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ARCHIVES DIVISION
STEPHANIE CLARK
DIRECTOR

800 SUMMER STREET NE
SALEM, OR 97310
503-373-0701

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FILING CAPTION: Amending the Grounds to Deny or Revoke a DPSST Criminal Justice Instructor Certification

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CONTACT: Jennifer Howald
503-378-2432
jennifer.howald@state.or.us

DPSST
4190 Aumsville Hwy SE
Salem, OR 97317

Filed By:
Jennifer Howald
Rules Coordinator

AMEND: 259-008-0080

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RULE SUMMARY: OAR 259-008-0080 maintains the minimum standards for a DPSST criminal justice instructor certification. This rule applies to instructors employed by DPSST or the Department of Corrections to deliver mandated training (the basic police course, the basic corrections course, etc.). This rule change amended the grounds to deny or revoke the criminal justice instructor certification.

Located in section (9), the instructor denial and revocation standards are defined as mandatory grounds. As mandatory grounds, these cases are handled administratively by certification compliance staff. A mandatory denial or revocation results in permanent ineligibility to hold the criminal justice instructor certification in the future.

Subsections (9)(a), (9)(b), (9)(c), and (9)(e) carry over the existing disqualifiers for falsification, not meeting required standards, revocation of public safety professional certifications, and disqualifying criminal convictions. The criminal conviction disqualifiers for instructors located in (9)(e) mirror the mandatory criminal disqualifiers for public safety professional certification as defined in OAR 259-008-0300. The revisions to these disqualifiers capture the changes that have been made to the other rule, including the addition of mandatory denial or revocation for a conviction that is a bias or a hate crime.

Subsection (9)(d) addresses Instructor Misconduct which becomes grounds to deny or revoke instructor certification when triggered by a separation from employment. This rule change amended the definition of Instructor Misconduct. The revisions focus the scope of Instructor Misconduct on intentional conduct that occurs while performing the duties of an instructor. The revisions also clarify the intent to include any form of separation where the conduct resulted in or coincided with any non-voluntary or voluntary separation of employment. This would include, but not be limited to, circumstances such as an employer-initiated termination; a separation, resignation, or retirement in lieu of termination; or a voluntary resignation or retirement prior to or during an investigation. DPSST certification compliance staff have

the discretion to determine when the conduct associated with a separation of employment constitutes Instructor Misconduct as defined in the rule.

The remaining changes included in section (10) help to clarify and simplify the Notice and Contested Case process.

CHANGES TO RULE:

259-008-0080

Instructors for Mandated Training ¶¶

(1) Definitions. For the purposes of this rule:¶¶

(a) "Instructor" means an individual, including volunteer or loaned personnel, who is employed or utilized by DPSST or the Department of Corrections for the instruction of any portion of a Board-approved curriculum for a mandated training course, including the following:¶¶

(A) The DPSST basic police, corrections, parole and probation, regulatory specialist, telecommunications or emergency medical dispatcher courses, excluding field training;¶¶

(B) The Department of Corrections basic corrections course, excluding field training;¶¶

(C) The career officer development courses, excluding field training;¶¶

(D) A DPSST instructor development course; or¶¶

(E) The DPSST supervision leadership academy or organizational leadership management course.¶¶

(b) "Employer" means DPSST or the Department of Corrections.¶¶

(2) These instructor employment and certification requirements do not apply to individuals assigned by a public or private safety agency to instruct non-mandated training, training required to maintain DPSST-issued public safety professional certifications or a field training manual.¶¶

(3) Instructors must be certified prior to being assigned primary responsibility for the instruction of any portion of a Board-approved curriculum for a mandated training course.¶¶

(a) Primary responsibility for instruction means that the instructor is the certified instructor of record for the course completion documentation identified in OAR 259-008-0085.¶¶

(b) The employer delivering the mandated training course is responsible for ensuring that certified instructors are assigned to the topics that they are qualified to instruct.¶¶

(4) When an employer hires or separates an instructor, the employer must report the personnel action to the Department, on a form provided by the Department, within 10 business days of the employment or utilization status change.¶¶

(5) Pursuant to OAR 259-008-0015, the employer must conduct a background investigation on each individual being considered for employment or utilization as an instructor.¶¶

(6) DPSST Instructor Certification. To be eligible for certification as an instructor, an individual must:¶¶

(a) Be currently employed or utilized as an instructor;¶¶

(b) Have experience that meets the requisite knowledge, skills and abilities to perform the duties of an instructor as determined by the employer;¶¶

(c) Successfully complete employer specific instructor development training:¶¶

(A) Instructors employed or utilized by the Department must successfully complete the Board-approved Adult Learning Core Course as defined in OAR 259-008-0085.¶¶

(B) Instructors employed or utilized by another employer must successfully complete instructor development training or possess, as determined by the employer, the knowledge and skills needed to instruct the mandated course.¶¶

(d) Never have had a public safety professional certification denied, suspended or revoked by the Department under OAR 259-008-03070;¶¶

(e) Not have any convictions, criminal dispositions, or a history of conduct that would constitute a mandatory disqualifier as defined by section (9) of this rule;¶¶

(f) As determined by the employer, not have any convictions, criminal dispositions, or a history of conduct that would adversely impact the instructor's position as a role model, a leader within the public safety profession and a source of expertise for critical learning components; and¶¶

(g) Submit an application for certification on a form provided by the Department.¶¶

(7) Notification of Arrest or Criminal Citation to Appear. A certified instructor who is arrested, or receives a criminal citation to appear or its equivalent, for any offense punishable as a crime must notify the Department within five business days. Notification must be in writing and include the date of the arrest or citation, the location of the arrest or citation, the reason for the arrest or citation and the arresting or citing agency.¶¶

(8) Expiration and Reactivation of DPSST Instructor Certification.¶¶

(a) Notwithstanding subsection (d) below, an instructor's certification will expire upon separation from a certifiable instructor position.¶¶

(b) In order to become recertified as an instructor, an individual with an expired instructor certification must meet the instructor certification requirements as defined in section (6) and submit a new application for certification.¶¶

(c) When an individual's instructor certification has been expired for more than three years, the instructor must successfully recomplete or satisfy the applicable instructor certification training requirement found in subsection (6)(c) prior to the reissuance of certification.¶¶

(d) The Department will stay the expiration of instructor certification for an instructor whose separation from a certifiable instructor position occurs while the individual's public safety professional certification is under review pursuant to OAR 259-008-03070 or the individual's instructor certification is under review pursuant to section (9) of this rule until a final determination has been made regarding the individual's fitness for certification as an instructor or public safety professional.¶¶

(9) Denial or Revocation of DPSST Grounds to Deny or Revoke Instructor Certification. The Department certifies instructors to deliver the mandated training courses that are the foundations of a Board has determined that the following conduct constitutes mandatory grounds for denial or revocation of instructor certification because such conduct violates public trust in the public safety professional's development of the knowledge, skills and abilities that the public safety professional will utilize in the performance of their public safety roles. Engaging in conduct unrepresentative of the standards that public safety professionals are held accountable to or the inability to effectively deliver course materials adversely impacts and erodes the competence of the public safety professionals who perceive the instructor as a role model, a leader within the public safety profession and a source of expertise for critical learning components. In order to improve and preserve the competence of public safety professionals, this rule establishes the Board's standards for the denial or revocation of an instructor certification.¶¶

(a) The Department must deny or revoke an instructor's certification upon a finding that the instructor or applicant:¶¶

(A) Has been discharged for cause from employment as a public safety professional as defined by OAR 259-008-0070; and violates the trust that students and their employers place in instructors as professional leaders and role models in public safety. The Department must deny or revoke an instructor's certification upon a finding that:¶¶

(a) The instructor intentionally falsified any information submitted on the application for instructor certification or on any documents submitted to the Board or the Department;¶¶

(b) The instructor does not meet the applicable minimum standards, minimum training or the terms and conditions for instructors established under ORS 181A.410 as defined in OAR chapter 259 division 8;¶¶

(c) The instructor's public safety professional certifications have been denied, suspended or revoked pursuant to OAR 259-008-0300;¶¶

(d) The instructor engaged in intentional conduct while performing the duties of an instructor that constitutes Instructor Misconduct and the conduct resulted in or coincided with any non-voluntary or voluntary separation of employment. Instructor Misconduct includes dishonesty or deception, harassment, discrimination, assisting a student to cheat, or falsifying documentation related to training, testing or certification; or¶¶

(e) The instructor has a disqualifying criminal offense. Disqualifying criminal offenses are:¶¶

~~(BA) Has a conviction in any jurisdiction for any offense designated under the law of the jurisdiction where the conviction occurred as being punishable as a felony or as a crime for which a maximum term of imprisonment of more than one year may be imposed;~~

~~(CB) Has a conviction in any jurisdiction for any offense involving the unlawful use, possession, delivery or manufacture of a controlled substance, narcotic or dangerous drug;~~

~~(DC) Is a sex offender pursuant to ORS 163A.005(6) A conviction in any jurisdiction for a bias or hate crime;~~

~~(ED) Has a conviction in any jurisdiction for any offense involving domestic violence as defined in ORS 135.230 or. For the purposes of this rule, domestic violence includes abuse of a child, and the term "domestic violence" has the meaning given by ORS 135.230, the term "abuse as defined in" has the meaning given by ORS 107.705, and the term "child" means a child who is under 18 years of age and is a natural child, adopted child, stepchild, a child under the guardianship of, or a child who regularly resides or formerly resided in the same household as the public safety professional;~~

~~(F) Has been determined to be unfit under 259-008-0070 to hold public safety professional certification;~~

~~(G) Intentionally falsified any information submitted on the application for instructor certification or on any documents submitted to the Board or the Department;~~

~~(H) Does not meet the applicable minimum standards, minimum training or the terms and conditions for instructors established under ORS 181A.410 as defined in OAR chapter 259 division 8; or~~

~~(I) Has been separated from employment or utilization as an instructor for misconduct that adversely impacts employer trust. For the purposes of this rule such misconduct includes, but is not limited to: instructor; or~~

~~(E) The person is a sex offender pursuant to ORS 163A.005(6).~~

(10) Denial and Revocation Processes.

~~(i) Conduct that is dishonest or deceptive;~~

~~(ii) Conduct that violates the employer's mission and values;~~

~~(iii) Conduct that violates the employer's policies and procedures or any State policies and procedures;~~

~~(iv) An act of insubordination;~~

~~(v) Harassment. Includes verbal or physical actions addressing sex, race, gender, religion or a person's characteristics that could be reasonably construed to demean, target or harm another person, group of persons or a person's employing public or private safety agency;~~

~~(vi) Discrimination. Includes conduct that could be reasonably construed to be unfair treatment of another person because of that person's actual or perceived race, color, national origin, religion, sex, age, marital status, sexual orientation, medical or physical condition or disability; or~~

~~(vii) Cheating. Actual, intended, or attempted deception or dishonest action in relation to the administration or documentation of any training, testing or certification.~~

~~(b) Upon receipt of information that a certified instructor or applicant has engaged in any of the conduct identified in subsection (9)(a), or upon receipt or discovery of information that would lead an objectively reasonable person to conclude that an instructor engaged in conduct that is mandatory grounds for denial or revocation, as defined in subsection (9)(a) of this rule, the Department will prepare a contested case notice and serve it on the individual.~~

~~(c) and serve a Notice of Intent on the instructor.~~

~~(b) Notice of Intent. The Department's denial or revocation of an instructor's certification will be administered in accordance with the applicable provisions of the Attorney General's Model Rules of Procedure, adopted under OAR 259-005-0015, for Notice of Intent, Request for Hearing and Contested Case Procedure.~~

~~(d) Scope. The Department's denial or revocation of an instructor's or applicant's certification for paragraph subsection (9)(a)(i) of this rule will only apply to the instructor certification.~~

~~(e) Notwithstanding subsection (9)(d) above, However, the application of this rule does not preclude the Department from denying, suspending or revoking any other certifications or licenses that may have been issued to the instructor or the applicant in accordance with the rules established for denial, suspension or revocation for the other certification or license.~~

~~(f) Any application for certification submitted by an individual whose instructor certification has been denied or revoked for a reason defined by subsection (9)(a) of Ineligibility. An instructor whose certification is revoked~~

pursuant to this rule is permanently ineligible for instructor certification. Any application for instructor certification submitted by an individual who has been denied or revoked pursuant to this rule will be denied in accordance with the applicable provisions of the Attorney General's Model Rules of Procedure, adopted under OAR 259-005-0015, for Notice of Intent, Request for Hearing and Contested Case Procedure.

Statutory/Other Authority: ORS 181A.410

Statutes/Other Implemented: ORS 181A.410, ORS 181A.590