior to the beginning of mediation services.

(6) The mediation shall occur between the client's counselor or assigned Commission employee and the client. The parties may have a representative assist them in the mediation, including the Client Assistance Program.

(7) Conclusion of mediation:

(a) At any point during the mediation process, either party or the mediator may elect to terminate the mediation.

(b) A successful mediation shall be concluded with a final written mediation agreement that is developed by the parties with the assistance of the mediator. The parties must agree to and sign the agreement for it to be effective in resolving the case. The parties shall be given a copy of the signed agreement.

(A) The final agreement shall become part of the case file record, unless otherwise agreed.

(B) If the agreement includes any changes to the Individualized Plan for Employment (IPE), a revision to the IPE or amended IPE that incorporates the changes shall be in writing and signed by Commission and the client.

(8) If an agreement is not reached, Commission shall provide the client with written notice that the mediation process has ended and advise the client of their right to request an impartial fair hearing within the timeframes specified in OAR 585-025-0030, if a hearing request is not already pending.

(9) The costs of the mediation process must be paid by the Commission. Commission is not required to pay for any costs related to the representation of client, including attorney's fees.

Statutory/Other Authority: ORS 346.150, ORS 183.502

Statutes/Other Implemented: ORS 183.502

ADOPT: 585-030-0045

RULE SUMMARY: Adopts Attorney General's model rule on Mediation Confidentiality

CHANGES TO RULE:

585-030-0045

Confidentiality and Inadmissibility of Mediation Communications.

Pursuant to ORS 36.224, Commission adopts by reference the Attorney General's model rule on Mediation Confidentiality set forth in OAR 137-005-0052.

Statutory/Other Authority: ORS 346.150, ORS 36.224(4)

Statutes/Other Implemented: ORS 36.224

ADOPT: 585-030-0050

RULE SUMMARY: Establishes parameters of impartial fair hearings beyond AG Model Rules of Procedure for Contested Cases

CHANGES TO RULE:

585-030-0050

Impartial Fair Hearing

In addition to the procedures set forth in the Attorney General's Model Rules of Procedure for Contested Cases, and the procedures set forth in 29 USC § 722(c) and 34 C.F.R. § 361.57, the following shall apply to impartial fair hearings:¶

- (1) Commission shall refer a completed and timely request for impartial fair hearing, as described in OAR 585-025-0030, to OAH.¶
- (2) The hearing shall be held at a time consistent with OAR 585-025-0030.¶
- (3) The hearing shall be held in a location that is convenient and accessible, as agreed to by the client and Commission.¶
- (4) Hearings shall be conducted in person, unless agreed to by the client and Commission.¶
- (5) The parties shall have the opportunity to submit documentary evidence, to testify, and to call and cross-examine witnesses.¶
- (6) On reviewing the evidence presented, the ALJ shall:¶
 - (a) Issue a written decision based on relevant state and federal statutes and regulations, and Commission's rules; and¶
 - (b) Provide the written decision to the client, or, as appropriate, the client's representative, and to Commission.¶
- (7) The ALJ shall have the authority to render a decision and require Commission take actions consistent with that decision regarding the client's vocational rehabilitation services.

Statutory/Other Authority: ORS 346.150, ORS 183.341

Statutes/Other Implemented: ORS 183.341

ADOPT: 585-030-0055

RULE SUMMARY: Commission will not pay attorney fees or transportation costs in connection with mediation or hearing

CHANGES TO RULE:

585-030-0055

Payment of Legal Fees and Transportation Costs

Commission will not pay for attorney's fees or transportation costs for an applicant for vocational rehabilitation services or for a client receiving vocational rehabilitation services in connection with formal mediation or fair hearing proceeding.

Statutory/Other Authority: ORS 346.150

Statutes/Other Implemented: ORS 346.150