BUSINESS ENTERPRISE PROGRAM OF OREGON

RULE-MAKING MEETING

 **Date: Tuesday, August 29th, 2017**

**Time: 9:00 am**

 OREGON COMMISSION FOR THE BLIND

535 SE 12th Avenue (Portland office)

Conference line: 404-443-6397

Participant code: 943611#

**Agenda**

1. Open Meeting/Roll Call (9:00 am)

2. HB 3253 Rules Development Negotiations

3.  Public Comment (11:00 am)

4. Action Items

a. Analyze/review the draft rules for vending facility managers

5. Adjourn

**8-29-17 Part 1**

**Verbatim**

**Hauth**: Let’s get this going and I’ll start by taking roll. We have Art Stevenson here, correct?

**Art Stevenson**: That’s correct.

**Hauth**: Derrick Stevenson. Derrick?

**Derrick Stevenson**: Yes.

**Hauth**: Okay. And Jerry Bird.

**Bird**: Yes. Here.

**Hauth**: Okay. I’m here as well. Are there any other Board members?

**Gordon**: Steve Gordon.

**Art Stevenson**: Steve is addressing an issue at work. He said he’d be on in about ten minutes, Randy.

**Hauth**: Okay. Good morning, Steve Gordon.

**Gordon**: Morning.

**Hauth**: Managers who’ve joined us?

**Jaynes**: Lin Jaynes.

**Miranda**: Lewanda Miranda.

**Hauth**: Hi, Lin. Hi, Lewanda. Okay. Anybody else? No one else right now. Okay. And Eric’s here and Terry’s here. Is there anybody else? From the agency or…?

**Ewing**: Kathy Ewing, BEP.

**Hauth**: Hey, Kathy. Good morning.

**Ewing**: Good morning.

**Pileggi**: Tom Pileggi, BEP.

**Hauth**: Okay. Well let’s get this… let’s get this going. Anyway, I’m going to… let’s try and keep it short and concise. If there’s any public comment I’ll be glad to hear it. Is there any public comment? Okay. Well, just to start this out, I do want to share that, you know, we’ve… we’ve all done a lot of work at this; the agency, especially Terry Smith. I know Terry… some of his emails I’ve seen have been up, you know, 12:00, 1:00 in the morning. So it’s been appreciated and I know many of the managers have spent a lot of time looking over the rules.

It’s hard to do this, you know, in a piecemeal… I know the recent draft was probably the best read that I was able to have of that. I know that we have talked about being under time constraints and I know relative to the House Bill we are.

However, I do want to say a couple of things. I still think, even though we’ve made some progress, as I read through the document I believe there’s some things that we need to continue to address and I know there’s a few other items here, I think, that Terry is going to help us to work through. And maybe there’s things that we’ll have to work through on our own. But the administrative review… Director’s review and administrative review, I know that we’re supposed to be meeting with RSA on that in the next couple of days. So that’s of concern. I know the full evidentiary hearing is of concern and how if there’s a way we can incorporate language within that. Also, I know we talked about it but… and I know the rest of you had shared your concerns.

So, bottom line, my opinion is, we still need work. Even if Terry’s not available we’re going to need to continue to work with the agency on fine tuning some of this. I did review Gretchen Merrill’s presentation and I know I sent that out by way of email. And what Gretchen said on that Saturday when we kicked everything off is this House Bill is a program-friendly bill. It’s actually, you know, supposed to help provide opportunities and stimulate this program. And so hopefully we can continue to do that. I personally think that the agency at times, my opinion, has been really resistant to be too flexible. And hopefully… hopefully we can get there. So, with that being said, if there isn’t anybody else I’ll go ahead and turn this over to Terry Smith. Okay, make sure and put your phones on mute, you guys, if you can. Terry, go ahead.

**Terry Smith**: Okay, I wanted to… a couple things that I wanted to point out from a technical standpoint. And Eric, you can… or Kathy can probably fix this. But I think… Doesn’t the law refer to the agreement as a vending facility agreement? Isn’t that what the law refers to it? The operating agreement as?

**Unknown Voice**: Hello?

**Terry Smith**: Doesn’t it call it… Can… Can you not hear me?

**Morris**: I can hear you, Terry.

**Terry Smith**: Okay. … Doesn’t the law refer to it as a vending facility agreement, instead of an operating agreement?

**Morris**: Um…

**Terry Smith**: And I noticed…

**Morris**: I’m looking.

**Terry Smith**: I noticed at some places in the operating agreement you refer to it as an operating agreement then you slip up and call it a vending facility agreement. I think probably throughout your rules and throughout your… that agreement, the term needs to be the same.

**Morris**: Yeah, I was just trying to look in the statute real quick. I think you’re probably right because that… that rings a bell.

**Terry Smith**: Yeah, I didn’t… I didn’t go back and look it up. I’ll admit I did not.

**Morris**: No, that’s a good catch.

**Terry Smith**: So, whatever that is, you’ll want to… [Silence.] And Kathy, while he’s looking that up, if you look at line 247…

**Ewing**: Yeah?

**Terry Smith**: … where you’re talking about issuing a license to a blind person who is licensed in another state…

**Ewing**: Okay.

**Terry Smith**: … down under… and K) you don’t mention the computer skills. So they can come in from another state and not have to meet the computer skill requirement. So you need to make sure that language is consistent with what you’re requiring of new people coming into the program.

**Ewing**: Okay. Thank you.

**Terry Smith**: Do you follow me?

**Ewing**: Yes, I do.

**Terry Smith**: And you got the same situation over on line 281, where we didn’t pick that up.

**Ewing**: Okay. Got it.

**Terry Smith**: So I guess the best place… I don’t know if Eric found that. Did you find it, Eric?

**Morris**: I’m still looking. I’ll go back and double check, but I think you’re right, Terry.

**Terry Smith**: Yeah.

**Morris**: That… That does sound like…

**Terry Smith**: It just… I mean, you’re going to need… you’re going to need to be consistent. Gretchen will catch that. So, you know, if the law calls it one thing you might as well call it that in the…. So, what’s the… what’s the choice of the group? There’s some things highlighted in here in yellow that changes were made based on the last call and the changes that… that a lot of the language that I sent in and then there were changes in the operating agreement. Do you want to go through and discuss the changes that are… that were made on this revision? The ones that, for those of you who have the highlighted copy and can read the highlighted copy, that are highlighted in yellow? Is that… Is that the way you want to proceed with this? And get stuff…

**Hauth**: What do you guys say? What do you guys want?

**Bird**: Well, this’s Jerry. I just… I got shut off so I had to re-dial in so I missed a few minutes of that, or a minute. But I can’t read yellow or nothing because of my… color of my glasses and stuff. So I don’t see any…

**Terry Smith**: Well, that doesn’t matter. We’re going to read it. We’re going to read the changes.

**Bird**: Okay. Cool.

**Terry Smith**: I’m just asking if we want to go…

**Hauth**: Yeah, Terry. Why don’t you… You know, Terry, my thoughts are…

**Terry Smith**: Okay.

**Hauth**: … why don’t you go ahead… why don’t you go ahead and do that. I know there’s some key major things that we’ll want to address as we go through this. Go ahead.

**Terry Smith**: We’ll discuss… We’ll discuss them as we go. The first one is the definition of the Business Enterprise Program and that’s where we changed it to reflect that it’s… means a program administered by the Commission that is responsible for providing self-employment opportunities, pursuant to the Randolph-Sheppard Act. The previous definition just said responsible for providing employment to people who are blind and that’s… So that’s a change that we all, I think, agreed to. Kathy, I would say “responsible for providing self-employment opportunities to persons who are legally blind…”

**Ewing**: Okay.

**Terry Smith**: … there, “pursuant to the Randolph-Sheppard Act,” just so it’s clear.

**Ewing**: Okay.

**Terry Smith**: And then the next change that I see that is in yellow, we have on line 97 – and Kathy, if I’ve missed one, take me back, or Eric, or somebody – we have preference listed in the definitions. We did not define it. That was one that we… we were deferring to Gretchen to hopefully help us out with. We did provide… We did put a definition of priority, means first right of refusal. That was a change that we made. And that comes straight out of the law. So there shouldn’t be much of an issue with that one. The next one I see is over… line 190, under Training and we sort of reworked the wording in that. It says, “To be eligible for a license a trainee must successfully complete the training course provided by the Business Enterprises Program. The Business Enterprise Program, with the active participation of the BECC, may design the training course for assignment to a vending facility. The training will encompass operations of all types of vending facilities. The training course may include distance education or college courses and shall include on-the-job training at one or more Director-approved facilities.” And that’s the change there, if you recall, and Art brought it up, was that it did say you would take into consideration what facilities are available in designing the training. And he thought Jesse had an issue with that and… because it wasn’t specific to all the vending facilities. So we… we changed that and took it out so that it’s no longer designed considering what facilities are vacant and you have… it’ll be for all types of facilities. Any… Any questions about that?

**Art Stevenson**: Terry, this is Art.

**Terry Smith**: Yeah?

**Art Stevenson**: Yeah, I got that first “may.” We got to have a training program so, I mean, to me, the word “may” design needs to be “shall” design. Because we got to have a training program and we got to have it in place. And so putting the word “may” says, “Well, you know, you can have a training program or you can’t.” So I believe that word should be “shall.”

**Terry Smith**: I think you’re probably correct. You got a problem with that, Eric? I mean, he’s right, you have to do it.

**Morris**: Which part was it?

**Terry Smith**: The very first… in line… in the fourth line where it says in the second sentence, “The Business Enterprise Program, with the active participation of the Committee, may design a training course.”

**Morris**: No, that’s fine.

**Terry Smith**: He’s saying it should be “shall.”

**Morris**: That’s fine.

**Terry Smith**: Yeah. So change “may” to “shall.”

**Ewing**: Okay.

**Terry Smith**: Then you skip… skip down to number three…. Was there any other questions or comments about that? Any… Any opposition to that? Okay, in number three it says, “with active participation of the BECC, additional training may be required as a prerequisite for assignment to unique vending facilities.” And that’s where we put in that in case you get into commissaries and you want to require some additional training up front, then the agency and Committee can make that determination. And that’s the language we agreed to on the telephone. Any… Any problems or questions about that? Hearing none… changed some titles but I’m not going to worry… Okay, the progressive discipline. And I’ll just read through this whole thing. And this is what Eric said he would take back and work on and so this is what he submitted. “The Commission may utilize progressive discipline to document and correct performance for conduct issues prior to terminating a vending facility manager’s license… vending facility manager’s…” I think you got some words there wrong. “… terminating a vending facility manager’s…”

**Ewing**: Or licensee’s…

**Terry Smith**: “… or licensee’s license or operating…” Okay, but manager’s… I think you got… I think you’re better off if you take those commas out after “manager’s” and after “licensee’s.” So that it’s “vending facility manager’s or licensee’s license or operating agreement.” However, I’m not going to get hung up on punctuation. “The Commission may take the following progressive discipline steps.

Step 1: Verbal Warning – Business Enterprise Program staff will discuss the performance or conduct issues that was observed or reported with the vending facility manager or licensee. Business Enterprise staff will explain the respective corrective action and the expected amount of time to complete the corrective actions to the vending facility manager or licensee. Business Enterprise staff will document the discussion and provide the vending facility manager or licensee a copy of the documentation.

Step 2: Written Warning – If a vending facility manager or licensee does not take the corrective actions that were documented in Step 1 and the performance or conduct issues continue, Business Enterprise staff will issue the vending facility manager or licensee a written warning that documents the performance or conduct issues that continue to be reported or observed. The actions that were not taken after the Step 1 warning and required immediate corrective actions and timelines the vending facility manager or licensee must complete to remedy the issues. The Director will review the written warning with the vending facility manager or licensee to ensure they fully understand the expected immediate and sustained corrective actions that needs to occur to prevent further progressive discipline or termination of their license or operating agreement. The vending facility manager or licensee shall receive a copy of the written warning.

Step 3: Final Warning – If a vending facility manager or licensee does not take the corrective actions that were documented in Step 2 and the performance or conduct issues continue Business Enterprise staff will issue the vending facility manager or licensee a final written warning. The final warning shall document…” That shouldn’t be an “s” there. “The final warning shall document the performance or conduct issues that continue to be reported or observed. The actions that were not taken after the Step 2 warning and the required immediate corrective actions and timelines the vending facility manager or licensee must complete to remedy the issues.

Step 4: Termination – If the vending facility manager or licensee does not complete the required corrective actions outlined in Step 3 within the required timeline the Commission may begin the process to terminate vending facility manager’s or licensee’s license or operating agreement. The vending facility manager or licensee shall receive due process as outlined in the termination of licensure OAR [mumble] and/or the terms outlined in the operating agreement.”

So at the last… on our last call it was agreed that, you know, we needed something in there to protect the vendor from just being terminated. And Eric was asked to get that… to write that up and that’s what he submitted. So what… Any comments or discussion?

**Hauth**: Yeah, Terry, let me… let me say something if I may, first. I believe, you know, if we’re going to have a progressive discipline policy it should be “shall.” I don’t think it should be “may” because, I believe, that gives too much discretion. Also, another thing I made note of as you were reading, I believe that at some time through the process probably a BECC rep should be allowed or involved in that. I… you know, if the manager so chooses. I don’t know how we’d do that but probably more specifically when the… when the Director is going over the, you know, written warning with the vendor. That’s a couple of things.

 And the most important thing, I think, is that – and I know this is going to be a topic of today – but “due process,” what does it mean? Reading through the due process, unless it is prior to the manager’s removal then what real due process does a manager have? So I know that’s going to be my bugaboo. I read through… You know, and when they’re referring back to the operating agreement, if you read the operating agreement you’re almost agreeing to, if the agency says you’re gone, you’re agreeing to… to leave.

And so, just wanted to share that. Those are a few things that come up. I don’t know how we can address it but again, “shall,” I think it’s “shall.” And if there’s a way we can incorporate some kind of representation by the BECC rep for that manager, if they so choose. And the big one is due process. Thanks.

**Terry Smith**: Okay. I think I can address all of those but let’s hear the comments.

**Art Stevenson**: Am I off mute?

**Terry Smith**: You are.

**Art Stevenson**: Okay. Yeah, I agree with Randy on the “shall” word. I mean, if we’re going to have a progressive disciplinary action, that’s… it should be, not that it may be. And then, my first thing is I believe there should be in place that the building management, the building is… has a process that they follow and it should be in the agreement. The quickest way to handle a complaint, obviously, is if the building approaches the blind licensed manager in charge to make sure that there is a problem. And so, obviously, they’re the front line of defense and it should be in the rules, I believe, that… that the blind licensed manager, if there is a problem, needs to be informed by building management or customers or whatever first. And then they have the opportunity to correct it and it’s done in the quickest manner.

And I also agree with Randy that the area rep should be involved. And, you know, just… having dealt with customers for 31 years, there are those problem people that complain about, you know, every little thing no matter what because they seem to like to do that. And so, you know, that individual needs to submit a written complaint either to the building management or to the blind licensed manager and… and, you know, it needs to be well-documented.

So that is my… well, there is one more thing, too. The…

**Terry Smith**: Keep it related to the discipline. I don’t think the building management thing is related to discipline. I think that’s a totally separate issue.

**Art Stevenson**: Well, obviously, there has to be a complaint process in… in place, Terry. And, in my opinion, it does deal with building management and… and the complaint process, you know. So I’ll respectfully disagree with you. It does have to do with the building and the building manager and… and… and the customers. And so…

**Terry Smith**: You can put in… You can put in a section on how complaints are to be dealt with. That’s… I don’t see… I don’t have a problem… I don’t have a problem with that. I just don’t… I don’t think… I… Very few of your discipline problems come from building managers, to be perfectly honest with you. Very, very few. But we can… we can go…

**Art Stevenson**: Well, no…

**Terry Smith**: We can go on.

**Art Stevenson**: Yeah. And… am I off mute?

**Terry Smith**: Do you want to add anything… You’re still off mute. If you want to… If you want to add a complaint section on how complaints will be dealt with I’d totally support that.

**Art Stevenson**: Okay. Well, yeah, that’s… you know, that’s really good because I think it’s very important. Because the sooner issues are addressed, you know, the better. Sometimes things can get really blown out of proportion if they aren’t.

 Then, you know, the part in there about what’s in the agreement or, you know, on… on, you know, the termination or suspension or anything, you know, what’s in the agreement or what’s in the rules… I mean, there should just be one set process. And so I believe we’re being redundant here by saying we’re going to follow the process that’s in the agreement or in the rules. There should only be one process determination, there shouldn’t be two. And so I think it should just relate to the suspension/termination process in the rules and drop that whatever’s in the opera… I mean, the facility agreement.

**Terry Smith**: Okay, it says, “termination of the vending facility manager or licensee does not complete the required corrective actions outlined in Step 3 within the requested timeline. The Commission may begin the process to terminate the vending facility manager’s or licensee’s license or operating agreement.” It says, “the vending facility manager or licensee shall receive due process as outlined in…” and it says, “the termination of licensure OAR blank blank blank and/or the terms outlined in the operating agreement.” So Eric, why don’t you just say “in section so-and-so of these rules” and be done with it?

**Morris**: Well, because I was drafting it, to be perfectly honest. I wasn’t sure if it was going to reference a different section or literally it’s going to reference…

**Terry Smith**: Yeah.

**Morris**: … like, the next section of the document. So, yeah, we can clean that piece of it up. But I have a few comments…

**Terry Smith**: You could just… You… What, I’m just saying… Yeah, we’ll hear what you’ve got to say… “outlined in section e) below.” That’s all you’d have to say. And then that clears up what he’s talking about. All right. Go ahead, Eric.

**Morris**: Well, the whole “shall” versus “may” thing, I wrote it this way with “may” because the thing about progressive discipline, not everything fits into the progressive discipline scheme. I mean, it’s just… there’s some things that – and I’m trying to think of a super-extreme example – if you went in and burned your facility down we’re probably going to terminate your license. So that’s not going to be a progressive, you know, slow process of “You shouldn’t burn your facility down. Please don’t do that again. We’re going to give you another shot at it.” You know, it’s… it’s the extremes. So the “may” gives flexibility to, you know, have flexible situations, which is life. So the fact that it says “may” is, I think, better for the managers, to be honest. And I know people are going to come back and say, “Well, it doesn’t provide consistency.” But if you’re going to say we’re going to use progressive discipline every single time, then that’s just… that’s not reality when it comes to using progressive discipline. So I have a problem with that.

I have a problem with the Elected Committee being involved because, quite frankly, I think it’s outside the scope of their… their… their… it’s outside the scope. I mean, some people would love to have their local rep come in and be part of the process, which obviously they can do that. But to put it in the rules and say you’re going to every time I think is way outside the scope. Because some people… some people don’t care about the Elected Committee, as much as I hate to say that. But some people participate in these things a lot and some people are, like, “Hey, my business is my business. Stay out of it.” So I think trying to include something in there about the Elected Committee…. People know the Elected Committee’s there; they know they’re a resource. It’s not like it has to be written down in black and white to say you can call your rep. I think it’s way outside the scope to involve the Committee, especially in progressive discipline dealing with a manager’s personal vending facility.

**Hauth**: Yeah, my comment, Terry, is, you know, I do think that it is to be consistent. I don’t know what we can say. “Shall,” you know, “as appropriate.” I think it allows too much discretion and I think there’s been a lot of issues with, you know, application of different things. So I think if there’s a way that we could tighten that up, that’d be great.

 And, as far as the Elected Committee’s representation of that manager, my opinion is, when somebody’s facing potentially termination or being documented out of the program as may be the instance when it gets to a point, I do believe that they should, you know, be encouraged or allowed or identify that…. I don’t think it’s outside the scope at all for that representative sit at the table when the Director’s going over that with that manager. That’s my opinion. So.

**Art Stevenson**: And… this is Art. Am I off mute?

**Terry Smith**: You are.

**Art Stevenson**: And also, “outside the scope,” I love that term. If the manager wants to… and you can put “may” here, give the option of the blind licensed manager to have their representative or the Chair or whoever, you can give them the option to do that. But to say that it’s outside the scope for a manager to want help, I don’t think that you can say, “Well, you can’t have your rep or a person or an advocate with you in order to protect, you know, the integrity of it.” A lot of the things that I hate is the he said/she said and this kind of tightens it up and, you know, protects both sides, I believe.

**Bird**: Jerry.

**Terry Smith**: Yeah, Jerry.

**Bird**: Yeah, I must say, I believe Eric’s situation on the fire thing is way extreme and doesn’t really… I mean, something like that, it’s kind of a no-brainer. I mean, to have a shell in and then they do that, that’s when they’re, you know, they’re jeopardizing the health of the people in their building. That’s a whole different ball game. I think “may” gives too much control on the agency to say, “Well, it don’t say I shall.” Because this has happened a lot in the past. “It don’t say I shall, it says I may, so I decided I’m not going to.” Now, there’s no reason why it shouldn’t be “shall” and if some of them extremes happens, you know, they’ll be dealt with in a different way. So I absolutely believe it should be “shall” and…

**Terry Smith**: These are my thoughts on that, and I agree with you, Jerry. I think… this is… this is where I would come at it. We haven’t gotten to this section yet, but we did add a section, because we agreed last time there had to be something in the rules, you know, we’re getting away from this we’re taking somebody out without cause and all that kind of stuff. We had to have something in the rules that if there was a situation like Jerry just described that you had to remove the manager in an emergency situation. So we… we, you know, added, we got a section later on that we’re going to talk about.

So, with that understanding, what… you know, how you could approach that is start that sentence and say “except as provided in section so-and-so, which is the emergency removal of a manager for the health… or is it, a threat to people… You can say, “except as provided in section so-and-so, the agency… the Commission shall use progressive discipline to document performance issues.” And I think, in that case, you’re just saying that your, you know, your run-of-the-mill kind of progressive stuff, I mean your run-of-the-mill performance stuff will go through this disciplinary process.

But your extreme stuff, you’re going to have to have something in there… you can’t… Like Eric said, you can’t give an oral warning for some things. You can’t give a written warning for some things. Some things are just so severe that they have to come out immediately and you don’t have the option of going through this process. So I… my suggestion as a compromise would be to say, again, is “except as provided in section blank the Commission shall use progressive discipline.”

**Art Stevenson**: I agree.

**Terry Smith:** Eric?

**Morris**: Yeah?

**Terry Smith**: You agree?

**Morris**: Does anybody else agree?

**Terry Smith:** I just heard Art.

Morris: That’s all I heard.

**Terry Smith**: Okay, let me do it the other way, then. Does anybody on the Committee object to that language? Okay, hearing none, Eric, how do you feel about it?

**Morris**: I think that’s fine.

**Terry Smith**: And then I would say… Okay, the other thing… we talked about the “may” and the “shall.” We talked about…. What was your other point, Randy? Oh, the Committee rep.

**Hauth**: The BE…

**Terry Smith**: Yeah, yeah.

**Hauth**: You know…

**Terry Smith**: Yeah. So, I mean, I agree that it’s… you know, in a program your size everybody knows they can go to their Committee rep. However, I mean, if it’s that serious a point a contention if, in the notice of termination, you at least advise them that the Committee is available as a resource then I don’t… it’s just like giving them… telling them their due process… I mean, when you terminate their license or you take this action against them your letter’s going to have to say, “You have the right to appeal this decision” and, you know, advising them that they can contact their Committee rep if they choose. It seems reasonable to me. If it’s just… I mean, you can’t require them, you know, you can’t… you know, we had that conversation when I was there. You can’t require them to go through the Committee but just advising them that you’re available, I mean, that’s just… I don’t see that that’s a big issue.

**Hauth**: And, again, from what I understand, that, you know, it’s supposed to be, like, a flexible process and supposed to be program-friendly. So I don’t know what it would hurt to have that, you know, supported in there.

**Terry Smith**: Keep in mind that every one of these, you know, you were talking about due process, every one of these can be appealed. So, you know, if you get an oral warning… You know, any action that the agency takes against you can be appealed. So, you know, if you disagree with it you’re going to get due process. They’re not going to take you right. You know, your oral warning, your written warning, your final warning, you know, all four of those steps are grievable.

**Bird**: Jerry. I don’t… I don’t know if you’re thinking, Randy, that maybe something in just to feel more comfortable, like, any manager has the option of having their rep advocate for them or attend any meetings or just an option. Is that what you’re looking for?

**Hauth**: Yeah.

**Bird**: I think Terry’s saying it’s pretty well in there.

**Hauth**: I think to let that manager know that they may use us, you know? Even though, like Terry said, it’s kind of implied because we have a small program and most everybody would know that. However, I don’t think it hurts to address that. You know, let the… let that person know that they may utilize the BECC or their BECC rep. I don’t know the exact language. But… But I don’t think it’s inappropriate, you know, especially when you’re going through that pathway.

**Jackson**: Hey, Terry, can I say something? Steve Jackson.

**Terry Smith**: Okay, Steve. Go ahead.

**Jackson**: Hi. Hello, guys. Sorry I’m late. I think it’s very appropriate, especially since we need to have more managers in the program. I think it’s a very good idea to let people know that other managers are there to answer questions and to just be a support for them. So that’s my opinion. Thanks.

**Terry Smith**: Well, my suggestion – and I know Eric’s… we haven’t heard from Eric so he’s not committed, you know, one way or the other. You know, my suggestion would… would be… hold on just a second… that you… after all… after you’ve gone through 1, 2, 3, 4 there’s a couple other things I want to see added that I would suggest. But that you add a sentence that says, “All notices of disciplinary action shall include… shall advise the vendor of their right to appeal and also advise them of the availability of the Committee to act as an advocate on their behalf. I think… I don’t… I think that’s…. Eric, does that give you real heartburn?

**Morris**: Can you say it one more time, Terry?

**Terry Smith**: I don’t have the exact wording. I was going to say, “All notices of… all notices of disciplinary action shall advise the vending facility manager of his right to appeal.” And then I’d put a period. And then I’d say, “The notice shall also advise the vending facility manager of the availability of the BECC to assist and act as an advocate.” And then be done with it. It’s just… It’s just a form letter basically, anyway. It should be, just have that paragraph. We were required in every action we took against a vendor to advise them of their right to appeal and as well as legal things. And then sticking in one more sentence on that doesn’t seem to be that big of an issue.

**Morris**: I think that’s fine.

**Terry Smith**: Okay. So then, the… Any other things about this? I’ve got a couple of things that I’m going to bring up that I would just, from my own perspective. But anybody else, the BECC have anything else about this?

**Derrick Stevenson**: This is Derrick.

**Terry Smith**: Go, Derrick,

**Derrick Stevenson**: Yeah, I… I kind of have a problem with it not being pretty clear. If you just say performance and conduct that kind of leaves the world wide open to just about anything. I think it needs to be that the performance and conduct has to be considered negatively on the operation of the vending facility. And… Did that make sense?

**Terry Smith**: Yeah, I think it does.

Derrick Stevenson: I think it has to be clear… yeah, I think it has to be clear that… that the performance and the conduct negatively effects the operation of the vending facilities. So.

**Terry Smith**: They can only terminate your license…

**Derrick Stevenson**: [inaudible]

**Terry Smith**: They can only terminate your license for a violation of the rules or your operating agreement or the permit. So any performance that they are doing disciplinary action for have to tie back to a violation of the rules pertinent, or something like that. It’s just not, you know, performance in general. If… They cannot terminate your license if you did not violate something in the rules. That’s just…

**Derrick Stevenson**: Right.

**Terry Smith**: According to the operating agreement or the permit. So…

**Derrick Stevenson**: The performance part I’m really not that shaken up on; it’s the conduct part.

**Hauth**: Yeah, and I think… Hey, Terry, if I may, I think as I read through the rules there’s something about, you know, you had to represent the… I think there was some things in there that were really open to interpretation and that even I think talked about if you shed a bad light on the agency you might be in violation of the rules. I don’t have it in front of me. But I see what Derrick’s saying and I understand what you’re saying. But, you know, as we go through this there’s some issues we need to clear up. Because if you’re saying it’s tied back to the rules and the rules [inaudible] then you’re in a jam, too. So.

**Art Stevenson**: Yeah, I… I agree. Performance, you know… but the conduct is really subject to determination. And I did see in there, in the rules where if you talk negatively concerning OCB, you know, that’s… that’s kind of, in my opinion, infringes on your right to free speech and stuff like that. And obviously we wouldn’t want to deny those rights to an individual. Just because you’re in the program you still have…. And I can see, you know, this code of conduct stuff coming out in a different kind of way, which was really controversial, is… is kind of spelled out there. So.

**Hauth**: Well, let’s hear… let’s hear what Terry has to say. Art, you’re right, you know. Let’s hear what Terry has to say, I suggest, if we can. So. But you’re absolutely right. So.

**Terry Smith**: I’m… I’m trying to find where you can’t talk negatively against OCB. Where… Where is that? How did I miss that? Eric, where is that? Do you know?

**Morris**: I’m having a hard time finding it too, Terry. I think that was probably… well, I think that’s probably in the current rules but I don’t think it’s in this version.

**Art Stevenson**: Well, it jumped out at me when I read the copy you sent out, Eric. And so, you know, I haven’t got time to search right now to find where it is but it… it’s in there because it hit me in the face because we’ve had this conversation, you know, before. So it was in the copy that you sent out.

**Morris**: Art, I’m looking at the copy right this second and I’m… I’m having a hard time finding what you’re talking about.

**Derrick Stevenson**: Well, this… I… I think that, you know…

**Art Stevenson**: Well, maybe it’s in the operating agreement, then. I know it was…

**Terry Smith**: I mean, the only thing it says in the rules, it says, “represents themselves as employees of the State of Oregon or the Commission or solicits or negotiates for new vending agreements or permits.” And that’s out… that’s…

**Art Stevenson**: So Terry, maybe it was in the operating agreement but I read those words. And, you know, I know it was in there. So it… it may be in the operating agreement.

**Derrick Stevenson**: This is Derrick.

**Terry Smith**: Go, Derrick.

**Derrick Stevenson**: Yeah, well, my main concern is the Commission tried to do a code of conduct a year or so ago and it was kind of my understanding that if you said something that hurt somebody’s feelings, that was breaking the code of conduct and there was just… just things in there that didn’t even pertain to the operation of the vending facility in any kind of negative way. You know, if you said something in a meeting that hurt someone’s feelings you could get written up and stuff like that. And that’s the kind of stuff I want to… want to avoid. If it’s negatively affecting the facility then I have no problem with it. But anything outside that scope should not be considered “conduct.”

**Terry Smith**: So what do you have as a suggestion? I mean, I know where Eric’s coming from on conduct. I mean…

**Derrick Stevenson**: Right.

**Terry Smith**: … it all has to tie back to the rules. So…

**Derrick Stevenson**: Right. Well, my suggestion is just… just put in there that it has to… has to deal with stuff that is negatively affecting the facility or the customers or whatever, you know. It has to strictly deal with work-related stuff and nothing else.

**Terry Smith**: So Eric, would you have an issue saying in that first sentence “the Commission shall utilize, except as provided in… the Commission shall use progressive discipline to document and correct performance or conduct issues related to the operation of a vending facility?”

**Morris**: No, I think that’s fine.

**Terry Smith**: Okay. I mean that’s… Does that get at it, Derrick?

**Derrick Stevenson**: That’s good. Yeah, that sounds good.

**Terry Smith**: Okay. Any other comments or questions about… about that?

**Morris**: Art, I don’t see anything in the operating agreement about that either. So, not sure where you read it.

**Terry Smith**: Yeah, I looked… I looked at it. May… It may… If there’s something in there it missed me but it could be. Okay. So, two… two things that I would strongly… well, I don’t know strongly encourage you, but I would at least encourage you to consider: one is that you… if we added a sentence about the due process, then I would add another paragraph after that. Because we’ve already talked about it but I think it’s clear here that, you know, if it is an issue that is… you can somehow correct with training, you know, the agency needs to provide that training. Now, it may be implied up there and maybe that’s where you get at it. The performance of conduct… continue the business staff… Well, let’s see.

**Art Stevenson**: This is Art.

**Terry Smith**: My point… My point is, I think… I think there needs to be something in here that puts a little bit of responsibility on the agency to, you know… I mean, it’s one thing to say, “You’re doing a bad job and you’re going to do a better job.” But if it’s a training issue then… and this is where most states lose arbitration, because they go through the discipline process and they don’t provide training and they get… they get slammed. And even if it’s not in your rules that you require it, you get slammed. And I just think, so that everybody’s clear…

**Art Stevenson**: Terry, this is Art.

**Terry Smith**: Mm hm.

**Art Stevenson**: I… I agree with you a hundred percent. And… And again, there’s another “may” word in there. It says, “may provide additional training,” I believe and… and it should say, “shall provide additional training.”

**Terry Smith**: Everything’s not training-related.

**Art Stevenson**: Yeah.

**Terry Smith**: So I don’t think… In that case, I don’t think you can say “shall.” I mean, again, I use the example… and you didn’t… you know, not pay… not submitting your reports on time is not a training issue. That’s just simply not… You can’t provide training on how to put a stamp on an envelope and mail it by the 20th. That’s just… there’s no way you… that’s not a training issue. What, you know, what you could do is you could say, like, verbal warning… Business Enterprise Program staff will discuss the performance or conduct issues that were observed…. That’s bothering me. Is that “was” or “were,” Eric? You… are you…? I’m not an English major. Because this says “performance or conduct issues” ends with an s, “was observed.” I don’t know. I guess that… I’m okay with it. “Or reported with a vending facility manager or licensee, Business Enterprise Staff will explain the expected corrective actions.” And they you could say, “including any prescribed training,” and that gets at what I’m talking about. That way the agency states… states in there that they can require training and should provide training.

**Morris**: So that’d be mandatory training that the manager would have to do? They couldn’t…? It’s not optional?

**Terry Smith**: It think if it’s… well, that’s what I’m… that’s the way I’m suggesting it. If it’s… If it’s…. Well, let’s talk through that. I mean, what do you… what…? Yeah, you’re right. Probably, it’s better, now that you say that, it’s probably better if you just add a sentence down at the bottom, like I was talking about, after we put the notice in, and say… put a sentence in saying that you’ll offer, you know, training. And if they don’t take advantage of the training then, you know, they’re not going to be… they’re not going to be terminated because they didn’t do the training. They’re still going to be terminated because they didn’t correct the problem. You don’t want to terminate them because they didn’t do the training. And so I think that’s probably….

**Morris**: Okay.

**Art Stevenson**: So, Terry, this is Art.

**Terry Smith**: Go ahead, Art.

**Art Stevenson**: You know, I… I think there is training out there – in fact, we went through it one time – about time management. And obviously if a manager isn’t very good at managing their time and needs training in time management in order to make sure that they get things done, you know, that good old training you need to list your priorities and get rid of those things that you don’t need to do. And so, you know, a good old time management training session with the blind licensed manager that seems to be having problems getting their reports and stuff on time may be appropriate. And so I just thought I’d throw that out there because I know that the agency provided time management training to the managers at one of our in-services. Because it was a critical issue.

**Terry Smith**: What was a critical issue?

**Art Stevenson**: That managers weren’t managing their time, you know, running their facilities and stuff like that. And, you know, so it was a valuable training tool to help the managers, you know, resolve issues and stuff like that. So that… that’s what I got to say on that. And, as a matter of fact, we were talking about late reports and stuff like that and I mentioned the fact that well, maybe some managers need some time management training. And then all of a sudden more reports were getting in on time and it wasn’t a problem anymore; or at least not as major a problem as it was. So I just thought I’d throw that out there. I, you know I think…

**Terry Smith**: The fact… The fact is, there are some things that aren’t training. I mean, the… you know. I mean, if you’re just, you know… everything’s not a training issue. And I just think you ought… I think you’re going to have to leave some discretion here when you talk about it because I think, you know, I don’t think this… I think if the agency determines that there’s a deficiency that can be corrected by training, then they shall develop… and, you know, that’s maybe the language we use. You could say, “If the performance, conduct… If the Commission determines that the performance or conduct issues can be corrected with training, the Commission shall arrange for such training and make it available to the vending facility manager.” I think that… I think that sentence…

**Art Stevenson**: That’s good.

**Terry Smith**: … protect…

**Gordon**: Terry?

**Terry Smith**: Yeah, Steve Gordon.

**Gordon**: Yeah, I… I’m in agreement with you there on that, Terry. And also, Art was mentioning the fact of the training that we have had. But we got to remember, you know, we’re building these rules around not just when it goes into effect in 2020. Is that correct?

**Terry Smith**: Nah, these rules go into effect whenever they’re finalized.

**Gordon**: When will the rules be completely in effect?

**Terry Smith**: Well, the law says they’re supposed to be completely in effect by November 15th.

**Gordon**: Okay. So… but basically, I’ll go back to… that was past training. We’re looking at other training for the new managers that’s going to be coming in. That’s one of our main concerns here, too. That’s all.

**Terry Smith**: Right. I would suggest language… and I know we haven’t… Eric hasn’t agreed. But I would suggest language, say, “If the Commission determines that the performance or conduct issues can be appropriately addressed through training, the Commission shall make such training available to the vending facility manager.” And I think that… You okay with that, Eric?

**Morris**: I think that sounds fine. We’re still in the progressive discipline, right?

**Terry Smith**: Uh huh.

**Morris**: All right.

**Terry Smith**: But that… that’s just one more signature added. Anybody… Any objection to that from the BECC? Okay. Then the other thing, just… just to consider… and I don’t know how you want to approach it. You know, how long does discipline remain in somebody’s file? You know, does it stay there forever? Is it there for five years? Is it there for, you know, I know in many cases, you know, if you correct the problem after a period of time the… that is removed, you know, from your file and it can’t be brought up five years from now as reason to take further action against you. Just something to consider. I don’t know if you guys wanted to include that but I throw it up there for your consideration.

**Derrick Stevenson**: Yeah, I think it should be documented at the time of the incident; well, after the incident is over and the manager took the steps that… that that should be pretty much the end of it. And, you know, of course if something else happens then they just start another… another session and work on getting it fixed. I don’t think it should be, you know, something that can be used against the manager, you know, forever.

**Gordon**: Hey, Terry? Steve Gordon.

**Terry Smith**: Yeah, Steve.

**Gordon**: What… What does Tennessee do? Do they have a structured 60-day, 90-day deal? Or how does that work?

**Terry Smith**: It’s… I can’t remember. I can’t remember if there was a complaint section or…. But somewhere in there we had a year or two. I can’t remember.

**Gordon**: Mm hm.

**Terry Smith**: Which I think… I don’t have a problem with these staying in the file for a period of time and… because if it shows a pattern of problems then, you know, it’s one thing. But if the problem only pops up once every, you know, x number of years then it’s a little different situation. I mean, I would… And I don’t know what the…. Eric, what… what does the State of Oregon… how long does it stay in your file there?

**Morris**: I… I don’t know right off the top of my head, Terry. I just assume, when you get written up for something, it doesn’t come out of your file. Now that may be different depending on union contracts and stuff like that. But for managers and stuff, if it’s in your file, it’s in your file. So.

**Terry Smith**: Okay. Well…

**Hauth**: Hey, Terry, tell me… tell me the drawback of having it stay in somebody’s file or the benefit of having a time period to expunge it or whatever.

**Terry Smith**: I think the… It’s not… It’s not that big a deal. The advantage is that, you know, if you, you know, if you gave somebody a warning… an oral warning five years ago, let’s say you gave them an oral and a written warning five years ago and they’ve been perfect managers for the last five years and then they do the same thing and then you give them a final warning, you know, that… that’s the… that’s the issue. Do you start over at that point or, you know…. That… That’s the only… You know, there’s not a real…

**Hauth**: Okay. Yeah, that helps me understand a little bit where you’re going with it. Eric, are there… are there things being put into managers’ files that they’re unaware of? Or does anything that gets put into their file are the managers made aware of? And, that’s the first question. The second: do you have… would you or the agency have a problem with having a time period on, you know, on a write-up on somebody being released?

**Morris**: Well, to answer your first question, I don’t know what managers are or are not aware of but everything we do gets documented to a certain extent when it comes to managers… depending on what, you know, depending on what the issue is. As a global perspective we document what’s happening within the program and if it’s manager-specific or facility-specific it gets documented. Now, the context around… if you give somebody a verbal… a verbal warning then you write them up for something and five years goes by that doesn’t pass any common sense test to say you’re going to give them a final warning based on that progressive discipline, it just doesn’t… it doesn’t…. And I’m sure that there’s some laws out there that govern, you know, the tempo of that.

It wouldn’t make any common sense if you went to an arbitration panel and said, “Hey, I wrote this person up, gave them a verbal warning and wrote them up. And then five years went by and they were perfect records and then I gave them a final warning and be terminated.” That doesn’t make any sense at all. And for those of you who have managed people over the decades you’ve been in the program and stuff, you guys know that. So it wouldn’t make sense to do the same thing to a manager. I don’t know how you’d do it in a progressive discipline program like we’re drafting here that would allow for circumstances to be flexible enough when it comes to discipline. Because if you say it’s going to be 90 days after the last time it happened and you’re going to have to start the process over again, like we talked about before. And it was an extreme example of somebody burning down their facility but usually policies and procedures are based on extreme examples of the crazy things that happen in life.

So to make it cookie cutter with a sliding scale kind of thing is tough. It has to…. You have to use some common sense and you have to look at the circumstances and say, “Did that person…?” And let’s say it was submitting late reports or something like that; they were good. We gave them, you know, we gave them a verbal, we gave them a written; they don’t do it for two years. Well, obviously, on like something like that we’d come back to them and say, “Hey, you’ve been late. We’re going to document that with a verbal warning. We’re going to start the process again.”

But I’m trying to think of a different example that would be more extreme, where we would come back and say, “Listen, you’re not going to get to hit the reset button because we’ve covered that.” And it’s going to have to do with the extreme circumstances, the extremity of… how extreme the circumstance was and the time period between written and, you know, between the written documentation processes.

But normally, if you have somebody that has a progressive discipline type of issue, and let’s say it’s, like an example I can think of right off the top of my head, somebody coming late to work, which doesn’t apply to our circumstances, but it is something that’s common with employees. You give a verbal warning the first time, you say, “Hey, we don’t want you showing up late for work. You know, please… please be on time.” Two weeks go by, that person’s late to work a couple times in those two weeks, you give them a written warning, “Hey, here’s the expectation.” You don’t let that go for another year before you warn them again and they’re late every other week or every week they’re late to work; you write them up in a consistent fashion, which is what you have to document if you’re going to terminate someone. So the same thought process should apply with this kind of progressive discipline, it depends on the circumstance. So if we were going to put some kind of measure in there, I think it would be hard to put something in that made sense to fit circumstances.

**Gordon**: Terry?

**Terry Smith**: Yeah.

**Gordon**: Steve Gordon. The one… The one… This is just kind of a far-out example but let’s just say I won the transfer for better… better job… better opportunity and I had a whole bunch of stuff, let’s hopefully not, but had a bunch of stuff on file, you know, two years down the road but I put in a request to go to, say, Tennessee. You know, I don’t want to have a bunch of old stuff or old news tracing along, you know, when I am applying for, let’s say something in Tennessee. You know, I don’t want to have an old list of, you know, they’re going to be new people looking at… at my qualifications and that. And they’re going to start seeing, “Oh, this guy had that,” or “He had that.” And then all of a sudden it’s going to bring up kind of like old news. That’s… That’s I have a concern about the promotional and, you know, transitional part of a bad list.

**Terry Smith**: Well, I mean, I thought… I think it was worth having the conversation over. I don’t think there’s going to be consensus on it. I don’t think it’s that big of a threat to the vendors. So, you know, my suggestion is that we move on. And, you know, if you later come up with a procedure you want to implement on that, you can. Any objection to…? So, under Termination of License we added in “fails to complete the required minimum number of continuing education points in a calendar year.” Which we’ll come back to that. We’ve got to talk about continuing education points. That’s the part… I submitted it, you know, at your request. The notice of termination… when the Commission has grounds for termination of a license it shall provide written notice of termination.” That’s still the same. “Such notice shall advise the vending facility manager of his or her rights to a full evidentiary hearing, as provided in section The Dispute Resolution Process (c) when the applicant, trainee or vending facility manager makes a written request for a full evidentiary hearing, as required in 34 CFR 395.13.

 Then the next big change was vending education and I’ll just read through it. And I just put points in here just to give us something to talk about, okay? Continuing Education Training: “In order to ensure continued professional growth and to enhance opportunities for upward mobility, all vending facility managers and licensees are required to complete a minimum of ten points of continuing education credits each calendar year. Credit for training will be given as follows: 3 points – vending facility manager training sponsored by the Commission.” And that should say “sponsored by the Commission and the BECC.” That’s the… Do you do one…? You do two meetings a year, don’t you?

**Morris**: Depends on the year.

**Terry Smith**: Don’t you do…? Okay. Then “four points to attend the National Association of Blind Merchants’ BLAST Conference, the Randolph-Sheppard Vendors of America Sagebrush Conference, the National Automated Merchandising Association OneShow, National Restaurant Association National Conference and the National Association of Convenience Stores. Three points…” And that should say annual conference, too, after Convenience Stores. “You get three points for successful completion of a Hadley Institute for the Blind and Visually-Impaired Online Training Course offered by Hadley’s Forsythe Business Program. You get three points for certification or recertification in the National Restaurant Association’s ServSafe training… ServSafe Food Safety Program. You get one point for attending a state NAMA conference. And you get one point for attending an industry-sponsored food show. Additionally, the Commission may design training specific to an individual or identify other training opportunities not listed above. With the active participation of the BECC point values will be assigned to such training, as appropriate. It will be the responsibility of the vending facility manager or licensee to provide documentation each January of attendance or completion of all training. The Commission may make an exception to the training requirements if the vending facility manager or licensee cannot complete the training due to medical issues or other documented hardships.” So I would open…

**Hauth**: Hey, Terry?

**Terry Smith**: Yeah.

**Hauth**: Yeah, yeah. So, yeah, I…. Thanks for sending that along. I know, like you said, it’s a good place to start. There’s a couple of things I do want to say. I believe the current law should remain the same, as far… or the current rules to remain the same, as far as the in-services are sponsored with the assistance of the…

**Terry Smith**: Right.

**Hauth**: … Oregon Commission for the Blind. That’s one thing that I wanted to make note of. And also, if… if we are going to be required to attend and to receive those amount of points, then we need to make sure that, I believe, that the agency also sponsors those. Because there may be people that aren’t allowed to be, you know, can’t make it on their own.

I think ten points might be a little bit extreme at this time. I personally, and I could be wrong, but I personally think that managers need to be also encouraged somehow to attend Elected Committee meetings. There’s a lot of them that don’t and I think that also has some kind of value point system there. But I just wanted… just wanted to throw that out there. I do believe that the national trainings are really important and also, you know, the state in-service. So those are my two cents’ worth.

**Terry Smith**: Well, committee… committee meetings, I don’t disagree. They should attend. That’s not training. You know, this section deals with training. But I agree… I agree with you, the language needs to be on that first one, you know, should say, “Vending facility manager training, sponsored by the BECC, with the assistance of the Commission.” That’s the language out of the act. That should still be there.

**Art Stevenson**: Terry, this is Art.

**Hauth**: What about funding, Terry? What about funding if the agency is requiring that? You know, you could actually have your license terminated for not meeting, you know, a set number of points. How do we ensure that the agency provides for funding on that?

**Terry Smith**: Well, the only thing that really requires funding would be the national conference and you wouldn’t want to make it to where the only way you could qualify is if you attended one of these national conferences. You know, the way it… the way it’s set up, you could meet your requirements by going to both of the…. I was thinking you did two a year, but if you do two meetings a year, you know, that gives you six points. And then you can do, you know, a Hadley course for three points and it doesn’t cost you anything. And then go to a food show or two. A state NAMA conference gives you one point. So I don’t know how much that would cost.

 But I see what you’re saying. And the only thing… the only thing you could add, and it wouldn’t be very… it wouldn’t be worth the paper it was written on, but I mean you could add a sentence, you know, “To ensure maximum upward mobility training opportunities, the agency shall sponsor managers to attend national conferences, based on the availability of funds.” So, you know, you could… you could put that in there.

 But, you know, again it’s going to be based on monies being available. This year I think you guys are sending several. So apparently funds are available. Next year they might not be. I think you need to make this where it’s more than just attending your two conferences. I mean, if you want to say nine points instead of ten, you know, that way you get three for attending each one of the meetings you sponsor and three points for doing a Hadley course. It doesn’t cost anything that way.

**Art Stevenson**: Am I off mute?

**Terry Smith**: You are.

**Art Stevenson**: Okay. Yeah, I had some discussion with some of my constituents concerning this. And when we were writing our previous rules we… of course, we got the mandatory in-service training, that you can’t bid on a place unless you attend one of the in-service trainings. But again, there was some problems about the termination stuff and… and all of that. I think managers won’t have a problem with maybe, you know, this being tied into the transfer and promotional system. But some managers just have time and money because of family constraints, et cetera, et cetera. And so, after further consideration, if we want to, in my opinion, include maybe some extra credit points to go into the bidding process I wouldn’t have a problem with that. But I, you know, I think that’s probably as far as we should go, is definite on the in-service training, some extra credit points for bidding and stuff like that. But to tie in, you know, termination, “Hey, you got to do this or you’re… you may get terminated,” I think that’s a little bit extreme. So that… that was, you know, some of the input.

**Terry Smith**: So what… So what if you said you couldn’t… and I totally get what you’re saying about it being pretty harsh if you don’t… if you don’t do it. You know, if it’s not, you know, required continuing education credit, if you’re just going to give bonus points for it, what if you said you… if you don’t complete your continuing education credits then you can’t bid on vacant facilities for the next year.

**Hauth**: That’s probably a better angle, I think. You know, some kind of incentive for, you know, supporting transfer and promotion or something, rather than a discipline or punitive type of thing.

**Terry Smith**: I can… I can totally get that.

**Art Stevenson**: Well, and, you know, that’s… that’s my point. And, you know, I don’t… I don’t want… want to say, “Hey, you can’t bid on something, you know, this year if you haven’t done it,” or any of that. Because, you know, I can see where a newer manager, it would definitely benefit. You know, a manager that’s been around for a long time and attended a lot of conferences and those kind of things, you know, could be… You know, the bidding part I, you know, that may, in my opinion, be a little bit harsh, too. But if you included it and as I thought about this more, when… when we were actually doing the point system for, you know, bidding and stuff like that we… we tied it in there. But now that, you know, we’ve curtailed it to ten points each and stuff it’s a little hard to, you know, add a lot of extra points because then it would, you know, it would be difficult on some managers and better on other managers. And so that’s…

**Terry Smith**: You’ve already got training included in your selection process. So, you know, you’ve already got that as one of your… one of your criteria that you’re going to rate people on. So that, you know, so that’s already covered in your selection process.

**Art Stevenson**: Well, training and education, if I believe… that’s one criteria. It’s… they’re mixed together, correct?

**Terry Smith**: I think it’s just training completed. I can’t remember.

**Art Stevenson**: Yeah.

**Bird**: Jerry.

**Terry Smith**: Yeah, Jerry.

**Bird**: Yeah, I see a little bit of what Art’s saying but I still believe that an incentive is a good thing. I… I’m more in favor of, if you don’t want to do that special thing then that shows that you’re not wanting to maybe move up and maybe learn as much as you can. So I personally like that you can’t bid on a unit for a year if you have… if you don’t do it. So that’s my vote.

**Derrick Stevenson**: This is Derrick.

**Terry Smith**: Derrick.

**Derrick Stevenson**: Yeah, well my opinion is to scrap the ten point system completely. I think, you know, we don’t want to make things that may be impossible because of people’s finances and stuff like that. I think, you know, we can put in that they do three things of training per year would be better than just arbitrarily giving points out for this and for that. I don’t think the opportunity to do all that is the same between, you know, somebody who has… who’s making a lot of money versus somebody who’s not making a lot of money. So I think we can do a…

**Terry Smith**: If we change… If we change ten points… If we change ten points to nine points, or you change the Hadley course to four points, you can complete… you can get your points without spending a nickel. So I don’t think… you know, I think… and you’ve got an exception in here for the agency, you know, if there’s medical reasons or other hardships, they can make an exception to it. I don’t… I don’t think the money thing is a valid argument because it’s set up so somebody…

**Derrick Stevenson**: Well, how many Hadley courses are there? I mean, when… when they’re gone what do you use? And…

**Terry Smith**: If you take one a year you’re going to be good for the next 15 years.

**Derrick Stevenson**: Yeah.

**Art Stevenson**: Well, and… and, Terry, I think what Derrick is saying, instead of having a point system, have, you know, “Hey, you got to do at least three upward mobility training” or whatever we’re calling this; three different options. So then actually what you’re doing is say, “Hey, you need to, you know, get more educated. You have all these options and in any given year you have to do three, instead of “Hey, you’ve got to get nine points or ten points.” You just… and that would make it less complicated. Just say, “Hey, you’ve got to complete in a calendar year three of the following things.” And… And then…

**Terry Smith**: Okay. Okay. I got you. So I’m not hearing from Eric or anything so I feel like I’m sort of negotiating on my own point here. [Laughs.]

**Morris**: Terry, I’m just waiting for there’s some kind of consensus.

**Terry Smith**: I know. I understand. I… I think Derrick’s on to something. I might compromise… it’s the compromise with me, it’s not the compromise with Eric. But I mean, I think if you go up there and you strike that section where it says you’ll lost your license, which is what we talked about last time, so we strike up there and… 19. Fails to meet the required minimum number of continuing educations… if we strike that, then we change the language under continuing education to say, “In order to ensure continued professional growth and to enhance opportunities for upward mobility, all vending facility managers and licensees are required to complete continuing education credits each calendar year. In order to meet this requirement the vending facility manager must complete three of the following.” And then you just list those that we’ve already got listed there. Take out the points.

**Art Stevenson**: Yeah, I think that makes…

**Terry Smith**: That gets at what I was doing anyway, trying to get it to where you had to do three of them. And it leaves it up to the vendor to decide which of those three. So you’re accomplishing the same thing, just getting at it a way that’s a little more comfortable for you guys. And then we’d have to put over there… in the promotion process we’d have to note that, you know, they couldn’t bid for a year if they failed to do so. So from the BECC side are you, is everybody okay with that?

**Derrick Stevenson**: I’m good.

**Art Stevenson**: I like that a lot better.

**Terry Smith**: Okay, Eric. Now your turn.

**Morris**: Well, I… I guess I’m struggling with it. Because last time we talked about continuing education we talked about… and it’s the first sentence. It says, “In order to ensure continued professional growth and to enhance opportunities for upward mobility” and then you draft this up, which I think is pretty consistent with a whole bunch of other states that have implemented this, correct?

**Terry Smith**: Yeah, it is. But the points… the point value, I don’t what the other states have done.

**Morris**: Yeah, which is not only… not only a BE thing. Like, I don’t know, probably almost every licensure in the country has some kind of continuing education credit requirement nowadays, if I understand that correctly, right?

**Terry Smith**: A lot of professions do.

**Morris**: Yeah. From VR Counselors to pharmacists’ assistants and pharmacists and doctors and everybody else. So here’s my thing: if we’re trying to really encourage people to professionally develop themselves, then not having some kind of consequence besides, “Hey, you can’t bid on something,” you’re just watering it down. I mean, why have the thing at all? That’s why I was surprised when you guys brought it up last week. You were like, “Well, hey, we should have this.” And then if you’re going to put it into a policy let’s have something that has some consequences and you can call it, you know, anything you want. But it has consequences if you don’t do it, just like everything in life does. So… Otherwise, if we’re just going to water down, say, “Hey, you’ve got to go to some meetings” that most people go to anyway, how is that… how is that challenging people to continue their professional development?

**Hauth**: Hey, Terry? Yeah, this is Randy. Again, I think we need to stay away from the punitive nature of this. Again, Gretchen Merrill identified this statute, which these rules are based on to help implement, as being extremely program friendly, very flexible and to grow the program. I agree with Eric and, you know, others that we do need to step up our game. But to try and be punitive on it, I think we’re missing the mark. To try and incentivize and encourage, I think we’re right on the target.

Morris: Well, I think it’s punitive if you say people can’t bid the next year. The argument…. You can’t have the argument both ways. Either it’s punitive towards their licensure, towards their opportunities in the future…. It has consequences, if you use [inaudible].

**Hauth**: Well, yeah, but I mean license termination is a little extreme. Maybe it should be, you know, considered in the promotion opportunity. I don’t know. But.

**Morris**: I’m not vested in this. Because you guys, we talked about it last meeting. I said, hey, if you guys wanted… Terry drafted up some stuff for us, which I think it pretty good. I mean, if you want to jockey around the numbers a little bit, I’m good with that, too. I think taking out the numbers structure, taking out any… any punitive consequence kind of discussion at all is… is kind of silly, to be perfectly honest. And if you look at other professional agencies or professional occupations they have these kind of standards. And they’re just standards, they’re not punitive or anybody else. You don’t hear people who have to, like the VRCs, they don’t like continuing education but it’s part of their job, to be highly educated. Just like, as business people, licensed blind managers should be up on the trends and everything. So.

**Art Stevenson**: Terry, this is Art. Am I off mute?

**Terry Smith**: You are.

**Art Stevenson**: Okay. So then let’s make it progressive, okay? And… And say if a manager doesn’t fulfill these obligations for a certain amount of years then obviously they’re not interested in, you know, being the best they can be. And then maybe the termination thing could occur. So set a number of years in a row and then the possibility of termination could be there. But, you know, to say, you know, after one year you can be terminated, I think… I think that is extreme. So since we’re doing everything else progressively, putting in a clause if we do it in a number of years in a row, then the possibility of license termination is there. Because obviously, a manager, you know, if they think they’re going to get… any good managers think they’re going to benefit for something, with something, they’re going to do it. So that’s my thoughts on that, then.

**Derrick Stevenson**: This is Derrick.

**Terry Smith**: Go, Derrick.

**Derrick Stevenson**: Yeah, why is it that each one of these things have a different numerical number? Why can’t… If you’re going to have… have requirements, why can’t they all be worth the same amount of points instead of one being worth one point and the others being worth three or whatever? What… What’s…?

**Terry Smith**: The point… The points were sort of based on, you know, the difficulty to get it, you know, going to a food show for an hour or two is not very challenging. It’s… It can be educational but it’s not, you know, doesn’t take that much effort. So I only put one point with that. I put the greatest number of points on the national conferences because they’re probably the best training you’re going to get and they also are the hardest to obtain. The… You know, I admit they were, you know, somewhat random in nature. But they certainly…. There’s nothing that says you can’t change the point value of the… I just… and I said when I sent it out, I just… I think I said, or said when I started this, I think, you know, it was…

**Hauth**: Hey, hey, Terry?

**Terry Smith**: … a starting point to have a conversation.

**Hauth**: Let me just say, I think… I think there’s too much resistance on both sides. I think we need to support and encourage training and our growth. However, you know, I will… I won’t support a termination for a manager that won’t do it. Again, I think that’s missing the mark. But let’s… you know, we have some other things important to talk about too. And I know you’re only here till 11:00 today, right?

**Terry Smith**: I’m here until 12:00.

**Hauth**: Well, okay. Good enough. But anyway, let’s find some kind of workable solution. It seems like Eric is set in that your license will be terminated or some kind of punitive action will be taken if you don’t do these. But again, I think that’s missing the mark. So let’s find something that Eric can be happy with and that we can be happy with. Obviously…

**Terry Smith**: Okay. Let’s…. So let me start with the facts. Is the Committee at least in agreement that the consequence could be that you can’t bid for a year. Whether you don’t do it… we’re not… we’re not talking about Art’s issue about, you know, progressive. But at least that we tie it to your ability to bid. Is there at least consensus from the BECC to do that?

**Derrick Stevenson**: Yes.

**Terry Smith**: Okay. Hearing no objections…. So then the question… there’s two issues to decide: one, do we use a point value or do we say it’s got to be three. And the other issue, is it one year? I don’t think it could go more than two consecutive years if you fail to meet it. I think you could say, “If you fail to meet this requirement in two consecutive years you won’t be able to bid.” But… and I agree that since this is new for you guys that jumping straight to termination is probably a little… a little stiff. I don’t think when we first implemented it we went straight to termination. We did later on. But… and you may want to come back in the next round and… and do that. But… so…

**Art Stevenson**: Terry, are you talking about Tennessee? Because I know they have the upward mobility training. But they don’t have all the other stuff. But…

**Terry Smith**: It’s not a point system. It’s just, you have to complete… I mean, you have to complete 12 hours of training, one way or the other. And you could…

**Hauth**: Hey, Terry? How about…? I’ll share that I think the three is a good idea and I think… and that gets away from the point system. And I think, you know, two consecutive years is also reasonable. I don’t know what the rest of the Board thinks. But.

**Derrick Stevenson**: I agree.

**Terry Smith**: So what… what do you think, Eric?

**Morris**: About the points issue? Is that the…?

**Terry Smith**: What the… What the consensus is on… from the BECC is that have to complete three of those, off that list. And if they don’t do that for two consecutive years, then they won’t be able to bid for a year. At least a starting point, to get you… get you started down this road. If you ever want to make it stricter… we… I mean, that’s… we did ours initially that it was tied into promotion and then we came back later and made it different. So that’s a place to at least get you into this…

**Morris**: So, Terry, what was…?

**Terry Smith**: … process, to where you start to think…

**Morris**: What was your experience with people actually doing… doing it? Was it… did they do anything? Or did they just say, “its fine?” Or…?

**Terry Smith**: It was not an option for… I mean, it was required. And we… we’ve never had…. You know, there’s been one… and I can’t speak now but I was thinking all the years that I was involved in it, there were one or two cases where there was a legitimate medical issue that prevented somebody from going to a training and we had to get them… and it was legit. I mean it was, you know, it wasn’t that, you know, “I felt bad” or whatever. They legitimately could not attend the trainings that year because they had an extended medical issue. And so… but other than… other than one or two cases like that, it never came up. People either… People complete their 12 hours and they either do it through going to the agency-sponsored training or they go to the… to BLAST or Sagebrush or NAMA or one of those to complete it.

**Morris**: And when you…

**Terry Smith**: And it was… it was a minimum of 12 hours.

**Morris**: And what were the consequences when you guys first rolled it out?

**Terry Smith**: It was tied to the promotion process; you couldn’t bid.

**Morris**: Okay. I…

**Terry Smith**: And then we came back… then we came back and made it stricter in the next go-round.

**Morris**: I would be fine with that. I think the two-year thing is… I think you’re just… I… I don’t understand that piece of it. If somebody doesn’t do it in a year they shouldn’t be able to bid on anything the next year. If we’re going to take that route then, yeah, there’s going to have to be something to motivate people to…. Because instead of flipping it around and making it punitive, it’s hey, people are allowed to bid on stuff instead of you’re not allowed. And so that makes it… incentivizes it.

**Terry Smith**: So BECC, he’s compromising on making it promotion and not termination. I think…. Are you okay with completing three of the… off that list. You’re just not… you want to make it every year and not two consecutive years. Is that what I hear? Eric?

**Morris**: I’m sorry, Terry. What? I was…

**Terry Smith**: I just wanted to make sure… I just want to make sure that you’re wanting to compromise on the fact that it’s not termination and you’re okay with it being three off of that list…

**Morris**: Yeah.

**Terry Smith**: And then… except you think it should be every year. So…

**Morris**: Yeah, I think that makes sense.

**Terry Smith**: …BECC, he’s meeting you over half way on this. So what’s the thinking on the BECC?

**Derrick Stevenson**: I’m good with that.

**Bird**: Works for me.

**Hauth**: Well, I’m with it too because I’d probably get about a hundred points a year. So I’m good with it.

**Terry Smith**: I know it. You will. [Laughs.] Okay, hearing no other objections, we will…

**Morris**: Well, Terry? Hey, Terry, can you hang on one second?

**Terry Smith**: Yeah.

**Morris**: So I just want to make sure… Kathy… Kathy’s furiously typing away to make sure that we’re staying… Did you…

**Ewing**: So, going back to number 19 under Failure of License, sorry, Termination of License…

**Terry Smith**: You’re going to strike that.

**Ewing**: So we’re still going to strike that. Okay, great. And so, let’s see. Terry, what I added in the first paragraph, at the end there after calendar year it says, “in order to meet this requirement the vending facility manager shall complete three of the following…”

**Terry Smith**: Read… Read the whole… Read the whole thing.

**Ewing**: Okay.

**Terry Smith**: Start at the beginning.

**Ewing**: “In order to ensure continued professional growth and to enhance opportunities for upward mobility all vending facility managers and licensees are required to complete continuing education credits each calendar year.”

**Terry Smith**: Okay.

**Ewing**: “In order to meet this requirement the vending facility manager shall complete three of the following activities.”

**Terry Smith**: Okay.

**Ewing**: “Credit for training will be given as follows.” And then I removed the points and so do you want me to remove them?

**Terry Smith**: Well, they already… there’s no change there.

**Ewing**: All right.

**Terry Smith**: And then… then you just add after number six…

**Ewing**: Mm hm.

**Terry Smith**: You need to put a sentence there before “additionally,” sort of a new paragraph.

**Ewing**: Mm hm.

**Terry Smith**: Well, let’s see. Wait. “Additionally…” So I guess there… so “it will be the responsibility of the vending facility manager or licensee to provide documentation each January of attendance or completion of all training.” Period. And then you add this sentence: “And failure to meet the continuing education requirement will disqualify a vending facility manager from bidding on vacant vending facilities for the next calendar year.” And then we, somewhere over in promotions we’ll have to… we will have to list that. And when we get over there we’ll pick that up. Okay.

**Art Stevenson**: Terry, is college business courses on there?

**Terry Smith**: Good point. Good point. I think that… when we had that as an option in Tennessee. So you may want to add that. And somebody could take an online college course or go to a college course, I would add that, Kathy, just to say a college business course.

**Ewing**: Should we say “completing a college business course?” Or…?

**Morris: “**Successful completion of.”

**Ewing**: “Successful completion of.” All right.

**Gordon**: Now, that doesn’t have to be credited, does it? Necessarily?

**Terry Smith**: Well, it just says for successful completion.

**Gordon**: Okay. That’s great. Thank you.

**Terry Smith**: And then, let’s see. So we need to move on over…. There under Application, which is on the very next page, under B): “A vending facility manager or licensee may apply for any vacancy and shall meet the following conditions:” It says, “has no past due indebtedness” and all… it’s got one, two, three. And…

**Morris**: Did we change any of this?

**Terry Smith**: Yeah, we’ve got to have “attended at least one Commission-sponsored training in the current… previous calendar year. That needs to say “has met the continuing education requirements, as outlined in Section A above.

**Morris**: Got that?

**Ewing**: Mm.

**Morris**: Kathy’s working on it.

**Terry Smith**: Okay. So then the next thing that I see highlighted in yellow that was a change is under Temporary Assignment. We changed “may” to “shall.” And it says now, the section now reads “If a vending facility manager or licensee is not available or selected for a primary assignment to a vending facility, the Commission shall select a vending facility manager or licensee to operate the vending facility under a temporary operating agreement, if a vending facility manager is available and willing to accept the temporary assignment.” So they have to offer it to a blind vendor first, if one is available.

 And then we added number seven down there under the section that… about what’s going to happen. It says, “If a vending facility becomes vacant for whatever reason without prior notice of the vending facility manager, the Commission may elect a contract with a third party vendor to ensure continuous operation of a vending facility. With the active participation of the BECC, a decision will be made as to when to announce the fending facility so that all vending facility manager and licensees can bid. In such instances, a vending facility will not…” – let’s see – “will not remain run by the third party for more than six months without bidding it out, unless unique circumstances…” We need to fix that a little bit. “If a facility is no longer viable the Commission, with the active participation of the BECC, may choose not to bid it out and make other arrangements.” So that’s the section that we added last time. “The vending facility will not remain…” Eric, help me out here. Let’s… “The vending facility will not remain run by the third party for more than six months without bidding it out, unless unique circumstances… unless there are unique circumstances… unless there are unique circumstances.”

**Morris**: Should we stop?

**Ewing**: No.

**Morris**: Okay. Got it. Yeah, that makes more sense. Hey, Terry? Would everybody be opposed to taking five minutes so we can hit the restroom real quick?

**Terry Smith**: Okay. Is there any…? That’s the language we agreed to last time. I’m assuming there’s no issues with that, right? BECC? Hearing none, let’s take a ten-minute potty… five-minute potty break. Five minutes.

**Morris**: Copy that.

**Terry Smith**: Kathy, can you smoke cigarettes?

**Ewing**: [Laughs.]

**Morris**: All right, back in five.

**Terry Smith**: Okay.

**END OF 8-29-17 PART 1 TRANSCRIPTION.**

Transcription: Mark Riesmeyer