

STATE BOARD OF EDUCATION – ADMINISTRATIVE RULE SUMMARY

Title/OAR #: OAR 581-021-0500

Date: 4-09-15

Staff/Office: Michael Elliott, School Finance, ODE; TJ Crockett, Pupil Transportation, ODE; Michael Wiltfong, Director School Finance and Pupil Transportation, ODE; Cindy Hunt, Superintendent’s Office, ODE

New Rule **Amend Existing Rule** **Repeal Rule**
Hearing Date: _____ **Hearings Officer Report Attached**
Prompted by: **State law changes** **Federal law changes** **Other**

Action Requested:
 First Reading/Second Reading Agenda **Adoption** **Adoption/Consent**

PROPOSED/AMENDED RULE SUMMARY:

Clarifies subject individual and limits timeline for honesty on misdemeanors

BACKGROUND: Oregon law requires all employees of a school district be fingerprinted. For employees who need a license (administrators, teachers, counselors, etc.), that fingerprinting happens with the Teacher Standards and Practices Commission. For all other school district employees, including contractors who work at the school, fingerprinting is handled by the Oregon Department of Education.

The purpose of these background checks is to ensure the people working with our children are qualified and are providing a safe environment for our children. To that end, individuals who have been convicted of specific crimes are forever prohibited from working at a school district. These crimes, called forever crimes, are listed in ORS 342.143. This is the same list used by the Teacher Standards and Practices Commission when reviewing the backgrounds of potential teachers and administrators.

Additionally, state law requires individuals to be honest about their background. If an individual has a conviction for any crime—even if the crime is not a forever crime—and fails to disclose that crime, the district has the option of not employing that individual.

OAR 581-021-0500 outlines procedures, rights, and responsibilities of the Department and individuals going through the background check. The current rules require the district to fingerprint all non-certified staff as stated above. If an individual’s computer criminal record (CCR) comes back with a crime listed in ORS 342.143, the the Department must notify the district that the district is required to terminate the employment of the individual.

If an individual stated they did not have any conviction on their record, yet their CCR shows a conviction, then the Department must notify the district of the dishonesty of the individual. The district has the option of whether to continue the employment of the individual. The Department must also provide a process whereby the individual can appeal the determination that they were dishonest.

The proposed changes to the OAR 581-021-0500 are both technical and substantive in nature. The technical fixes clear up the definition of “subject individual,” organize the definitions section, and clarify the definition of “newly hired.” “Subject individual” was clarified in two ways. First, the

definition was changed to exclude individuals who had worked for another Oregon school district where they had been fingerprinted and had not left the state in the interim. This brings the rule into compliance with state statute. Second, the definition was changed so that subject individuals are employees who are newly hired only and not current employees. "Newly hired" has been defined to be three (3) months or less between date of hire and date of fingerprinting.

The proposed substantive change is in the definition of "knowingly made a false statement." Currently the rule states if an individual fails to mention any conviction of a misdemeanor or felony, then they are considered to have knowingly made a false statement. This is regardless of when the conviction happened or whether they believed the conviction was no longer valid.

To remedy these results, the proposed rules changes the definition of "knowingly made a false statement." The new definition states a person has knowingly made a false statement if they fail to mention any felony, any misdemeanor that is a forever crime, or any misdemeanor that is less than twenty (20) years old. This new definition recognizes people who have had long and successful lives can reasonably forget small incidents back in their youth.

ISSUES/CONCERNS THAT SURFACED DURING RULE WORK:

The significant issues that arose during discussions regarding this rule were around changing the definition of "knowingly made a false statement." The issue was how to balance recognizing that individuals can forget small incidents that are very old against ensuring the safety of children in the care of these individuals and ensuring children in the care of the school districts are kept safe. To resolve this issue, the Department reviewed several recent contested case hearings to see where the balance would be best. The solution is the proposed one where all felonies and all misdemeanors listed under ORS 342.143 had to be stated, but misdemeanors more than 20 years old would not need to be stated.

A public hearing was held for this rule but no comments or testimony were received.

FISCAL IMPACT:

The fiscal impact will be minimal. The fingerprint forms will need to be changed to reflect the change in the "knowingly made a false statement" definition. That fiscal impact can be minimized, however, by replacing forms as they are used up in the process.

CHANGED SINCE LAST BOARD MEETING?

- N/A; first read—hasn't been before board
- No; same as last month
- Yes – As follows:

STAFF RECOMMENDATION:

- Adopt administrative rule as prepared this month
- Adopt next month administrative rule as prepared
- No recommendation at this time (rarely used)

581-021-0500

Fingerprinting of Subject Individuals in Positions Not Requiring Licensure as Teachers, Administrators, Personnel Specialists, School Nurses

(1) Definitions of terms shall be as follows:

(ga) "Applicant" means a subject individual for whom fingerprint cards and other required information have been submitted to the Oregon Department of Education for a criminal history check and review;

(b) "Direct, unsupervised contact with students" means contact with students that provides the person opportunity and probability for personal communication or touch when not under direct supervision;

(c) "Fee" means the total charges assessed the local school district's State School Fund by the Department of Education for processing each fingerprint card submitted. The fee amount and distribution shall be as follows:

(A) Oregon State Police (OSP) — \$28;

(B) Federal Bureau of Investigation (FBI) — \$16.50;

(C) Oregon Department of Education — \$14.50;

(D) TOTAL — \$59.

(a) "Subject individual" means:

(A) Any person newly hired by a school district and not requiring licensure under ORS 342.223;

(B) Any person newly hired as or by a contractor into a position having direct, unsupervised contact with students and not requiring licensure under ORS 342.223;

(C) Any person included above unless the current employer has on file evidence from a previous employer documenting a successfully completed Oregon and FBI criminal records check. The Oregon Department of Education or the Teacher Standards and Practices Commission verification of a previous check shall be acceptable only in the event the employer can demonstrate records are not otherwise available. Additional evidence that the employee has not resided outside the state between the two periods of time working in the district shall be maintained;

(D) A person who is a community college faculty member providing instruction:

(i) At the site of an early childhood education program or at a school site as part of an early childhood program; or

~~(ii) At a kindergarten through grade 12 school site during the regular school day; and~~

~~(E) A person who is an employee of a public charter school.~~

~~(b) "Direct, unsupervised contact with students" means contact with students that provides the person opportunity and probability for personal communication or touch when not under direct supervision;~~

~~(c) "Fee" means the total charges assessed the local school district's State School Fund by the Department of Education for processing each fingerprint card submitted. The fee amount and distribution shall be as follows:~~

~~(A) Oregon State Police (OSP) — \$28;~~

~~(B) Federal Bureau of Investigation (FBI) — \$16.50;~~

~~(C) Oregon Department of Education — \$14.50;~~

~~(D) TOTAL — \$59.~~

(d) "Information to be required" means all information requested by the Oregon Department of Education for processing the fingerprint application, including the following:

(A) One properly completed FBI fingerprint cards #USGPO 1990-262-201-2000; and

(B) A properly completed Department of Education form #581-2283-M.

(e) For purposes of criminal background checks pursuant to ORS 326.603 and 326.607, conducted in relation to individuals subject to such criminal background verification, the following definitions of "conviction" of a crime applies:

(A) Any adjudication in any criminal court of law, in this state or in any other jurisdiction, finding the individual committed a crime. A crime is an offense for which a sentence of imprisonment is authorized.

(B) Any adjudication in a juvenile proceeding, in this state or in any other jurisdiction, determining that the individual committed an offense, which if done by an adult, would constitute a crime listed in ORS 342.143.

(C) Any conduct which resulted in mandatory registration reporting as a sex offender in this state or any other jurisdiction. A later court order or other action relieving the individual of the sex offender registration/reporting requirement does not affect the status of the conduct as a conviction for purposes of this rule.

(D) Any plea of guilty, no contest or nolo contendere in connection with a crime, in this state or in any other jurisdiction.

(E) A conviction exists for purposes of this rule, regardless of whether a dismissal was later entered into the record in connection with a diversion or on any sort of deferred adjudication or delayed entry of judgment.

(F) A conviction exists for purposes of this rule even if a crime was expunged or removed from the record of the individual under the laws of another jurisdiction if the crime would be ineligible under ORS 137.225 for expunction or removal from the record if the conviction had occurred in Oregon. A conviction does not exist where an Oregon court has expunged or otherwise removed a conviction from the record of an individual.

(G) A conviction does not exist, except as noted above, only where there was a judicial adjudication that the individual did not commit the offense in question, or when a conviction, adjudication or plea is overturned by an appellate court of record and no later conviction, adjudication or plea indicating the individual committed the offense in question is on the record.

~~(fe)~~ "Knowingly made a false statement" means that a subject individual has failed to disclose ~~a crime~~ on the Department of Education form #581-2283-M as part of the criminal background check process any of the following:

(A) A felony;

(B)- Any misdemeanor conviction less than twenty years from date of conviction;

(C) Any misdemeanor that is listed in ORS 342.143 or its substantial equivalent in another jurisdiction.

~~(g) "Applicant" means a subject individual for whom fingerprint cards and other required information have been submitted to the Oregon Department of Education for a criminal history check and review;~~

~~(hf)~~ "Newly hired" means the employment of a person; a person employed for three months or less after application or request for a position ~~without regard to that person's current or previous employer; . and~~

~~(g+)~~ "School district" means:

(A) A taxing district providing public elementary or secondary education, or any combination thereof, within the state;

(B) An education service district;

(C) The Oregon School for the Deaf;

(D) An educational program under the Youth Corrections Education Program; and

(E) A public charter school.

(h) "Subject individual" means:

(A) Any person newly hired by a school district and not requiring licensure under ORS 342.223;

(B) Any person employed as or by a contractor into a position having direct, unsupervised contact with students and not requiring licensure under ORS 342.223;

(C) Subject individual excludes a newly hired employee so long as the school district has on file evidence that the newly hired employee previously successfully completed Oregon and FBI criminal records check for a previous employer that was a school district and the employer has additional evidence that the employee has not resided outside the state between the two periods of employment;

(D) A person who is a community college faculty member providing instruction:

(i) At the site of an early childhood education program or at a school site as part of an early childhood program; or

(ii) At a kindergarten through grade 12 school site during the regular school day; and

(E) A person who is an employee of a public charter school and not requiring licensure under ORS 342.223.

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(2) School districts shall adopt and implement local board policy related to fingerprint collection and processing which shall:

(a) Specify that subject individuals as defined by this rule are subject to fingerprinting and criminal record checks required by law;

(b) Specify which contractors will be considered to have unsupervised access to children and are subject to fingerprinting and criminal records checks required by law;

(c) Specify the format used to notify subject individuals that fingerprinting and criminal record checks are required by law and that any action resulting from those checks may be appealed as a contested case;

(d) Provide a clear statement that the district will terminate the employee, if it receives notification by the Superintendent of Public Instruction that the person has been convicted, of the crimes prohibiting employment that are listed in section (9) of this rule;

(e) Provide a clear statement that the district may terminate the employee, if it receives notification by the Superintendent of Public Instruction that the person has knowingly made a false statement as to the conviction of any crime;

(f) Specify that subject individuals may begin to carry out terms of a contract or employment on a probationary basis pending the return of criminal record checks by the FBI;

(g) Identify that employment shall be offered prior to collecting fingerprint cards for submission to the Department of Education and that fees may be collected from the applicant. The applicant may request that the amount of the fee be withheld from the amount otherwise due the individual, and the school district shall withhold the amount only upon the request of the subject individual; and

(h) Identify a procedure that ensures the integrity of fingerprint collection and will prevent any possible compromise of the process.

(3) Fingerprints may be collected by one of the following:

(a) Employing school district staff;

(b) Contracted agent of employing school district;

(c) Local or state law enforcement agency.

(4) School districts shall send to the Department of Education for purposes of a criminal records check any information, including fingerprints for each subject individual defined in this rule immediately following offer and acceptance of employment or contract.

(5) The Department of Education shall request criminal information from the Department of State Police in the manner prescribed by law and may charge the school district a fee not to exceed the actual cost of acquiring and furnishing the information.

(6) The Oregon Department of Education shall review the criminal records of subject individual upon the district's submission of the required FBI and state forms and the State Superintendent of Public Instruction or designee shall issue a statement of criminal history status and related impact on employment or contract qualification. The Superintendent of Public Instruction or designee shall also notify the school district if the subject individual has knowingly made a false statement as to conviction of a crime.

(7) The Oregon Department of Education shall not provide copies of criminal records to anyone except as provided by law. The subject individual may inspect his or her personal criminal records under the supervision of properly certified LEDS (Law Enforcement Data Systems) personnel at the Department of Education.

(8) Subject individuals who refuse to consent to the criminal records check or refuse to be fingerprinted shall be terminated from employment or contract status by the district.

(9) Subject individuals who have been convicted of any of the crimes listed in ORS 342.143, or the substantial equivalent of any of those crimes if the conviction occurred in another jurisdiction

or in Oregon under a different statutory name or number, shall be refused continued employment or have employment terminated upon notification from the Superintendent of Public Instruction.

(10) Subject individuals who have been convicted of any of the crimes listed in ORS 161.405 or an attempt to commit any of the crimes listed in section (9) of this rule shall be refused continued employment or have employment terminated upon notification from the Superintendent of Public Instruction.

(11) A school district may terminate the employment of any subject individuals who knowingly makes a false statement as to the conviction of a crime upon notification of the false statement by the Superintendent of Public Instruction.

(12) Evaluations of crimes shall be based on Oregon laws in effect at the time of conviction, regardless of the jurisdiction in which the conviction occurred.

(13) Prior to making a determination that results in a notice and opportunity for hearing, the Superintendent of Public Instruction may cause an investigation to be undertaken. Subject individuals and districts shall cooperate with the investigation and may be required to furnish oral or written statements by affidavit or under oath. If the Superintendent of Public Instruction determines through investigation that a violation of this rule has not occurred, a written decision explaining the basis for the decision will be provided to the subject individual.

(14) Applicants may appeal a determination that prevents their employment or eligibility to contract with a school district as a contested case under ORS 183.413 to 183.470 to the Oregon Superintendent of Public Instruction.

(15) Only cards and forms approved by the Department of Education will be accepted. The Department of Education will return any incomplete or incorrectly completed fingerprint cards and associated forms without taking any other action.

(16) The Department of Education shall maintain a record of all properly submitted fingerprint cards. The record shall include at least the following:

- (a) Card sequence number;
- (b) District submitting the cards;
- (c) Date cards and Department form received;
- (d) Date completed card sent to Oregon State Police;
- (e) Date denial or probationary approval sent to district;
- (f) Date FBI card returned to Department; and
- (g) Date denial or final approval sent to district.

Stat. Auth.: ORS 326.603

Stats. Implemented: ORS 326.603

Hist.: ODE 25-2008, f. & cert. ef. 9-26-08; ODE 12-2009, f. & cert. ef. 12-10-09; ODE 18-2009, f. & cert. ef. 12-10-09; ODE 2-2012, f. 2-1-12, cert. ef. 2-3-12; ODE 25-2012(Temp), f. 9-13-12, cert. ef. 9-17-12 thru 3-15-13; ODE 5-2013, f. & cert. ef. 1-17-13; ODE 8-2014, f. & cert. ef. 2-19-14