



GARRETT HEMANN ROBERTSON P.C.

TSPC Investigations

Rebekah R. Jacobson
rjacobson@ghrlawyers.com

1011 Commercial St. NE • Salem, Oregon 97301-1049
(503) 581-1501 • 1-800-581-1501 • Fax (503) 581-5891 • www.ghrlawyers.com

Laws and Rules Applicable to TSPC Investigations

ORS 342.175 Grounds for discipline; reinstatement. (1) The Teacher Standards and Practices Commission may suspend or revoke the license or registration of a teacher or administrator, discipline a teacher or administrator or suspend or revoke the right of any person to apply for a license or registration if the licensee, registrant or applicant has held a license or registration at any time within five years prior to issuance of the notice of charges under ORS 342.176 based on the following:

- (a) Conviction of a crime not listed in ORS 342.143 (3);
- (b) Gross neglect of duty;
- (c) Any gross unfitness;
- (d) Conviction of a crime for violating any law of this or any state or of the United States involving the illegal use, sale or possession of controlled substances;
- (e) Any false statement knowingly made in an application for issuance, renewal or reinstatement of a license or registration; or
- (f) Failure to comply with any condition of reinstatement under subsection (4) of this section or any condition of probation under ORS 342.177 (3)(b).

(2) If a person is enrolled in an approved teacher education institution or program under ORS 342.147, the commission may issue a public reprimand or suspend or revoke the right to apply for a license or registration based on the following:

- (a) Conviction of a crime listed in ORS 342.143 (3) or a crime described by the commission by rule;
- (b) Conviction of a crime for violating any law of this or any state or of the United States involving the illegal use, sale or possession of controlled substances; or
- (c) Any conduct that may cause the commission to suspend or revoke the license or registration of a teacher.

(3) The commission shall revoke any license or registration and shall revoke the right of any person to apply for a license or registration if the person has held a license or registration at any time and the holder or applicant has been convicted of any crime described in ORS 342.143 (3).

(4) Except for convictions for crimes listed in ORS 342.143 (3) and subject to subsection (5) of this section, any person whose license or registration has been suspended or revoked or whose privilege to apply for a license or registration has been revoked may apply to the commission for reinstatement of the license or registration after one year from the date of the suspension or revocation. The commission may require an applicant for reinstatement to furnish evidence satisfactory to the commission of good moral character, mental and physical health and such other evidence as the commission may consider necessary to establish the applicant's fitness. The commission may impose a probationary period and such conditions as it considers necessary upon approving an application for reinstatement.

(5) The commission shall reconsider immediately a license or registration suspension or revocation or the situation of a person whose privilege to apply for a license or registration has been revoked, upon application therefor, when the license or registration suspension or revocation or the privilege revocation is based on a criminal conviction that is reversed on appeal.

(6) Violation of rules adopted by the commission relating to competent and ethical performance of professional duties shall be admissible as evidence of gross neglect of duty or gross unfitness.

(7) A copy of the record of conviction, certified to by the clerk of the court entering the conviction, shall be conclusive evidence of a conviction described in this section.

ORS 342.176 Preliminary investigation; materials confidential; notice. (1) The Teacher Standards and Practices Commission shall promptly undertake an investigation upon receipt of a complaint 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.

(2) The commission may appoint an investigator and shall furnish the investigator with appropriate professional and other special assistance reasonably required to conduct the investigation, and the investigator is empowered to subpoena witnesses over the signature of the executive director, swear witnesses and compel obedience in the same manner as provided under ORS 183.440 (2).

(3) Following completion of the investigation, the executive director shall report in writing any findings and recommendations to:

(a) The commission, meeting in executive session, at its next regular meeting following completion of the investigation; and

(b) The person against whom the charge is made.

(4)(a) Except as provided in paragraph (b) of this subsection, the documents and materials used in the investigation and the report of the executive director are confidential and not subject to public inspection unless the commission makes a final determination to:

(A) Refuse to issue a license or registration, as provided under ORS 342.143;

(B) Suspend or revoke a license or registration, discipline a person holding a license or registration, or suspend or revoke the right to apply for a license or registration, as provided under ORS 342.175; or

(C) Discipline a person for failure to provide appropriate notice prior to resignation, as provided under ORS 342.553.

(b) Records made available to the commission under ORS 419B.035 (1)(h) shall be kept confidential.

(5) If the commission finds from the report that there is sufficient cause to justify holding a hearing under ORS 342.177, it shall notify in writing:

(a) The person charged, enclosing a statement of the charges and a notice of opportunity for hearing;

(b) The complainant; and

(c) The employing district or public charter school, if any.

(6) If the commission finds from the report that there is not sufficient cause to justify holding a hearing under ORS 342.177, it shall notify in writing:

(a) The person charged;

(b) The complainant; and

(c) The employing district or public charter school, if any.

(7) Notwithstanding ORS 192.660 (6), the commission may make its findings under this section in executive session. However, the provisions of ORS 192.660 (4) apply to the sessions.

ORS 342.177 Hearing and decision on charges; notice. (1)(a) Hearings under ORS 342.176 shall be conducted by an administrative law judge assigned from the Office of Administrative Hearings established under ORS 183.605.

(b) Any hearing conducted under this subsection shall be private unless the person against whom the charge is made requests a public hearing. Students attending school in the employing district may not attend any hearing except as witnesses duly subpoenaed to testify with respect to the charges made. Students attending a public charter school that employs the person may not attend any hearing except as witnesses duly subpoenaed to testify with respect to the charges made. The person against whom the charge is made shall have the right to be represented by counsel and to present evidence and argument. The evidence must be confined to the charges.

(2) The Teacher Standards and Practices Commission or the person charged may have subpoenas issued to compel attendance at the hearing. The person charged may have subpoenas issued by an

attorney of record subscribed by the signature of the attorney or by the executive director. Witnesses appearing pursuant to subpoena, other than the parties or officers or employees of the commission, shall receive fees and mileage as prescribed by law for witnesses in ORS 44.415 (2). The commission or the person charged shall have the right to compel the attendance and obedience of witnesses in the same manner as provided under ORS 183.440 (2).

(3) The commission shall render its decision at its next regular meeting following the hearing. If the decision of the commission is that the charge described in ORS 342.175 (1) has been proven, the commission may take any or all of the following disciplinary action against the person charged:

(a) Issue a public reprimand.

(b) Place the person on probation for a period not to exceed four years and subject to such conditions as the commission considers necessary.

(c) Suspend the license or registration of the teacher or administrator for a period not to exceed one year.

(d) Revoke the license or registration of the teacher or administrator.

(e) Revoke the privilege to apply for a license or registration.

(4) If the decision of the commission is that the charge is not proven, the commission shall order the charges dismissed.

(5) The commission shall notify in writing the person charged, the employing school district or public charter school and the Superintendent of Public Instruction of the decision.

ORS 342.180 Appeal. (1) Any person whose license or registration has been suspended or revoked or who has been disciplined, or who has been refused issuance or reinstatement of a license or registration, and is aggrieved at the decision of the Teacher Standards and Practices Commission, may appeal in the manner provided in ORS 183.480.

(2) If the Superintendent of Public Instruction, the district school board or the public charter school employing the teacher or administrator is aggrieved at the decision of the commission, the superintendent, the board or the school may appeal from the decision in the manner provided in ORS 183.480.

(3) Unless the decision of the commission is accompanied by a finding that immediate suspension or revocation of the teaching license or registration is necessary to protect the safety and well-being of students, an appeal made under this section in a proceeding to suspend or revoke shall operate as a stay of the suspension or revocation, if any, until the determination of the appeal.

ORS 342.183 Letters of informal reproof. (1) The Teacher Standards and Practices Commission may issue a letter of informal reproof to a person licensed, registered or certified by the commission if:

(a) Following the completion of an investigation, the commission determines that the person has engaged in conduct that affects the person's ability to be professionally effective, based on standards adopted by the commission by rule; and

(b) Subject to subsection (5) of this section, the commission agrees not to pursue disciplinary action against the person under ORS 342.175 and the person agrees to the terms of the letter of informal reproof, including a monitoring period.

(2) A letter of informal reproof issued as provided by subsection (1) of this section shall establish the terms of a monitoring period for the person to whom the letter is issued.

(3) Upon the issuance of a letter of informal reproof, the commission shall notify the employer of the person to whom the letter is issued, including any terms of the letter that the employer may need to know to assist the person in complying with the terms of the letter.

(4) A letter of informal reproof issued as provided by subsection (1) of this section:

(a) Is confidential; and

(b) Except when a disciplinary action is taken as provided in subsection (5) of this section, may not be posted on an interstate clearinghouse related to educator license sanctions.

(5) If a person fails to comply with the terms of a letter of informal reproof, the commission may take disciplinary action against the person based on one or both of the following:

(a) The conduct underlying the letter of informal reproof; or

(b) The failure to comply with the terms of the letter of informal reproof.

(6) If the executive director of the commission determines that a person failed to meet the terms of a letter of informal reproof, the executive director shall report the failure to the commission for the commission to make a final determination pursuant to ORS 342.176.

(7) The documents and materials used in an investigation for the purposes of this section are confidential and are not subject to public inspection unless the commission makes a final determination to discipline the person pursuant to ORS 342.175.

OAR 584-020-0000-Application of Rules

(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 begin the investigation of complaints, reports or information related to educator misconduct under the following conditions:

(a) The Executive Director may delay investigating an educator against whom a complaint has been filed under ORS 342.176 when:

(A) The investigation report or other information indicates that disciplinary action against the educator is pending at the local district level; or

(B) When criminal charges are pending or are likely to be filed against the educator.

(b) 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.

(c) 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.

OAR 584-020-0041-Misconduct Reporting Requirements

(1) For purposes of this rule, "chief administrator" means:

(a) The superintendent, head teacher, head administrator or person designated by a school district board as district school clerk under ORS 332.515, of a school district, education service district or charter school;

(b) The chief administrative officer of public schools administered by the Oregon Department of Education; or

(c) The chief administrative officer of a private elementary or secondary school, as long as the chief administrative officer is licensed by the Commission.

(2) A chief administrator will report educators described in this subsection regardless if the educator is employed in the chief administrator's district. Subject educators include:

(a) Any educator possessing a TSPC-issued license or certification;

(b) Any educator holding a charter school registration;

(c) Any pre-service candidate enrolled in a public or private school for purposes of program completion pursuant to any program described in division 17 of these administrative rules.

(3) A chief administrator will report to the Executive Director within thirty (30) days the name of any person described in subsection (2) above, when the chief administrator reasonably believes the person may have committed any act which may constitute any of the designated acts of gross neglect of duty under OAR 584-020-0040(4), subsections (a) to (s) or any of the designated acts of gross unfitness listed under OAR 584-020-0040(5), subsections (a) to (e).

OAR 584-020-0045-Factors for Imposing Disciplinary Sanctions

The Commission may consider one or more of the following factors, as it deems appropriate, in its determination of what sanction or sanctions, if any, should be imposed upon a finding that an educator has violated any standard set forth in OAR 584-020-0040:

- (1) If the misconduct or violation is an isolated occurrence, part of a continuing pattern, or one of a series of incidents;
- (2) The likelihood of a recurrence of the misconduct or violation;
- (3) The educator's past performance;
- (4) The extent, severity, and imminence of any danger to students, other educators, or the public;
- (5) If the misconduct was open and notorious or had negative effects on the public image of the school;
- (6) The educator's state of mind at the time of the misconduct and afterwards;
- (7) The danger that students will imitate the educator's behavior or use it as a model;
- (8) The age and level of maturity of the students served by the educator;
- (9) Any extenuating circumstances or other factors bearing on the appropriate nature of a disciplinary sanction; or
- (10) To deter similar misconduct by the educator or other educators.

OAR 584-020-0060-Letters of Informal Reproval

- (1) Pursuant to ORS 342.183, the Commission may agree not to pursue disciplinary action against a licensed, registered or certified educator by the Commission and issue a letter of informal reproval if:
 - (a) Following an investigation, the Commission determines that the educator has engaged in misconduct based on standards adopted by the Commission by rule; and
 - (b) The educator agrees to the terms of the letter of informal reproval, including a monitoring period.
- (2) The Commission may take disciplinary action if the educator fails to comply with the terms of the informal reproval as provided in section (5) of this rule.
- (3) Pursuant to ORS 342.183, the Commission shall:
 - (a) Establish the terms of a monitoring period for the educator to whom the letter is issued; and
 - (b) Notify the employer, if any, of the educator to whom the letter is issued, including any terms of the letter that the employer may need to know to assist the educator in complying with the terms of the letter.
- (4) A letter of reproval:
 - (a) Is confidential; and
 - (b) May not be posted on an interstate clearinghouse related to educator license sanctions except if disciplinary action is taken as provided in section (5) of this rule.

(5) If an educator fails to comply with the terms of a letter of informal reproof, the Commission may take disciplinary action against the educator based on one or both of the following:

(a) The conduct underlying the letter of informal reproof; or

(b) The failure to comply with the terms of the letter of informal reproof.

(6) If the Executive Director of the Commission determines that an educator failed to meet the terms of a letter of informal reproof, the Executive Director shall report the failure to the Commission to make a final determination pursuant to ORS 342.176.

(7) If the Executive Director of the Commission determines that an educator has met the terms of a letter of informal reproof and has successfully completed the monitoring period, the Executive Director shall report to the Commission that the educator has met the terms of the letter of informal reproof. The report and the Commission's approval of the report shall serve as the termination of the informal reproof.

(8) The Executive Director shall notify the educator of the successful termination of the informal reproof as provided in section (7) of this rule.

(9) The Executive Director shall notify the employer, if any, of the educator who was previously notified under section (3)(b) of this rule of the successful termination of the informal reproof as provided in section (7) of this rule.

OAR 584-019-0003-Notice of Opportunity for Hearing and Hearing Procedures

(1) The Commission delegates to the Executive Director the authority to draft the contents of the Notice of Hearing and Notice of Opportunity for Hearing when:

(a) The Executive Director denies the issuance, renewal or re-instatement of a license, charter school registration, school nurse certificate, or PA-1 clearance for student teaching under OAR 584-050-0006.

(b) When the Commission determines that there is sufficient cause to justify a hearing under ORS 342.176(5); or

(c) When the Executive Director has information that the educator has violated any term or condition of probation.

(2) The Commission delegates to the Executive Director the authority to amend the Notice of Hearing or Notice of Opportunity for Hearing.

(3) The Commission will review, approve or reject all Amended Notices of Hearing at the next Commission meeting following the Executive Director's issuance of the Amended Notice. The educator who is the subject of an Amended Notice may file objections to the amendments prior to the Commission meeting. The Commission's decision to review, approve or reject the Amended Notice will be in executive session under ORS 342.176.

(4) If the Commission rejects the Amended Notice of Hearing, the Executive Director will withdraw the Amended Notice, and the prior Notice of Hearing or Notice of Opportunity for Hearing will stand as the Commission's notice to the educator.

(5) Contested case hearings will be held in accordance with OAR 137-003-0501 through 137-003-0700.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.175 - 342.190

Hist.: TSPC 9-2005, f. & cert. ef. 11-15-05; TSPC 7-2007, f. & cert. ef. 12-14-07; TSPC 5-2009, f. & cert. ef. 10-5-09; TSPC 1-2015, f. & cert. ef. 2-10-15

OAR 584-019-0010-Discovery and Subpoenas

(1) Through the Executive Director, the Commission shall consider requests to take the testimony of a material witness by deposition for purposes of discovery or perpetuation of the witness's testimony when the witness is unavailable for hearing. A perpetuation deposition will be authorized only upon agreement of the educator and the Commission or upon a showing that the witness cannot testify at the hearing because of physical or mental illness or extreme hardship.

(2) The Executive Director may issue subpoenas in support of discovery as provided under OAR 137-003-0570 and 137-003-0572.

(3) The educator or the Commission may request that the other party produce for inspection or provide copies of any designated documents or any tangible things which are relevant to the proceeding and are not otherwise exempt from disclosure. The educator or the Commission may charge a fee to reimburse for the actual cost of producing or copying documents.

(4) The educator or the Commission may issue requests for admissions as provided under OAR 137-003-0570.

OAR 584-019-0015-Evidence

(1) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded, but erroneous rulings on evidence shall not preclude Commission action on the record unless shown to have substantially prejudiced the rights of a party. All other evidence of a type commonly relied upon by reasonably prudent persons in conduct of their serious affairs shall be admissible. Objections to evidentiary offers may be made and shall be noted in the record. Any part of the evidence may be received in written form.

(2) All evidence shall be offered and made a part of the record in the case, except for matters stipulated to and except as provided in section (4) of this rule. No other factual information or evidence shall be considered in the determination of the case. Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference. The burden of presenting evidence to support a fact or position rests on the opponent fact or position.

(3) The educator and the other party shall have the right of cross examination of witnesses who testify and shall have the right to submit rebuttal evidence.

(4) The hearing officer or the Commission may take notice of judicially cognizable facts and general, technical, or scientific facts as provided under OAR 137-003-0615.

(5) The hearing officer shall have discretion to require the parties to submit prior to the hearing date documents which may be introduced as evidence, names and addresses of witnesses, and other

information to facilitate the hearing. The hearing officer shall have discretion to require the parties to submit proposed findings of fact and conclusions of law.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.175 -- ORS 342.190

Hist.: TS 7-1989, f. & cert. ef. 12-13-89; TS 4-1997, f. 9-25-97, cert. ef. 10-4-97; TSPC 4-2001, f. & cert. ef. 9-21-01

OAR 584-019-0025-Mutual Disclosure Prior to Contested Case Hearings

(1) Not less than ten days prior to the hearing date, the educator and the Commission staff will disclose to one another in writing the following information:

(a) The name, address and telephone number of each person that the disclosing party may call as a witness at the hearing; and

(b) A copy of all documents that the disclosing party may introduce as evidence at the hearing.

(2) For good cause shown, the Executive Director may modify the disclosure requirements under section (1) of this rule.

(3) The hearing officer at the hearing may refuse to accept testimony or evidence that has not been disclosed in compliance with this rule.

OAR 584-019-0035-Settlement of Cases Prior to Hearing

(1) A "Settlement Agreement" is a written agreement in a disciplinary proceeding that includes:

(a) A stipulation to an order that is signed by the educator;

(b) A consent by the educator to a negotiated default order; or

(c) An agreement between the educator and the commission staff to resolution of a disciplinary matter without a contested hearing.

(2) The Executive Director will not accept a settlement agreement unless it is signed by the educator and the educator's attorney, if any.

(3) All matters not settled in accordance with subsection (2) of this rule will be determined through a contested case hearing in accordance with OAR 137-003-0501 through 137-003-0700 or will be determined through entry of a default order or voluntary surrender of the educator's license, school nurse certificate or charter school registration.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.175, 342.176, 342.177, 342.180 & 342.190

Hist.: TS 6-1996, f. & cert. ef. 12-9-96; TS 4-1997, f. 9-25-97, cert. ef. 10-4-97; TSPC 7-2007, f. & cert. ef. 12-14-07

OAR 584-019-0040-Commission Final Orders in Contested Cases

(1) In all contested cases, the Commission will notify the parties, the hearing officer and the Office of Administrative Hearings that the Commission itself will issue the Final Order and each Hearing Officer Proposed Order will include a statement to that effect.

(2) If the recommended action in the Proposed Order is adverse to the educator, the Proposed Order will contain a statement that the educator may file written exceptions to the Commission and may file a request for oral argument to the Commission. The statement will inform the educator that written exceptions or a request for oral argument must be filed with the Commission at the Commission's office within fourteen days of the date of the Proposed Order in order for the exceptions or the request for oral argument to be considered. The Commission need not allow oral argument on the Proposed Order. The Executive Director may permit oral argument in those cases in which the Director believes oral argument may be appropriate or helpful to the Commissioners in making a final determination.