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CHAPTER 584
TEACHER STANDARDS AND PRACTICES COMMISSION

FILING CAPTION: Aligns rules to implement 2019 Senate Bill 155 on Educator Sexual Conduct.

EFFECTIVE DATE: 01/02/2020

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RULES:
584-020-0000, 584-020-0005, 584-020-0035, 584-020-0040, 584-050-0016, 584-050-0018, 584-050-0021

AMEND: 584-020-0000

RULE TITLE: Application of Rules

NOTICE FILED DATE: 11/12/2019

RULE SUMMARY: Amends the rule to match the new statutory deadline for sexual conduct investigations.

RULE TEXT:
(1) Oregon Administrative Rules 584-020-0005 through 584-020-0045 were adopted by the Teacher Standards and Practices Commission in accordance with Oregon Revised Statute 342.175(5).
(2) OAR 584-020-0005 through 584-020-0045 may be used as criteria by the Teacher Standards and Practices Commission in matters pertaining to the revocation or suspension of licenses or registrations issued by the Commission under ORS 342.120 to 342.200, or the discipline of any license or registration holder or any person who has held a license or registration at any time within five years prior to issuance of the notice of charges under ORS 342.176.
(3) The Commission determines whether an educator's performance is ethical or competent in light of all the facts and circumstances surrounding the educator's performance as a whole.
(4) The Commission directs the Executive Director to promptly undertake an investigation upon receipt of complaints, reports or information that may constitute grounds for:
(a) Refusal to issue a license or registration, as provided under ORS 342.143;
(b) Suspension or revocation of a license or registration, discipline of a person holding a license or registration, or suspension or revocation of the right to apply for a license or registration, as provided under ORS 342.175; or
(c) Discipline for failure to provide appropriate notice prior to resignation, as provided under ORS 342.553.
(5) Notwithstanding subsection (4), the Executive Director may delay investigating an educator against whom a complaint has been filed under ORS 342.176 if:
(a) The investigation report, public complaint form, or other information indicates the complaint is filed:
(A) By a member of the public; and
(B) Against an educator who is employed in a public school district; and
(C) Does not allege sexual conduct as defined in ORS 339.370(11), and

(D) Prior to the Commission receiving verification that attempts were made to resolve the complaint through the complaint process of the employing school district. After the receipt of sufficient verification, the Executive Director must undertake an investigation pursuant to subsection (4).
(b) Except in cases alleging sexual conduct as defined in ORS 339.370(11), the investigation report or other information indicates that disciplinary action against the educator is pending at the local district level; or
(c) Criminal charges are pending or are likely to be filed against the educator.
(6) In considering whether to delay an investigation or defer recommending action to charge an educator, the Executive Director will consider all relevant circumstances including the nature and seriousness of the allegations and whether the educator is currently employed in the public schools.
(7) The Executive Director will regularly inform the Commission of the status of any complaints, reports or information of misconduct on which the Executive Director has deferred action.
(8) When the Teacher Standards and Practices Commission receives a report of suspected sexual conduct, as defined in ORS 339.370(11), that may have been committed by a licensed school employee, the commission shall immediately initiate an investigation.
(a) An investigation and final determination related to a report received under this subsection shall be completed and notification of the final determination shall be made to the education provider within 90 calendar days following the date on which the report was filed with the commission.
(b) The prescribed timeline for an investigation and final determination may be extended if, for good cause, a longer period of time is necessary.

STATUTORY/OTHER AUTHORITY: ORS 342

STATUTES/OTHER IMPLEMENTED: ORS 342.175 - 342.190, Chapter 618, Oregon Laws 2019

AMEND: 584-020-0005

RULE TITLE: Definitions

NOTICE FILED DATE: 11/12/2019

RULE SUMMARY: Amends rule to add new definitions for “Abuse,” “Chief Administrator,” and “Good Cause,” while revising the existing definitions of Sexual Conduct and Student to match the new statute.

RULE TEXT:
The following definitions apply to Oregon Administrative Rules 584-020-0000 through 584-020-0045 unless otherwise indicated by context:
(1) “Abuse:” Has the meaning given that term in ORS 419B.005.
(2) "Administrator:" Any educator who holds a valid Oregon Administrative License or registration and who works in a position requiring an administrative license pursuant to OAR 584-005-0005(1).
(3) “Chief Administrator:” The executive officer of a public school district, educational service district, or public charter school, such as a superintendent, principal, or other similar title, that has the authority and responsibility for the general supervision of the operation of the education provider.
(4) "Competent:" Discharging required duties as set forth in these rules.
(5) "Educator:" Any licensed or registered, or certified person who is authorized to engage in an instructional program including teaching, counseling, school psychology, school social work, administering, and supervising.
(6) "Ethical:" Conforming to the professional standards of conduct set forth in these rules.
(7) "Good Cause:" Exists when circumstances beyond the reasonable control of the Commission delay the completion of a TSPC investigation. Circumstances include, but are not limited to: criminal or civil court proceedings, law enforcement criminal investigations, and failure of an educator or school district to comply with a lawfully issued TSPC subpoena.
(8) "Sexual Conduct:" Any conduct defined by ORS 339.370(11).
(9) "Sexual harassment:" Any unwelcome conduct with an individual which includes but is not limited to sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:
(a) Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
(b) Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
(c) Such conduct unreasonably interferes with an individual's work performance or creates an intimidating, hostile, or offensive working environment.
(10) "Teacher:" Any person who holds a teacher's license as provided in ORS 342.125.
(11) "Student:" Is an individual as defined in ORS 339.370(12).

STATUTORY/OTHER AUTHORITY: ORS 342

STATUTES/OTHER IMPLEMENTED: ORS 342.120, 342.175 - 342.190

AMEND: 584-020-0035

RULE TITLE: The Ethical Educator

NOTICE FILED DATE: 11/12/2019

RULE SUMMARY: Amends rule to establish the ethical responsibility of educators to cooperate with a TSPC investigation.

RULE TEXT:

The ethical educator is a person who accepts the requirements of membership in the teaching profession and acts at all times in ethical ways. In so doing the ethical educator considers the needs of the students, the district, and the profession.

(1) The ethical educator, in fulfilling obligations to the student, will:

(a) Keep the confidence entrusted in the profession as it relates to confidential information concerning a student and the student's family;

(b) Refrain from exploiting professional relationships with any student for personal gain, or in support of persons or issues; and

(c) Maintain an appropriate professional student-educator relationship by:

(A) Not demonstrating or expressing professionally inappropriate interest in a student's personal life;

(B) Not accepting or giving or exchanging romantic or overly personal gifts or notes with a student;

(C) Reporting to the educator's supervisor if the educator has reason to believe a student is or may be becoming romantically attached to the educator; and

(D) Honoring appropriate adult boundaries with students in conduct and conversations at all times.

(2) The ethical educator, in fulfilling obligations to the district, will:

(a) Apply for, accept, offer, or assign a position of responsibility only on the basis of professional qualifications, and will adhere to the conditions of a contract or the terms of the appointment;

(b) Conduct professional business, including grievances, through established lawful and reasonable procedures;

(c) Strive for continued improvement and professional growth;

(d) Accept no gratuities or gifts of significance that could influence judgment in the exercise of professional duties; and

(e) Not use the district's or school's name, property, or resources for noneducational benefit or purposes without approval of the educator's supervisor or the appointing authority.

(3) The ethical educator, in fulfilling obligations to the profession, will:

(a) Maintain the dignity of the profession by respecting and obeying the law, exemplifying personal integrity and honesty;

(b) Extend equal treatment to all members of the profession in the exercise of their professional rights and responsibilities;

(c) Respond to requests for evaluation of colleagues and keep such information confidential as appropriate; and

(d) Respond to requests from a Commission representative for information, furnish documents to the Commission, and participate in interviews with a Commission representative relating to a Commission investigation, except subject to the exercise of any legal right or privilege.

STATUTORY/OTHER AUTHORITY: ORS 342

STATUTES/OTHER IMPLEMENTED: ORS 342.143, 342.175 - 342.190

AMEND: 584-020-0040

RULE TITLE: Grounds for Disciplinary Action

NOTICE FILED DATE: 11/12/2019

RULE SUMMARY: Amends rule to add violations under Gross Neglect of Duty.

RULE TEXT:

(1) The Commission will deny, revoke or deny the right to apply for a license or charter school registration to any applicant or educator who, has been convicted of any of the crimes listed in ORS 342.143, or the substantial equivalent of any of those crimes if convicted in another jurisdiction or convicted of attempt to commit such crimes as defined in ORS 161.405. Evaluation of substantially equivalent crimes or attempts to commit crimes will be based on Oregon laws in effect at the time of the conviction, regardless of the jurisdiction in which the conviction occurred.

(2) An applicant fails to meet the requirement of ORS 342.143 "good moral character" if the applicant engages in gross neglect of duty, gross unfitness, in violation of section (4) of this rule or other acts which are in violation of sections (1) or (3) of this rule.

(3) The Commission may initiate proceedings to suspend or revoke the license or registration of an educator under ORS 342.175 or deny a license or registration to an applicant under 342.143 who:

(a) Has been convicted of a crime not listed in section (1) of this rule, if the Commission finds that the nature of the act or acts constituting the crime for which the educator was convicted render the educator unfit to hold a license;

(b) Is charged with knowingly making any false statement in the application for a license or registration;

(c) Is charged with gross neglect of duty;

(d) Is charged with gross unfitness; or

(e) Is convicted of a crime involving the illegal use, sale or possession of controlled substances.

(4) Gross neglect of duty is any serious and material inattention to or breach of professional responsibilities. The following may be admissible as evidence of gross neglect of duty. Consideration may include but is not limited to:

(a) Substantial unauthorized use of: school name or financial credit; school materials or equipment for personal purposes; or school personnel to provide personal services unrelated to school business;

(b) Substantial unauthorized use of employment time or school resources for private purposes;

(c) Falsification of any document or knowing misrepresentation directly related to licensure, employment, or professional duties;

(d) Unreasonable physical force against students, fellow employees, or visitors to the school, except as permitted under ORS 339.250;

(e) Violent or destructive behavior on school premises or at a school-sponsored activity;

(f) Any sexual conduct with a student;

(g) Appearing on duty or at any district-sponsored activity while under the influence of alcohol, marijuana, or any controlled substance;

(h) Unauthorized disclosure of student records information received in confidence by the educator under ORS 40.245, (See subsection (6), below);

(i) Assigning an educator in violation of licensure requirements;

(j) Resignation from a contract in violation of ORS 342.553;

(k) Violation of any order or rule of the Commission;

(l) Sexual harassment;

(m) Failure of a chief administrator to report a violation of Commission standards as required by OAR 584-020-0041;

(n) Substantial deviation from professional standards of competency set forth in OAR 584-020-0010 through 584-020-0030;

(o) Substantial deviation from professional standards of ethics set forth in OAR 584-020-0035;

(p) Subject to the exercise of any legal right or privilege, failure or refusal by an educator under investigation to respond to requests for information, to furnish documents or to participate in interviews with a Commission representative

relating to a Commission investigation;
(q) Unauthorized use of school electronic equipment to receive, store, produce or send sexually explicit materials;
(r) Working without a license;
(s) Failing to report child abuse pursuant to ORS 419B.010;
(t) Failure of a chief administrator to disclose all required background check information regarding an educator to a requesting education provider, as required by ORS 339.378 and ORS 339.374;
(u) Failure of a chief administrator to comply with a lawfully issued subpoena, including subpoenas issued for investigation of sexual conduct or abuse, as required in ORS 339.388;
(v) Abuse of a student; or
(w) Failure of an educator to cooperate with an investigation conducted by the Teacher Standards and Practices Commission under ORS 339.370 to ORS 339.400 and ORS 342.176, except subject to the exercise of any legal right or privilege.
(5) Gross unfitness is any conduct which renders an educator unqualified to perform his or her professional responsibilities. Conduct constituting gross unfitness may include conduct occurring outside of school hours or off school premises when such conduct bears a demonstrable relationship to the educator's ability to fulfill professional responsibilities effectively. The following may be admissible as evidence of gross unfitness. Consideration may include but is not limited to:
(a) Revocation, suspension or denial of a license by another state for reasons and through procedures that are the same as, or substantially equivalent to, those permitting similar action in Oregon;
(b) Fraud or misrepresentation;
(c) Conviction of violating any federal, state, or local law. A conviction includes any final judgment of conviction by a court whether as the result of guilty plea, no contest plea or any other means.
(d) Commission of an act listed in OAR 584-020-0040(1);
(e) Admission of or engaging in acts constituting criminal conduct, even in the absence of a conviction; or
(f) Violation of a term of probation imposed by a court.
(6) In any proceeding brought under subsection (4)(h) of this rule, the Commission may not impose a sanction more severe than a suspension of the educator's license.

STATUTORY/OTHER AUTHORITY: ORS 342

STATUTES/OTHER IMPLEMENTED: ORS 342.143, 342.175 - 342.190

AMEND: 584-050-0016

RULE TITLE: Reinstatement of Suspended License, Registration, or Right to Apply for a License or Registration

NOTICE FILED DATE: 11/12/2019

RULE SUMMARY: Amends rule to remove the notarization requirement from affidavits and written declarations when reinstating a Suspended License.

RULE TEXT:

(1) Six weeks prior to the expiration of the period of suspension, an educator may apply to have a suspended license or registration reinstated. However, no reinstatement will be effective until expiration of the suspension period.

(2) An application for reinstatement of a suspended license, registration or suspension of right to apply for a license or registration must include:

(a) The online form;

(b) A fee pursuant to OAR 584-200-0050; and

(c) An affidavit or written declaration from the applicant, together with requisite and additional documentation sufficient to establish convincingly that all terms and conditions of the suspension have been met satisfactorily and fulfilled.

(3) If the Executive Director is satisfied that the terms and conditions have been met successfully, the Executive Director will reinstate the suspended license, registration, or right to apply for a license or registration.

(4) If the Executive Director is not satisfied the terms and conditions have been met, the Director will make a recommendation to the Commission in executive session to deny reinstatement of the license.

(5) Before taking action on the Executive Director's recommendation, the Commission may schedule an informal meeting between the educator and the Commission in executive session. The decision to schedule or not to schedule an informal meeting is entirely at the Commission's discretion.

(6) If the Commission agrees with the Executive Director's recommendation to deny the reinstatement, the Exceutive Director will mail a copy of the recommendation of denial to the educator and notice of right to a hearing under ORS 342.175 and OAR 584-019-0002.

STATUTORY/OTHER AUTHORITY: ORS 342

STATUTES/OTHER IMPLEMENTED: ORS 342.120 - 342.430, 342.455 - 342.495, 342.553

AMEND: 584-050-0018

RULE TITLE: Reinstatement of Revoked License, Registration, or Right to Apply for a License, Certificate or Registration

NOTICE FILED DATE: 11/12/2019

RULE SUMMARY: Amends rule to remove the notarization requirement from affidavits and written declarations when reinstating a Revoked License.

RULE TEXT:

(1) Any revocation for conviction for crimes listed in ORS 342.143(3) is permanent and the license, certificate or registration is not eligible for reinstatement. All other revocations of a license, certificate or registration or right to apply for a license, certificate or registration are eligible for application for reinstatement.

(2) A first application for reinstatement of a license, certificate or registration revoked for any reason other than those cited in ORS 342.143(3) may be submitted at any time after the period of revocation has expired.

(3) The burden will be on the educator to establish fitness for reinstatement.

(4) The application for reinstatement must include:

(a) The online form;

(b) A fee pursuant to OAR 584-200-0050;

(c) A personal affidavit or written declaration attesting that:

(A) All the conditions of the order for revocation have been met; and

(B) That the educator has not violated any laws of the states, including ethical violations related to licensure, certificate or registration; and

(d) Any additional documentation, sufficient to establish convincingly that the educator possesses all of the qualifications required for first licensure or reinstatement of a license, certificate or registration. Letters of recommendations from educator colleagues are insufficient alone to establish fitness for licensure following a revocation. The educator must be clear regarding what proactive steps have been taken to ensure to the Commission that the conduct that resulted in the revocation is highly unlikely to occur again.

(5) Following review of the application for reinstatement pursuant to this section, the Executive Director may make a recommendation to the Commission regarding whether to approve or deny the application.

(6) The Executive Director or the Commission may require the educator to appear before the Commission in executive session prior to consideration of the application for reinstatement.

(a) It is entirely at the Commission's discretion whether an educator may meet with the Commission under these circumstances.

(b) This subsection does not grant a right to any applicant to appear before the Commission prior to the Commission's consideration of the application for reinstatement following a revocation.

(7) Consideration of the application for reinstatement will take place in executive session. The decision whether to reinstate a revoked license, certificate, registration, or right to apply for a license, certificate, or registration will take place in public session.

(8) If the Commission denies the application for reinstatement, or the right to apply for a license, certificate, or registration, the Executive Director will mail a copy of the recommendation of denial to the educator and a notice of right to a hearing under ORS 342.175.

(9) The Commission's denial of reinstatement pursuant to this rule is considered a revocation of the applicant's right to apply and is effective for one full year from the date of the Commission's final order of denial. The applicant may apply for reinstatement of the right to apply for licensure, certification or registration after one year from the date of the Commission's final order of denial.

STATUTORY/OTHER AUTHORITY: ORS Ch. 342

STATUTES/OTHER IMPLEMENTED: ORS Ch. 342.120-342.430, 342.455-342.495, 342.553

AMEND: 584-050-0021

RULE TITLE: Reinstatement of Right to Apply for a License Following Revocation of a Provisional License

NOTICE FILED DATE: 11/12/2019

RULE SUMMARY: Amends rule to remove the notarization requirement from affidavits and written declarations when reinstating a Revoked Provisional License.

RULE TEXT:

(1) Educators who are only eligible for a provisional license upon application for reinstatement, or who have had a provisional license revoked and are applying for a right to apply for a non-provisional license, will be applying for reinstatement of the "right to apply" for any TSPC license whether or not the revocation order expressly stated the Commission revoked the educator's "right to apply".

(2) Non-Provisional Licenses or certificates include any Pre-1965 Five-Year; Basic; Standard; Initial; Continuing; Reciprocal; Preliminary; Professional; Substitute; and Teacher Leader licenses or certificates.

(3) Provisional Licenses, certificates or registrations include but are not limited to any: Emergency; Limited; Restricted Transitional; Charter School Registry; International Visiting Teaching; NCLB Alternative Route; Restricted Career and Technical Education License; Transitional; and Restricted Substitute licenses.

(4) Application for reinstatement of the right to apply for any license, certificate, or registration revoked for any reason other than those cited in ORS 342.143(3) may be submitted at any time after the period of revocation has expired.

(5) The burden will be on the educator to establish fitness for reinstatement.

(6) The application for reinstatement must include:

(a) The online form;

(b) A fee pursuant to OAR 584-200-0050;

(c) A personal affidavit or written declaration attesting that:

(A) All the conditions of the order for revocation have been met; and

(B) That the educator has not violated any laws of the states, including ethical violations related to licensure, certificate or registration;

(d) Any additional documentation, sufficient to establish convincingly that the educator possesses all of the qualifications required for first licensure or reinstatement of a license, certificate or registration. Letters of recommendations from educator colleagues are insufficient alone to establish fitness for licensure following a revocation. The educator must be clear regarding what proactive steps have been taken to ensure to the Commission that the conduct that resulted in the revocation is highly unlikely to occur again.

(7) Following review of the application for reinstatement pursuant to this section, the Executive Director may make a recommendation to the Commission regarding whether to approve or deny the application.

(8) All decisions to reinstate a revoked right to apply for a license, certificate, or registration under this rule or will be made by the Commission in executive session.

(9) The Executive Director or the Commission may require the educator to appear before the Commission in executive session prior to consideration of the application for reinstatement.

(a) It is entirely at the Commission's discretion whether an educator may meet with the Commission under these circumstances.

(b) This subsection does not grant a right to any applicant to appear before the Commission prior to the Commission's consideration of the application for reinstatement following a revocation.

(10) If the Commission denies the application for reinstatement, or the right to apply for a license, certificate, or registration, the Executive Director will mail a copy of the recommendation of denial to the educator and a notice of right to a hearing under ORS 342.175.

STATUTORY/OTHER AUTHORITY: ORS Ch. 342

STATUTES/OTHER IMPLEMENTED: ORS Ch. 342.120-342.430, 342.455 - 342.495, 342.553