



MEMO: OACTE, Commissioners, OSPA, School Districts
FROM: Vickie Chamberlain, Executive Director
DATE: May 18, 2011
RE: TSPC Fingerprint Requirements

In 2007, the statutes related to fingerprinting pre-service candidates, new applications and veteran teachers were changed. Accommodations were made for programs that allowed TSPC to accept PA-1 forms from candidates so long as their fingerprints had been submitted to TSPC within the past three years.

At that time, we (office staff) believed it was acceptable to continue accepting first applications from pre-service candidates so long as they had submitted a set of fingerprints and those fingerprints had been cleared within the past three years.

The three year period is calculated from the date of fingerprint clearance, (not the date the fingerprints were submitted) forward. In order for an applicant to be "covered" by the three year period, the application and fee for the license must be received before the expiration of three years from the date of fingerprint **clearance**. The clearance date is important because frequently, an applicant's fingerprints are of poor quality and new prints must be resubmitted for clearance.

The statute says that TSPC *may* require fingerprints of all first-time licensure applicants to TSPC *if* the person has not submitted fingerprints within the last year. TSPC's practice has allowed person's admitted to Oregon-approved programs to "rely" on fingerprint clearance records for up to three years.

A recent incident where C-2 fast-tracks were submitted with a few cases of applicants lacking recent (three years) fingerprints, caused us to look at the statute with new eyes. The question that was not clear was whether the TSPC had the legal discretion to apply the three year period to new applicants with fingerprints on file that were *older* than one year. (See ORS 342.223(1))

Our legal counsel has affirmed that the statutory language *does* allow TSPC to continue accepting applications from pre-service candidates if they have been fingerprinted within the past three years.

Accordingly, there will be no change to the past-practice of accepting applications from applicants completing Oregon licensure programs so long as they have been fingerprinted within the past three years.

Please keep in mind that fingerprints are only a snap shot in time that is obtained on the date the prints are reviewed. They are a look in the rear view mirror and they do not protect against future conduct, convictions or behavior. They are not an insurance policy; rather they are a necessary precaution in order to make an informed decision prior to hiring or licensure.

THREE YEARS OR MORE

The Commission has established a firm past-practice of requiring fingerprints when the person has "lost touch" with the Commission for three years or more. Hence, candidates who have taken more time to complete their programs or educators who have allowed their license(s) to lapse for more than three years **must** submit fingerprints when applying for licensure. The reason for this is student safety. It is only upon submission of a complete set of fingerprints that the Commission is able to verify a criminal records check with the FBI. Otherwise, TSPC is limited to "Oregon only" information. Submitting fingerprints allows the Commission to rule out any potential criminal action that may have happened in another state since the last time the person was licensed.

If the student has had fingerprints cleared their freshman year and this clearance expires during their senior year, do they have to resubmit to fingerprints? There is no hard and fast rule or statute that requires re-fingerprinting at that point. Two things should be considered: 1. The candidate will have to submit fingerprints to TSPC in order to obtain licensure at a later date; and 2. If the candidate has engaged in subsequent criminal conduct unbeknownst to the university, and a student is injured in similar misconduct, the university could be exposed to liability for allowing a placement without a "valid" fingerprint clearance on file.

Additionally, if the candidate is fingerprinted in one licensure program and switches institutional programs, there is no need to obtain new fingerprints so long as the new program can validate that the candidate has had their fingerprints cleared by TSPC and the clearance is valid (less than three years old.)

FINGERPRINT PROCEDURES

The fingerprint cards and fees are submitted to TSPC with either a PA-1 form for approval for practicum placement or a C-1 form for initial licensure or reinstatement of an expired license.

TSPC cannot accept fingerprints and fees in the absence of an application or PA-1 form. It is the application of PA-1 that triggers the Commission's jurisdiction over the fingerprint process.

The fingerprints are then submitted as quickly as possible (often daily) to the Oregon State Police (OSP). The OSP then "runs" the fingerprints through their Law Enforcement Data System (LEDS) to check the Oregon criminal record. The OSP then forwards the fingerprints electronically to the FBI. The FBI issues a report on each set of fingerprints indicating whether there is a criminal record in another state. Results are often received in less than one week. Occasionally, it takes longer due to backlogs at either the OSP or FBI.

By Oregon law, the OSP must destroy the fingerprints after the criminal records check has been completed. *This means that while an applicant's fingerprints are submitted for records checks, they are not retained in any state-wide system.* This is why applicants may have to

submit multiple sets of fingerprints depending on requirements for licensure or employment. In any case, only one card is required when seeking fingerprint clearance from TSPC.

Additionally, it is a violation of state law for any state agency to disclose the results of the criminal records check. If an agency violates this requirement, they lose access to the Law Enforcement Data System (LEDS). This is why the agency cannot under any circumstances release the results of the fingerprints. However, an applicant who has submitted fingerprints may examine the information received from the criminal records check under the supervision of a LEDS-certified TSPC employee.

FINGERPRINT QUALITY

TSPC staff generally does not make judgment calls about the quality of fingerprints submitted unless the quality of the card submitted is so inferior due to tears, smudges and other indicators. Otherwise, this determination is made solely by the Oregon State Police. There are a variety of reasons that prints may not be of the highest quality:

1. Prints are worn off (people who work with their hands may have worn the prints down);
2. Person taking the prints does a poor quality job; or
3. The ink used for the prints may be too faint or dry.

Regardless, as a matter of policy, we require two rejections before we will review the information we have at hand and make a determination of whether to clear the prints.

If prints have been rejected once, the conventional wisdom is to have them taken *somewhere other than* the place where the defective prints were obtained. Currently, many Oregon State Police offices have "live scan" procedures to take fingerprints. It is recommended that persons re-taking fingerprints attempt to obtain a live-scan set of prints. While this method is more reliable than the traditional ink and roll method, it is not foolproof if the printer projecting the scanned images onto the fingerprint cards is low on ink or the printer resolution is poor.

OREGON DEPARTMENT OF EDUCATION FINGERPRINTS/BACKGROUND CHECKS (SEE OAR 581-021-0500)

If an applicant/educator has been fingerprinted by the Oregon Department of Education (ODE), it is not acceptable to "skip" the fingerprint process required by TSPC. The ODE is only authorized to clear fingerprints for **non-licensed employees** of school districts and goes through a different review than that allowed/required by TSPC.

The ODE may only notify a school district regarding information discovered through a criminal background check in two circumstances:

1. If the person has been convicted of one of the enumerated felonies or misdemeanors in statute (See, OAR 584-020-0040 for a complete list of these crimes.) However, there are several serious convictions that cannot be found on that specific list such as: Harassment IV which generally involves an assault on a person, federal drug crimes, federal crimes, and multiple misdemeanors and offenses.
2. If the person has knowingly made a false statement on the application to clear fingerprints regarding a conviction.

FALSE STATEMENTS

False statement related to criminal records check are a serious violation and are taken very seriously by the Commission. It is not credible for an applicant to argue that they “forgot” that they spent three months in jail; or they “forgot” they were arrested for drug charges and later convicted; or they asked someone (attorney, friend, advisor, union representative, etc) and was told they did not have to disclose a conviction.

The finding of a false statement can result in revocation of the right to apply for a license, denial of licensure, denial of approval to enter the practicum process or other Commission sanctions such as reprimand, suspension or revocation. Commission discipline orders are filed in a national data base in the event the applicant attempts licensure in another state.

FEES AND QUANTITY

The fees for fingerprints (\$62) are distributed as follows:

1. \$28 to the Oregon State Police
2. \$24 to the Federal Bureau of Investigation
3. \$10 to TSPC

In the 2007-2009 biennium, TSPC processed about 9,600 fingerprint cards. So far in this biennium, TSPC has processed just under 8,100 fingerprint cards.

WHO TO CONTACT AT TSPC

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