

STATE BOARD OF EDUCATION – ADMINISTRATIVE RULE SUMMARY

Title/OAR #: Fingerprinting in Private Schools / OAR 581-045-0586

Date: 10-31-2014

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 **Adoption** **Adoption/Consent Agenda**

PROPOSED/AMENDED RULE SUMMARY:

Clarifies subject individual and limits timeline for honesty on misdemeanors

BACKGROUND: Oregon law permits private schools to submit fingerprints of their employees to the Oregon Department of Education (Department) for a criminal background check. 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 581-045-0586 outlines procedures, rights and responsibilities of the Department and individuals going through the background check. If a person has a conviction of a forever crime or was dishonest on their criminal background, the Department is required to notify the private school. The private school may choose whether to continue to employ the individual or not. The Department is required to provide an appeals process if a person was found ot have been dishonest about their criminal background.

The proposed changes to the rule 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 to mean 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 and ensuring that 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.

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:

581-045-0586

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

(1) Definitions of terms shall be as follows:

(fa) "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;

(eb) "Convictions of crimes prohibiting employment, contract or assignment by a contractor" means, notwithstanding any other statutes or Oregon administrative rule, conviction of a crime listed in ORS 342.143, or making a false statement as to the conviction of a crime;

(ec) "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;

(ed) "Fee" means the total charges assessed. Fees shall be paid to the Oregon Department of Education with submission of fingerprint cards and associated form. 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.

(ee) "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.

(f) "Knowingly made a false statement" means that a subject individual has failed to disclose 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) "Newly hired" means 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.

(h) "Private School" means a school that:

(A) Offers education in prekindergarten, kindergarten or grades 1 through 12, or any combination of those grade levels; and

(B) Provides instructional programs that are not limited solely to dancing, drama, music, religious or athletic instruction.

(a) "Subject individual" means:

(A) A person employed newly hired by a Private School in a position not requiring licensure under ORS 342.223; and

(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.

~~(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. Fees shall be paid to the Oregon Department of Education with submission of fingerprint cards and associated form. 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) "Convictions of crimes prohibiting employment, contract or assignment by a contractor" means, notwithstanding any other statutes or Oregon administrative rule, conviction of a crime listed in ORS 342.143, or making a false statement as to the conviction of a crime;~~

~~(f) "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;~~

~~(g) "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.~~

~~(h) "Private School" means a school that:~~

~~(A) Offers education in prekindergarten, kindergarten or grades 1 through 12, or any combination of those grade levels; and~~

~~(B) Provides instructional programs that are not limited solely to dancing, drama, music, religious or athletic instruction.~~

(2) A private school may request that Department of Education conduct a criminal records check of a subject individual. Upon receipt of the information, the Department shall request criminal information from the Department of State Police in the manner prescribed by law and may charge the private school a fee not to exceed the actual cost of acquiring and furnishing the information.

(3) The Oregon Department of Education shall review the criminal records of subject individual upon the private school'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. The Superintendent of Public Instruction or designee shall notify the private school if the subject individual has knowingly made a false statement as to conviction of a crime. A private school may choose to employ or contract with a person who has knowingly made a false statement as to conviction of a crime.

(4) 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 LEADS (Law Enforcement Data Systems) personnel at the Department of Education.

(5) The Superintendent of Public Instruction or designee shall notify the private school if the subject individual has been convicted of a crime 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. A private school may choose to employ or contract with a person who has been convicted of a crime listed in ORS 342.143 or the substantial equivalent.

(6) 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. The Department of Education will return fingerprint cards and associated forms without appropriate fees without taking any other action.

(7) 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) Name of Private School submitting the cards;

(c) Date cards and Department form received;

(d) Date incomplete card returned to the school (only if applicable);

(e) Date completed card sent to Oregon State Police;

(f) Date private school was notified of state police record or lack of record;

(g) Date FBI card returned to Department;

(h) Date private school was notified of FBI record or lack of record.

Stat. Auth.: ORS 326.603

Stats. Implemented: ORS 326.603

Hist.: EB 16-1997, f. & cert. ef. 12-29-97; ODE 29-1999, f. 12-13-99, cert. ef. 12-14-99; ODE 13-2003(Temp), f. & cert. ef. 7-1-03 thru 12-15-03; Administrative correction 8-2-04; ODE 9-2006, f. & cert. ef. 2-21-06; Renumbered from 581-022-1732, ODE 25-2008, f. & cert. ef. 9-26-08; ODE 27-2009, f. & cert. ef. 12-10-09; ODE 7-2012, f. 2-1-12, cert. ef. 2-3-12; ODE 28-2012(Temp), f. 9-13-12, cert. ef. 9-17-12 thru 3-15-13; ODE 4-2013, f. & cert. ef. 1-17-13; ODE 11-2014, f. & cert. ef. 2-19-14