

Secretary of State  
Certificate and Order for Filing  
**PERMANENT ADMINISTRATIVE RULES**

I certify that the attached copies\* are true, full and correct copies of the PERMANENT Rule(s) adopted on [12/4/09] by the  
State Board of Education  
Date prior to or same as filing date  
58100

Agency and Division Administrative Rules Chapter Number

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to become effective [December 10, 2009]. Rulemaking Notice was published in the [ November, 2009 ] Oregon Bulletin.\*\*  
Date upon filing or later Month and Year

**RULE CAPTION**

Modifies rule relating to public school employee criminal background checks.

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

List each rule number separately (000-000-0000)

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing.

**ADOPT:**

**AMEND:**  
581-021-0500

**REPEAL:**

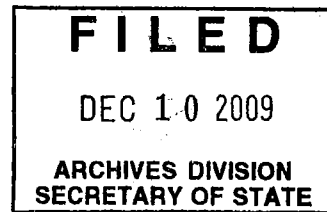
**RENUMBER:**

**AMEND & RENUMBER:**

Stat. Auth: ORS 326.603

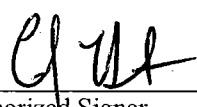
Other Auth.:

Stats. Implemented: ORS 326.603



**RULE SUMMARY**

The 2009 legislature enacted SB 46. The rule amendments implement this bill. The rules require school districts, education services districts, the Oregon School for the Deaf, the Youth Corrections Education Program and public charter schools to request criminal background checks of all nonlicensed school employees. The rule amendments allow an educational entity to hire someone who has knowingly made a false statement as to a crime.

  
Authorized Signer Printed name Date  
Cindy Hunt 12/8/09  
\*With this original, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules. \*\*The Oregon Bulletin is published the 1st of each month and updates rules found in the OAR Compilation. For publication in Bulletin, rule and notice filings must be submitted by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a weekend or legal holiday, when filings are accepted until 5:00 pm on the preceding workday. ARC 930-2005

ODE 18-2009

## **Final Rule**

**Updated by CH on 11/1/09**

**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:

(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 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) -- \$24;

(C) Oregon Department of Education -- \$10;

(D) TOTAL -- \$62.

(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 effect 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.

(f) "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.

(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;

(h) "Newly hired" means the employment of a person after application or request for a position without regard to that person's current or previous employer; and

(i) "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.

(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. The crimes listed in ORS 342.143 are:

(a) ORS 163.095 -- Aggravated Murder;

(b) ORS 163.115 -- Murder;

- (c) ORS 163.185 -- Assault in the First Degree;
- (d) ORS 163.235 -- Kidnapping in the First Degree;
- (e) ORS 163.355 -- Rape in the Third Degree;
- (f) ORS 163.365 -- Rape in the Second Degree;
- (g) ORS 163.375 -- Rape in the First Degree;
- (h) ORS 163.385 -- Sodomy in the Third Degree;
- (i) ORS 163.395 -- Sodomy in the Second Degree;
- (j) ORS 163.405 -- Sodomy in the First Degree;
- (k) ORS 163.408 -- Unlawful Sexual Penetration in the Second Degree;
- (l) ORS 163.411 -- Unlawful Sexual Penetration in the First Degree;
- (m) ORS 163.415 -- Sexual Abuse in the Third Degree;
- (n) ORS 163.425 -- Sexual Abuse in the Second Degree;
- (o) ORS 163.427 -- Sexual Abuse in the First Degree;
- (p) ORS 163.432 -- Online sexual corruption of a child in the second degree;
- (q) ORS 163.433 -- Online sexual corruption of a child in the first degree;
- (r) ORS 163.435 -- Contributing to the Sexual Delinquency of a Minor;
- (s) ORS 163.445 -- Sexual Misconduct);
- ORS 163.465 -- Public Indecency;
- (u) ORS 163.515 - Bigamy;
- (v) ORS 163.525 -- Incest;
- (w) ORS 163.547 -- Child Neglect in the First Degree;
- (x) ORS 163.575 -- Endangering the Welfare of a Minor;
- (y) ORS 163.670 -- Using Child in Display of Sexually Explicit Conduct;

- (z) ORS 163.675 (1985 Replacement Part) -- Sale of Exhibition of Visual Reproduction of Sexual Conduct by Child;
- (aa) ORS 163.680 (1993 Edition) -- Paying for Viewing Sexual Conduct Involving a Child;
- (bb) ORS 163.684 — Encouraging Child Sex Abuse in the First Degree;
- (cc) ORS 163.686 -- Encouraging Child Sex Abuse in the Second Degree;
- (dd) ORS 163.687 -- Encouraging Child Sex Abuse in the Third Degree;
- (ee) ORS 163.688 -- Possession of Materials Depicting Sexually Explicit Conduct of a Child in the First Degree;
- (ff) ORS 163.689 -- Possession of Materials Depicting Sexually Explicit Conduct of a Child in the Second Degree;
- (gg) ORS 164.325 -- Arson in the First Degree;
- (hh) ORS 164.415 -- Robbery in the First Degree;
- (ii) ORS 166.005 -- Treason;
- (jj) ORS 166.087 -- Abuse of Corpse in the First Degree;
- (kk) ORS 167.007 -- Prostitution;
- (ll) ORS 167.012 -- Promoting Prostitution;
- (mm) ORS 167.017 -- Compelling Prostitution;
- (nn) ORS 167.054 -- Furnishing sexually explicit material to a child;
- (oo) ORS 167.057 -- Luring a minor;
- (pp) ORS 167.062 -- Sadomasochistic Abuse or Sexual Conduct in Live Show;
- (qq) ORS 167.075 -- Exhibiting an Obscene Performance to a Minor;
- (rr) ORS 167.080 -- Displaying Obscene Materials to Minors;
- (ss) ORS 167.090 -- Publicly Displaying Nudity or Sex for Advertising Purposes;
- (tt) ORS 475.848 -- Unlawful manufacture of heroin within 1,000 feet of school;
- (uu) ORS 475.852 -- Unlawful delivery of heroin within 1,000 feet of school;

- (vv) ORS 475.858 -- Unlawful manufacture of marijuana within 1,000 feet of school;
- (ww) ORS 475.860 -- Unlawful delivery of marijuana;
- (xx) ORS 475.862 -- Unlawful delivery of marijuana within 1,000 feet of school;
- (yy) ORS 475.864(4) -- Unlawful possession of marijuana within 1,000 feet of school;
- (zz) ORS 475.868 -- Unlawful manufacture of 3,4-methylenedioxymethamphetamine within 1,000 feet of school;
- (aaa) ORS 475.872 -- Unlawful delivery of 3,4-methylenedioxymethamphetamine within 1,000 feet of school;
- (bbb) ORS 475.878 -- Unlawful manufacture of cocaine within 1,000 feet of school;
- (ccc) ORS 475.880 -- Unlawful delivery of cocaine;
- (ddd) ORS 475.882 -- Unlawful delivery of cocaine within 1,000 feet of school;
- (eee) ORS 475.888 -- Unlawful manufacture of methamphetamine within 1,000 feet of school;
- (fff) ORS 475.890 -- Unlawful delivery of methamphetamine;
- (ggg) ORS 475.892 -- Unlawful delivery of methamphetamine within 1,000 feet of school;
- (hhh) ORS 475.904 -- Unlawful manufacture or delivery of controlled substance within 1,000 feet of school;
- (iii) ORS 475.906 -- Penalties for distribution to minors.

(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