

Texas Administrative Code

<u>TITLE 25</u>	HEALTH SERVICES
<u>PART 1</u>	DEPARTMENT OF STATE HEALTH SERVICES
<u>CHAPTER 453</u>	OFFENDER EDUCATION PROGRAMS (FOR ALCOHOL AND DRUG-RELATED OFFENSES)
RULE §453.101	Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly states otherwise.

(1) Alcohol Education Program for Minors--A Program provider holding certification from the department demonstrating approval for it to offer an educational program to minors, pursuant to Alcoholic Beverage Code, §106.115 (relating to Attendance at Alcohol Awareness Course; License Suspension), that is taught exclusively by Instructors certified under this chapter and conducted in accordance with, and as described in, the Alcohol Education Program for Minors Instructor Manual authorized and approved by the department under §453.108 of this title (relating to Program Content and Materials). The educational program is designed to:

(A) present information to participants on the effects of alcohol upon behavior and upon the lives of persons who use alcohol;

(B) help participants identify their own drinking patterns or problems;

(C) educate participants about the laws relating to possession, consumption, and purchase of alcoholic beverages and laws relating to minors under the influence of alcohol; and

(D) assist participants in developing a plan to reduce the probability of involvement in future alcohol-related illegal behavior or detrimental activity.

(2) Annual Reporting Period--That period of time beginning September 1 of each year and ending August 31 of the following year.

(3) Branch Office/Site--An additional Offender Education Program site that is located in the same or adjacent county as the headquarters of a certified Offender Education Program.

(4) Certificates of Course Completion--Uniform, serially numbered certificates of completion required and designated by the department to be used by certified Offender Education Programs for dissemination to Offender Education Program participants upon successful completion of the applicable Offender Education Program.

(5) Class--A session of a complete Offender Education course or Administrator/Instructor training workshop.

(6) Continuing Education Hour--At least 50 minutes of participation in an organized, systematic learning experience which deals with and is designed for the acquisition of knowledge, skills, and information on drug or alcohol-related topics, as applicable to the particular Instructor certification.

(7) Course--The complete series of Offender Education class sessions.

(8) Course Records--Offender education participants' personal data forms, pre- and post-tests, self-assessments, screening instrument(s), homework assignments, action plans, and any other written material required or used in the offender education class instruction.

(9) Course Roster--A form used to record data on all offender education participants enrolled in the course and to record attendance data on those participants at each class throughout the course.

(10) Course Size--The number of offender education participants in a course, to be calculated according to the number of participants officially enrolled in the course or the greatest number of participants in attendance in any class within a course, whichever is greater.

(11) Department--The Department of State Health Services, its Commissioner, and its divisions, sections, units, groups, and employees. The term also encompasses, wherever applicable, the department's predecessor agency, the Texas Commission on Alcohol and Drug Abuse.

(12) Drug Offender--A person whose license is suspended under Transportation Code, §521.372 (relating to Automatic Suspension; License Denial) and any amendments thereto, for final conviction of an offense described in that section.

(13) Drug Offender Education Program--A Program provider holding certification from the department demonstrating approval for it to offer, pursuant to Transportation Code, §521.374 (relating to Educational Program), an educational program to Drug Offenders that is taught exclusively by Instructors certified under this chapter and conducted in accordance with, and as described in, the Texas Drug Offender Education Program Administrator/Instructor Manual authorized and approved by the department under §453.108 of this title. The program is designed to:

(A) educate participants on the dangers of drug use/abuse and associated illegal activities;

(B) provide information on the effects of drug use/abuse and related illegal activities on personal, family, social, economic and community life;

(C) assist participants in evaluating their own abusive patterns connected with their use of drugs or associated illegal activities; and

(D) assist participants in developing a plan for positive lifestyle changes to reduce chances of being involved in future drug use/abuse and related illegal behaviors.

(14) DWI--An offense relating to driving or operating a motorized vehicle while intoxicated, as described in Penal Code, §§49.04 - 49.08 (relating to Intoxication Offenses).

(15) DWI Approval Representatives--A group of at least one representative from the department, the Department of Public Safety (DPS), the Traffic Safety Section of the Texas Department of Transportation, and the Texas Department of Criminal Justice Community Justice Assistance Division. The purpose of the group of agency representatives is to approve or disapprove the educational program curriculum or curriculum changes, as set forth in the Texas DWI Education Program Administrator/Instructor Manual and required to be used by DWI Education Programs under §453.108 of this title, as well as any rules and rule changes proposed for publication relating to certification standards for DWI Education Programs and their Instructors.

(16) DWI Education Program--A Program provider holding certification from the department demonstrating approval for it to offer, pursuant to Code of Criminal Procedure, Article 42.12, §13(h), an educational program to persons convicted of a DWI offense and placed on community supervision that is taught exclusively by Instructors certified under this chapter and conducted in accordance with, and as described in, the Texas DWI Education Program Administrator/Instructor Manual authorized and approved by the DWI Approval Representatives and the department under §453.108 of this title. The program is designed to:

(A) present information on the effects of alcohol and other drugs on driving skills;

(B) help participants identify their own individual drinking or drugged driving patterns; and

(C) assist participants in developing a plan to reduce the probability that they will be involved in future DWI behavior.

(17) DWI Intervention Program--A Program provider holding certification from the department demonstrating approval for it to offer, pursuant to Code of Criminal Procedure, Article 42.12,

§13(j), an educational program to persons punished under Penal Code, §49.09 (relating to Enhanced Offenses and Penalties) that is taught exclusively by Instructors certified under this chapter and conducted in accordance with, and as described in, the Texas DWI Intervention Program Manual authorized and approved by the department under §453.108 of this title. The program is designed to:

(A) educate participants about chemical dependency and the problems associated with chemical dependency;

(B) provide intensive instruction about specific actions participants can take to prevent future DWI offenses; and

(C) instruct participants about methods and ways to make necessary lifestyle changes in order to prevent alcohol/drug-related problems in other areas of the participants' lives.

(18) In-service--A department-sponsored continuing education seminar, for an applicable Offender Education Instructor certification.

(19) Instructor Applicant--A term describing an individual from the period when the individual submits an application for admission into an Administrator/Instructor certification training workshop until the point where certification is granted or denied.

(20) Instructor Certification Period--That period of time beginning with the date Instructor certification was granted to instruct an applicable Offender Education curriculum, and ending the last day of the same month Instructor certification was granted, two years later.

(21) Minor--A person under the age of 21 years.

(22) Offender Education Program (Program)--An Alcohol Education Program for Minors, Drug Offender Education Program, DWI Education Program, or DWI Intervention Program.

(23) Participant--An individual who attends a department-approved Offender Education Program.

(24) Program Certification Period--For Drug Offender Education Programs, Alcohol Education Programs for Minors, and DWI Intervention Programs, that period of time beginning with the date certification was granted and ending August 31 of every odd-numbered year. For DWI Education Programs, that period of time beginning with the date certification was granted and ending August 31 of every even-numbered year.

(25) Program Headquarters--The primary administrative center of an approved Offender Education Program identified as the business address in the Program's application.

(26) Screening Instrument--A written device approved by the department and required to be administered to each Program participant for the purpose of:

(A) identifying indicators of a potential substance abuse problem; and

(B) making recommendations for further evaluation, where indicated by the screening instrument.

Source Note: The provisions of this §453.101 adopted to be effective September 1, 2009, 34 TexReg 4336

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RULE §453.102	Requirement of Program and Instructor Certification and Scope of Rules

Any entity or individual seeking to operate an approved Offender Education Program, as one of those programs is described in Alcoholic Beverage Code, §106.115 (relating to Attendance at Alcohol Awareness Course; License Suspension); Transportation Code, §521.374 (relating to Educational Program); Code of Criminal Procedure, Article 42.12, §13(h); or Code of Criminal Procedure, Article 42.12, §13(j), must have a current Offender Education Program certificate of approval for the applicable program issued by the department. Each Instructor that teaches any class or course for an Offender Education Program must have a current Instructor certificate issued by the department for the type of Offender Education Program the Instructor is teaching. An Approved Offender Education Program and all of its Instructors shall comply with all requirements of this chapter.

Source Note: The provisions of this §453.102 adopted to be effective September 1, 2009, 34 TexReg 4336

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RULE §453.103	Fees

- (a) Fees will be assessed by the department in accordance with the fee schedule set forth below:
- (1) initial Offender Education Program application fee--\$300;
 - (2) application fee for new branch site, including a new Program headquarters location in the same county--\$5;
 - (3) Offender Education Program renewal application fee--\$225;
 - (4) branch site renewal application fee--\$5; and
 - (5) certificate replacement fee--\$5.
- (b) Payment must be in the form of cashier's check, money order, or agency voucher.
- (c) Fees paid to the department and any charges for program-related materials are not refundable.
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Source Note: The provisions of this §453.103 adopted to be effective September 1, 2009, 34 TexReg 4336

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RULE §453.104	Program Instructor Certification

(a) To become an Instructor for a particular type of Offender Education Program, an individual must be eligible to apply and must apply to become certified as an Instructor for the applicable type of Offender Education Program; be accepted to enroll in and successfully complete the department-approved and sponsored Offender Education Administrator/Instructor training workshop for the applicable Offender Education Program; and be certified by the department as an Instructor for the applicable Offender Education Program.

(b) To be eligible to apply to become certified as an Instructor for a DWI Education Program, Drug Offender Education Program, or Alcohol Education Program for Minors, an individual must:

(1) have a minimum of an associate's degree in the field of psychology, sociology, counseling, social work, criminal justice, education, nursing, health, or traffic safety;

(2) be a licensed chemical dependency counselor (LCDC), registered counselor intern (CI), licensed social worker, licensed professional counselor (LPC), LPC-intern, certified teacher, licensed psychologist, licensed physician or psychiatrist, probation or parole officer, adult or child protective services worker, licensed vocational nurse, or registered nurse; or

(3) have at least one year of documented experience in case management or education relating to substance abuse and/or mental health.

(c) To be eligible to apply to become certified as an Instructor for a DWI Intervention Program, an individual must:

(1) be an LCDC, registered CI, licensed social worker, LPC, LPC-intern, licensed psychologist, licensed physician or psychiatrist, or possess, at a minimum, an associate's degree in the field of psychology, sociology, counseling, social work, criminal justice, education, nursing, or health; and

(2) have a minimum of two years of documented experience providing direct client services directly related to the applicable internship, licensing, or education documented under subsection (b)(1) of this section to persons with substance abuse problems or mental disorders.

(d) The department will review an Instructor applicant's criminal history and may deny an application at any point based upon a conviction for which denial is authorized under §453.123 of this title (relating to Criminal History Standards).

(e) To become a certified Instructor for a particular type of Offender Education Program, an individual must apply, be accepted to enroll in, and successfully complete the applicable department-approved and sponsored Offender Education Administrator/Instructor training workshop, including achieving a passing score on the participant teaching presentation and the written exam. All Instructor applicants must attend all classes of the training workshop in their entirety.

(f) Any Instructor applicant who does not achieve a passing score on either the participant

teaching presentation or the written exam at the Administrator/Instructor training workshop will have one additional opportunity to pass an alternate written exam or participant teaching presentation, as applicable, within 30 days after the date of workshop completion, or as otherwise directed by the department. If the Instructor applicant does not achieve a passing score on the applicable written exam or participant teaching presentation the second time, the Instructor applicant will not have successfully completed the Administrator/Instructor training workshop and must reapply for the applicable training workshop and certification. If the Instructor applicant does not achieve a passing score on both the written exam and the participant teaching presentation at the initial Administrator/Instructor training workshop, the Instructor applicant will not have successfully completed the Administrator/Instructor training workshop and must reapply for the applicable training workshop and certification.

(g) Any Instructor applicant who does not successfully complete the Administrator/Instructor training workshop, to include any permitted retesting, will be required to return the curriculum manual to the department by no later than the end of the class session at which unsuccessful completion of the course is determined or at the time of retest, whichever is later. Instructor applicants shall bring the manual with them to each class and to each retest. In no event shall the manual be used except by certified Instructors for instruction in approved Offender Education Programs, or by authorized Instructor trainers.

(h) The department may deny the application at any time of an Instructor applicant who engages or has engaged in conduct that would provide a basis for action under §453.122 of this title (relating to Action Against an Applicant or Certification Holder) or §453.123 of this title. An Instructor applicant may be deemed to have failed to successfully complete the applicable Administrator/Instructor training workshop and the application denied based upon conduct during, or at the time of, the training workshop that could form the basis for action under §453.122 of this title. The Instructor applicant shall agree in writing to abide by the requirements of this chapter and to refrain from conduct that would form a basis for action under §453.122 or §453.123 of this title, and shall abide by these rules and that agreement, both as an Instructor applicant and, if certified, as a certified Instructor.

(i) An Instructor certification shall only authorize the Instructor to instruct the particular type of Offender Education Program for which it is issued. A certified Instructor shall utilize only the Offender Education Program curriculum approved for the particular type of Offender Education Program for which the Instructor is certified, and shall utilize the approved curriculum only for an Offender Education Program that holds applicable certification from the department.

(j) Administrators and Instructors are required to report, in writing, any felony or misdemeanor conviction against themselves or other certified Instructors. This report must be submitted to the department within ten days of learning of the conviction.

(k) Instructors must notify the department within 30 days of any change in Instructor name, address, telephone number, or electronic mail address.

Source Note: The provisions of this §453.104 adopted to be effective September 1, 2009, 34 TexReg 4336

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RULE §453.105	Instructor Certification Renewals

(a) Instructor certifications and renewals for all Offender Education Programs are for two years. Absent any basis for action under §453.122 of this title (relating to Action Against an Applicant or Certification Holder) or §453.123 of this title (relating to Criminal History Standards), an Instructor applicant will be certified upon successful completion of the training workshop and any retesting, and the certification will expire two years later on the last day of the month in which certification was obtained.

(b) To renew an Instructor's certification, the Instructor will be required to submit to the department, prior to the certification expiring, complete information, on a form prescribed by the department, demonstrating compliance with the teaching and continuing education requirements for the applicable Offender Education Program curriculum.

(1) Each Drug Offender Education Instructor must teach a minimum of four complete Drug Offender Education courses and attend at least one department-sponsored Drug Offender Education Instructor in-service during the Instructor's certification period, and each subsequent Instructor certification period. If substantial intervening changes are made to the Drug Offender Education curriculum, or significant updates are required to curriculum material, Instructors for Drug Offender Education shall attend any additional department-sponsored Drug Offender Education Instructor in-service or special meeting regarding which the department sends them notice. Instructors who are licensed chemical dependency counselors, licensed professional counselors, licensed psychologists, licensed psychiatrists, or licensed social workers may submit 20 hours of continuing education that is directly drug-related and approved by the department's Offender Education Group, in lieu of attending the in-service. A request for approval of these continuing education hours must be submitted to the department at least 30 days prior to the date of the Instructor's Drug Offender Education certification expiration. Continuing education hours obtained in a department-sponsored Drug Offender Education Instructor in-service may not be used to fulfill the continuing education requirement of another Offender Education certification.

(2) Each Alcohol Education Program for Minors Instructor shall teach a minimum of four complete Alcohol Education Program for Minors courses and attend at least one department-sponsored Alcohol Education Program for Minors Instructor in-service during the Instructor's certification period, and each subsequent Instructor certification period. If substantial intervening changes are made to the Alcohol Education Program for Minors curriculum, or significant updates are required to curriculum material, Instructors for Alcohol Education Program for Minors shall attend any additional department-sponsored Alcohol Education Program for Minors Instructor in-service or special meeting regarding which the department sends them notice. Instructors who are licensed chemical dependency counselors, licensed professional counselors, licensed psychologists, licensed psychiatrists, or licensed social workers may submit 20 hours of continuing education that is directly alcohol-related and approved by the department's Offender Education Group, in lieu of attending the in-service. A request for approval of these continuing

education hours must be submitted to the department at least 30 days prior to the date of the Instructor's Alcohol Education Program for Minors certification expiration. Continuing education hours obtained in a department-sponsored Alcohol Education Program for Minors Instructor in-service may not be used to fulfill the continuing education requirement of another Offender Education certification.

(3) Each DWI Education Instructor shall teach a minimum of four complete DWI Education courses and attend at least one department-sponsored DWI Education Instructor in-service during the DWI Education Instructor's certification period, and each subsequent Instructor certification period. If substantial intervening changes are made to the DWI Education curriculum, or significant updates are required to curriculum material, Instructors for DWI Education shall attend any additional department-sponsored DWI Education Instructor in-service or special meeting regarding which the department sends them notice. Instructors who are licensed chemical dependency counselors, licensed professional counselors, licensed psychologists, licensed psychiatrists, or licensed social workers may submit 20 hours of continuing education that is directly alcohol-related and approved by the department's Offender Education Group, in lieu of attending the in-service. A request for approval of these continuing education hours must be submitted to the department at least 30 days prior to the date of the Instructor's DWI Education certification expiration. Continuing education hours obtained in a department-sponsored DWI Education Instructor in-service may not be used to fulfill the continuing education requirement of another Offender Education certification.

(4) Each DWI Intervention Instructor shall teach a minimum of two complete DWI Intervention courses and attend at least one department-sponsored DWI Intervention Instructor in-service during the Instructor's certification period, and each subsequent Instructor certification period. If substantial intervening changes are made to the DWI Intervention curriculum, or significant updates are required to curriculum material, Instructors for DWI Intervention shall attend any additional department-sponsored DWI Intervention Instructor in-service or special meeting regarding which the department sends them notice. Instructors who are licensed chemical dependency counselors, licensed professional counselors, licensed psychologists, licensed psychiatrists, or licensed social workers may submit 20 hours of continuing education that is directly alcohol-related and approved by the department's Offender Education Group, in lieu of attending the in-service. A request for approval of these continuing education hours must be submitted to the department at least 30 days prior to the date of the Instructor's DWI Intervention certification expiration. Team teaching, with no more than two certified instructors, may be counted towards the fulfillment of the teaching requirement. Continuing education hours obtained in a department-sponsored DWI Intervention Instructor in-service may not be used to fulfill the continuing education requirement of another Offender Education certification.

(c) If an Instructor's certification expires prior to submission of a complete renewal application that demonstrates compliance with all renewal requirements, the Instructor must reapply and successfully complete the applicable initial Administrator/Instructor training workshop again to become certified to instruct for the applicable Offender Education Program.

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RULE §453.106	Program Application and Certification

(a) An applicant seeking certification as an approved Offender Education Program shall submit the initial application fee and a complete application, on a form prescribed by the department. The application must identify an individual who will act as Program Administrator who is a certified Instructor in good standing for the applicable type of Offender Education Program, and who is authorized to act on behalf of the proposed certified Program in all respects relating to compliance with this chapter. The applicant seeking certification as an approved Offender Education Program shall agree in writing, through its Administrator, that the Offender Education Program and its personnel will abide by the requirements of this chapter and refrain from conduct that would form a basis for action under §453.122 of this title (relating to Action Against an Applicant or Certification Holder) or §453.123 of this title (relating to Criminal History Standards). The applicant Offender Education Program and, if certified, the certified Offender Education Program and its personnel shall abide by the agreement and by the rules in this chapter.

(b) If an applicant seeking certification as an approved Offender Education Program has met all requirements for the applicable type of Offender Education Program, as set forth in this chapter, and no basis for denial of the application exists under §453.122 or §453.123 of this title, the department will issue a Program certificate for the applicable type of Offender Education Program and its applicable Program Certification Period. An Alcohol Education Program for Minors, Drug Offender Education Program, and DWI Intervention Program's certification becomes effective on the first day of the month following the month the complete application was approved and expires on August 31 of every odd-numbered year. A DWI Education Program's certification becomes effective on the first day of the month following the month the complete application was approved and expires on August 31 of every even-numbered year.

(c) Prior to offering a course for which an Offender Education Program is certified, at a location other than the headquarters, in the same or adjacent county, the Program shall submit a written request to the department, with the applicable branch site fee. If approved, the department will then issue a certificate authorizing the Program to offer the applicable course at that approved branch site.

(d) The Offender Education Program applicant shall provide the department with a physical address, mailing address and telephone number for its headquarters and a physical address for each site where the applicable course will be conducted, as well as a local or toll-free telephone number for each site that participants may use to register and obtain information. The Offender Education Program applicant and certification holder shall notify the department in writing within 30 days of any change in Administrator, headquarters or site address, telephone number, or electronic mail address.

(e) A certificate for the applicable Offender Education Program shall be prominently displayed at each location where services are provided, including branch sites. The Instructor's certificate

shall be prominently displayed during each class taught by the Instructor.

(f) A holder of a current Offender Education Program certificate must submit a separate application and initial application fee and obtain a separate certification if it is seeking certification as an approved Offender Education Program to offer the applicable educational program at a site that is not located in the same or adjacent county as the Program headquarters of the then-certified Offender Education Program. The new application shall designate a Program Administrator and Program headquarters, and may establish branch sites in accordance with the provisions of this section.

(g) A separate application and initial application fee for certification as an approved Offender Education Program must be submitted and a new certification obtained to move the Program headquarters to a location that is not in the same county as the Program's current headquarters. The original certificate for the current Program must be returned to the department before a new certification will be issued. A program requesting to move its headquarters to a new location in the same county as the current headquarters must submit that request in writing to the department along with the applicable fee and the original certificate for the current headquarters.

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RULE §453.107	Program Expiration and Renewal

- (a) At least 30 days before the certificate's expiration date, an Offender Education Program seeking renewal shall submit the Program renewal fee and the Program renewal form prescribed by the department.
- (b) Applicants for Program renewal must demonstrate compliance with applicable rules in this chapter and applicable program requirements.
- (c) Renewal of a Drug Offender Education Program, Alcohol Education Program for Minors, or DWI Intervention Program becomes effective on September 1 of the year of renewal, and expires on August 31 of every odd-numbered year. Renewal of a DWI Education Program becomes effective on September 1 of the year of renewal and expires on August 31 of every even-numbered year.
- (d) Programs that fail to submit a complete renewal application and pay the renewal fee before the Program's expiration date will no longer hold a current certification to provide the applicable educational program, and must submit an initial Program application and fee as required in §453.106 of this title (relating to Program Application and Certification) to obtain certification as an approved Offender Education Program.
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RULE §453.108	Program Content and Materials

- (a) Approved Offender Education Programs shall use the most up-to-date version of the uniform curricula and of any screening instrument approved by the department.
- (b) The following curricula are approved:
- (1) the Texas Drug Offender Education Program Administrator/Instructor Manual;
 - (2) the Alcohol Education Program for Minors Administrator/Instructor Manual;
 - (3) the Texas DWI Education Program Administrator/Instructor Manual; and
 - (4) the Texas DWI Intervention Administrator/Instructor Program Manual.
- (c) The curricula are available for review free of charge at the department's administrative offices located at 8407 Wall Street in Austin, Texas.
- (d) Any supplemental media used in an Offender Education Program must have prior written approval from the department. The Offender Education Program seeking approval must demonstrate that it meets the following minimum conditions for approval of supplemental media:
- (1) the Program must still use all media required by the applicable approved curriculum for each module;
 - (2) the Program, with use of the supplemental media, must exceed the minimum number of classes and hours of instruction required per course by the length of any supplemental media; and
 - (3) the content of any supplemental medium must relate directly to the objectives of the curriculum module in which it is used.
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Source Note: The provisions of this §453.108 adopted to be effective September 1, 2009, 34 TexReg 4336

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RULE §453.109	Uniform Certificates of Course Completion

- (a) All certified Offender Education Programs shall provide each participant who successfully completes the applicable Offender Education Program, within five days of successful completion, a serially numbered uniform certificate of course completion required and designated for such use by the department. If an exit interview is required, the course shall not be deemed to be successfully completed and a certificate of course completion shall not be issued until the exit interview has been conducted.
- (b) All approved Offender Education Programs shall maintain an ascending numerical accounting record of all issued and un-issued certificates.
- (c) The applicable Offender Education Program, Administrator, and course Instructor are responsible for ensuring that an original certificate of completion is issued to each participant who successfully completes the course. All Offender Education Programs shall retain one copy for the Program's files. DWI Education Programs and DWI Intervention Programs shall also forward the DPS copy to DPS and notify the appropriate community supervision and corrections department, within ten working days of course completion. If the participant's deadline for completing the course is earlier than ten working days after the participant's successful completion of the course, the DWI Education Program or DWI Intervention Program, as applicable, shall, by no later than the participant's deadline, forward the DPS copy of the certificate of completion to DPS and notify the appropriate community supervision and corrections department, if requested by the participant, DPS, the appropriate community supervision and corrections department, or the court.
- (d) Each Offender Education Program shall develop procedures for issuing duplicate certificates. The procedures shall ensure that the duplicate certificate is a new certificate, is clearly identified as being a duplicate of a previously-issued certificate, and includes the control number of the previously-issued certificate. The Offender Education Program shall indicate at the bottom of the class roster on which the participant's original control number was recorded that a duplicate certificate was issued and shall show the new control number and date of issuance for the duplicate certificate.
- (e) If an Offender Education Program allows its certification to expire or otherwise loses its certification, it shall, within 30 days after expiration or other termination of the certification, return all unused certificates of completion to the department's Offender Education Group.
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RULE §453.110	Classroom Facilities and Equipment

(a) Offender Education Programs and Instructors shall conduct all classes in appropriate classroom facilities and settings which are in compliance with the Americans with Disabilities Act, 42 United States Code, §12101 et seq. The classrooms and setting shall be conducive to study and shall have:

- (1) a sufficient number of tables or desks to accommodate each participant without crowding;
- (2) a number of seats sufficient to seat each participant;
- (3) sufficient lighting; and
- (4) appropriate acoustics and climate control.

(b) Offender Education Programs and Instructors shall not conduct class sessions at a personal residence.

(c) Classroom facilities shall be easily accessible to all class participants.

(d) Audiovisual equipment shall be in good working order and in good condition for use in class instruction.

(e) Television monitors and projection screens must be at least 25 inches diagonal and videos and slides/transparencies must be maintained in a high quality condition.

(f) Slides/transparencies and videos shall be displayed in a manner which produces a clear image and allows all participants to have an unobstructed view.

(g) Offender Education Programs and Instructors shall not videotape or otherwise record or broadcast any portion of any Offender Education course.

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RULE §453.111	Program Administration

- (a) An Offender Education Program is responsible for all aspects of Program compliance with this chapter, including any noncompliance related to the conduct of a Program Instructor, Administrator, owner, or other personnel. Each Offender Education Program shall designate a Program Administrator who shall ensure the Program's compliance with the administrative requirements of this section and the proper operation of the Program in compliance with all requirements of this chapter. Nothing in this section shall limit the concurrent responsibility of an Administrator or Instructor for that individual's own conduct.
- (b) Program Administrators shall be in good standing as a certified Instructor for the applicable program and shall meet all of the requirements of program Instructors.
- (c) An Offender Education Program shall set definite and reasonable course fees. Course fees shall not be assessed on a class-by-class basis.
- (d) An Offender Education Program shall maintain, and make available upon request, written course schedules that include the dates, times, and locations where courses will be held, and the fees charged by the Program.
- (e) An Offender Education Program shall schedule at least one course each quarter.
- (f) An Offender Education Program, and its Administrator and Instructors, shall maintain documentation necessary to demonstrate compliance with all applicable requirements of this chapter. The Offender Education Program and its personnel shall allow the department access at any reasonable time, including while an Offender Education class is being taught, to any of its Program sites for auditing and monitoring purposes. In addition, unless otherwise prohibited by law, the Program, its Administrator, and Instructors shall make available or provide to the department upon request at any reasonable time, any of its documents or records, including all records of any Instructor or Administrator, for audit and monitoring purposes. The Offender Education Program, its Administrator, and its Instructors shall cooperate with department staff and allow department staff to interview Program personnel and participants.
- (g) An Offender Education Program shall notify the department in writing within 30 days of any change in the Program's headquarters or branch site address, telephone number, electronic mail address, or change in the Program Administrator or Instructor(s).
- (h) An Offender Education Program that does not have a currently certified Program Administrator on record with the department will be placed on inactive status, notified of that status, and will not be authorized to offer the applicable Offender Education course until the Offender Education Program designates a new, currently certified, Program Administrator, provides written notice to the department of the designation, and receives written acknowledgment from the department of its reactivated status.
- (i) If an Offender Education Program or Instructor is in a position to or does provide Offender Education referral information to an individual who is required to attend an Offender Education

course, the Offender Education Program or Instructor providing the referral information must provide the department's phone number and web address, advise the individual concerning the individual's choice to attend any Offender Education Program certified by the department, and may not require or otherwise attempt to influence an individual to choose a particular Offender Education Program. This section does not prevent a Program or Instructor from providing information particularized to the Program or to the Instructor's own Program or course when a prospective participant is specifically requesting information about that particular Program or the Instructor's own Program or course.

Source Note: The provisions of this §453.111 adopted to be effective September 1, 2009, 34 TexReg 4336

Texas Administrative Code

<u>TITLE 25</u>	HEALTH SERVICES
<u>PART 1</u>	DEPARTMENT OF STATE HEALTH SERVICES
<u>CHAPTER 453</u>	OFFENDER EDUCATION PROGRAMS (FOR ALCOHOL AND DRUG-RELATED OFFENSES)
RULE §453.112	Recordkeeping and Reporting

(a) An Offender Education Program shall collect and maintain all required data on each course participant.

(1) All Offender Education Programs shall collect and maintain the following information:

- (A) name;
- (B) street address, city, and zip code;
- (C) date of birth;
- (D) sex;
- (E) driver's license number (if any);
- (F) grade in school or educational level achieved;
- (G) present employment;
- (H) date of enrollment;
- (I) date of course completion;
- (J) dates and attendance record for each class session of the course completed;
- (K) certificate of completion number; and
- (L) criminal case cause number.

(2) Drug Offender Education Programs and DWI Education Programs shall also collect and maintain the following information:

- (A) individual pre- and post-course test scores;
- (B) average pre- and post-course test scores of course participants;
- (C) aggregate percent of knowledge increase between pre- and post-course test scores;
- (D) each course participant's screening instrument;
- (E) each course participant's screening instrument indicator code/score; and
- (F) any referral recommendations made to a course participant.

(3) In addition to the requirements in paragraph (1) of this subsection, DWI Intervention Programs shall also collect and maintain:

- (A) participants' blood alcohol concentration at time of arrest (if known);
- (B) the number of prior alcohol/drug-related arrests;
- (C) documentation that the agreement form, Alcoholics Anonymous attendance, family/significant other attendance, sessions with individual participants, and exit interview requirements were completed as outlined in the Texas DWI Intervention Administrator/Instructor Program Manual;
- (D) each course participant's screening instrument;
- (E) each course participant's screening instrument indicator code/score; and
- (F) any referral recommendations made to a course participant.

(4) In addition to the requirements in paragraph (1) of this subsection, Alcohol Education Program for Minors shall also collect and maintain:

- (A) the name of the referring judge;

- (B) individual pre- and post-course test scores;
 - (C) average pre- and post-course test scores of course participants; and
 - (D) aggregate percent of knowledge increase between pre- and post-course test scores.
- (b) An Offender Education Program shall retain each course roster and a copy of each issued certificate of completion for at least three years from the date of course completion. All other course records shall be retained for a minimum of one year from the date of course completion.
- (c) An Offender Education Program shall submit the following items to the department on the annual report form by September 15 of each year:
- (1) total number of participants registered for each Program course during the annual reporting period;
 - (2) total number of participants successfully completing each Program course during the annual reporting period;
 - (3) total number of courses conducted during the annual reporting period;
 - (4) names of all certified Instructors employed by the Offender Education Program and number of courses conducted by each Instructor during the annual reporting period;
 - (5) driver's license numbers of all participants, or, in the absence of a driver's license number, the date of birth of each participant completing the course;
 - (6) average percent of knowledge increase across all courses conducted during the annual reporting period from pre-course tests to post-course tests administered (not required for DWI Intervention Programs); and
 - (7) percent of total participants during the annual reporting period indicating significant substance abuse problems, based upon the numerical score on the approved screening instrument required to be administered (not required for Alcohol Education Program for Minors).
- (d) An Offender Education Program that does not file a timely annual report with the department will be put on inactive status, notified of that status, and will not be authorized to offer the applicable Offender Education course until the department receives the Offender Education Program's annual report and the Program receives written acknowledgment from the department of its reactivated status.

Source Note: The provisions of this §453.112 adopted to be effective September 1, 2009, 34 TexReg 4336

Texas Administrative Code

<u>TITLE 25</u>	HEALTH SERVICES
<u>PART 1</u>	DEPARTMENT OF STATE HEALTH SERVICES
<u>CHAPTER 453</u>	OFFENDER EDUCATION PROGRAMS (FOR ALCOHOL AND DRUG-RELATED OFFENSES)
RULE §453.113	General Program Operation Requirements

- (a) All Offender Education Programs shall use the applicable curriculum approved in §453.108 of this title (relating to Program Content and Materials), including all required videos, slides or transparencies, participant workbooks, booklets, and other resources or written materials. The applicable curriculum must be presented in the prescribed manner and sequence.
- (b) All courses shall be taught by a certified Instructor for the applicable Offender Education Program. Each Instructor shall be physically present in the classroom with all of the participants for each class. A single Instructor must teach the entire course for all Offender Education Programs, with the exception of DWI Intervention Programs, which may allow team-teaching utilizing no more than two certified Instructors.
- (c) Offender Education Programs shall require participants to attend all class sessions within a course in the proper sequence.
- (d) The Program shall make provisions for persons unable to read and/or speak English. All classes in a single course shall be taught in the same language.
- (e) The Program shall screen each participant and offer appropriate referral information to the participant, based upon the numerical score and accompanying referral recommendations on the approved screening instrument required to be administered. The screening instrument shall be administered by the Program Administrator or course Instructor, or under their direct supervision.
- (f) The Administrator or course Instructor for each Offender Education Program shall make available a current listing or roster of available chemical dependency counseling and treatment resources in the area to each participant whose numerical score and accompanying referral recommendations on the approved screening instrument required to be administered indicate a potential substance abuse problem requiring further evaluation.
- (g) All required registration, initial data collection, and screening procedures shall be completed before commencement of the first class session.
- (h) At the end of each course, the course Instructor for each Offender Education Program shall administer a participant course evaluation.
- (i) The course Instructor for all Offender Education Programs shall conduct an exit interview with each participant, as outlined in the applicable educational program manual.
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Source Note: The provisions of this §453.113 adopted to be effective September 1, 2009, 34 TexReg 4336

Texas Administrative Code

<u>TITLE 25</u>	HEALTH SERVICES
<u>PART 1</u>	DEPARTMENT OF STATE HEALTH SERVICES
<u>CHAPTER 453</u>	OFFENDER EDUCATION PROGRAMS (FOR ALCOHOL AND DRUG-RELATED OFFENSES)
RULE §453.114	Additional Program Requirements for Drug Offender Education Programs

- (a) Each Drug Offender Education Program shall:
- (1) conduct the prescribed drug offender education course a minimum of two times during each annual reporting period;
 - (2) provide a minimum of five class sessions of instruction per course;
 - (3) conduct class sessions which are not longer than three hours in length, and not shorter than two hours in length;
 - (4) conduct no more than one class session per day; and
 - (5) conduct courses and each class with no more than 30 participants and with no fewer than three participants.
- (b) Each Drug Offender Education Program shall administer and evaluate pre and post-course test instruments for each participant.
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Source Note: The provisions of this §453.114 adopted to be effective September 1, 2009, 34 TexReg 4336

Texas Administrative Code

<u>TITLE 25</u>	HEALTH SERVICES
<u>PART 1</u>	DEPARTMENT OF STATE HEALTH SERVICES
<u>CHAPTER 453</u>	OFFENDER EDUCATION PROGRAMS (FOR ALCOHOL AND DRUG-RELATED OFFENSES)
RULE §453.115	Additional Requirements for Alcohol Education Program for Minors

- (a) Each Alcohol Education Program for Minors shall:
- (1) conduct the prescribed alcohol education course a minimum of two times during each annual reporting period;
 - (2) provide a minimum of six hours of class instruction per course;
 - (3) conduct class sessions which are not longer than three hours in length;
 - (4) conduct no more than one class session per day; and
 - (5) conduct courses and each class with no more than 25 participants and with no fewer than three participants (not including parents and guardians).
- (b) The Program shall administer and evaluate pre- and post-course test instruments for each participant.
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Source Note: The provisions of this §453.115 adopted to be effective September 1, 2009, 34 TexReg 4336

Texas Administrative Code

<u>TITLE 25</u>	HEALTH SERVICES
<u>PART 1</u>	DEPARTMENT OF STATE HEALTH SERVICES
<u>CHAPTER 453</u>	OFFENDER EDUCATION PROGRAMS (FOR ALCOHOL AND DRUG-RELATED OFFENSES)
RULE §453.116	Requirements for DWI Education Programs

- (a) Each DWI Education Program shall:
- (1) conduct the prescribed DWI education course a minimum of two times during each annual reporting period;
 - (2) provide a minimum of 12 hours of instruction per course;
 - (3) provide no more than four hours of instruction in any one day; and
 - (4) conduct courses and each class with no more than 30 participants and with no fewer than three participants.
- (b) The Program shall administer and evaluate pre- and post-course test instruments for each participant.
- (c) Within ten working days after completion of the course, the Instructor shall notify the appropriate community supervision and corrections department and forward the DPS copy of the certificate of completion to DPS. If the participant's deadline for completing the course is earlier than ten working days after the participant's successful completion of the course, the DWI Education Program or DWI Intervention Program, as applicable, shall, by no later than the participant's deadline, forward the DPS copy of the certificate of completion to DPS and notify the appropriate community supervision and corrections department, if requested by the participant, DPS, the appropriate community supervision and corrections department, or the court.
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Source Note: The provisions of this §453.116 adopted to be effective September 1, 2009, 34 TexReg 4336

Texas Administrative Code

<u>TITLE 25</u>	HEALTH SERVICES
<u>PART 1</u>	DEPARTMENT OF STATE HEALTH SERVICES
<u>CHAPTER 453</u>	OFFENDER EDUCATION PROGRAMS (FOR ALCOHOL AND DRUG-RELATED OFFENSES)
RULE §453.117	Additional Requirements for DWI Intervention Programs

(a) Each DWI Intervention Program shall:

(1) conduct the prescribed DWI intervention course a minimum of one time during each annual reporting period;

(2) provide a minimum of 30 hours of class instruction per course;

(3) conduct class sessions which are not longer than three hours in length and not shorter than two hours in length;

(4) conduct no more than one class session per day;

(5) conduct no more than two class sessions per week;

(6) conduct courses and each class with no more than 15 participants and with no fewer than three participants;

(7) provide make-up class sessions for a maximum of two excused absences; and

(8) conduct a minimum of two sessions with each participant individually and an individual exit interview with each participant.

(b) Within ten working days after completion of the course the Instructor shall notify the appropriate community supervision and corrections department and forward the DPS copy of the certificate of completion to DPS. If the participant's deadline for completing the course is earlier than ten working days after the participant's successful completion of the course, the DWI Education Program or DWI Intervention Program, as applicable, shall, by no later than the participant's deadline, forward the DPS copy of the certificate of completion to DPS and notify the appropriate community supervision and corrections department, if requested by the participant, DPS, the appropriate community supervision and corrections department, or the court.

Source Note: The provisions of this §453.117 adopted to be effective September 1, 2009, 34 TexReg 4336

Texas Administrative Code

<u>TITLE 25</u>	HEALTH SERVICES
<u>PART 1</u>	DEPARTMENT OF STATE HEALTH SERVICES
<u>CHAPTER 453</u>	OFFENDER EDUCATION PROGRAMS (FOR ALCOHOL AND DRUG-RELATED OFFENSES)
RULE §453.118	Confidentiality

All Offender Education Programs shall abide by and obtain any consent to disclosure required by applicable Federal and State laws regarding confidentiality of patient/client records including, as applicable and without limitation, 42 United States Code §290dd-2; 42 Code of Federal Regulations, Part 2, and Health and Safety Code, Chapter 611.

Source Note: The provisions of this §453.118 adopted to be effective September 1, 2009, 34 TexReg 4336

Texas Administrative Code

<u>TITLE 25</u>	HEALTH SERVICES
<u>PART 1</u>	DEPARTMENT OF STATE HEALTH SERVICES
<u>CHAPTER 453</u>	OFFENDER EDUCATION PROGRAMS (FOR ALCOHOL AND DRUG-RELATED OFFENSES)
RULE §453.119	Discrimination Prohibited

Offender Education Programs shall be conducted without discrimination based upon the gender, race, religion, age, national or ethnic origin, or disability of the participant.

Source Note: The provisions of this §453.119 adopted to be effective September 1, 2009, 34 TexReg 4336

Texas Administrative Code

<u>TITLE 25</u>	HEALTH SERVICES
<u>PART 1</u>	DEPARTMENT OF STATE HEALTH SERVICES
<u>CHAPTER 453</u>	OFFENDER EDUCATION PROGRAMS (FOR ALCOHOL AND DRUG-RELATED OFFENSES)
RULE §453.120	Participant Complaints

- (a) Offender Education Programs shall establish procedures to resolve participant complaints.
- (b) At each site where an Offender Education Program conducts a course, the Offender Education Program, Administrator, and course Instructor shall ensure that a sign is prominently displayed containing the name, current mailing address, and current telephone number of the department and a statement notifying all persons that any complaints against the Program or any of its personnel may be directed to the department's Offender Education Group.
- (c) Upon verbal or written request from the department, an Offender Education Program, Administrator, Instructor, or any person associated with the Program, shall promptly provide complete and concise information about the Program's complaint procedures, including procedures for complaining directly to the department, and shall cooperate with the department and furnish requested information concerning any department investigation of a complaint.
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Source Note: The provisions of this §453.120 adopted to be effective September 1, 2009, 34 TexReg 4336

Texas Administrative Code

<u>TITLE 25</u>	HEALTH SERVICES
<u>PART 1</u>	DEPARTMENT OF STATE HEALTH SERVICES
<u>CHAPTER 453</u>	OFFENDER EDUCATION PROGRAMS (FOR ALCOHOL AND DRUG-RELATED OFFENSES)
RULE §453.121	Exceptions

(a) If a certified Offender Education Program cannot comply with specific standards because of alleged difficulty or hardship due to extenuating circumstances and makes the showing required under subsection (b) of this section, the department may grant an exception to specific rule provisions of this chapter, or to specific requirements of the curricula required to be used under §453.108 of this title (relating to Program Content and Materials).

(b) To request an exception, the Offender Education Program shall submit a written request to the department stating:

(1) the name, headquarters address, and phone number of the Offender Education Program, and the branch site address(es) for which the requested exception(s) is being sought;

(2) the specific rule provision(s) or curriculum requirement(s) from which exception is sought;

(3) a clear statement of the difficulty or hardship and extenuating circumstances the applicant for the exception claims and a justification for the exception sought;

(4) how the intent of the rule provision(s) and/or curriculum requirement(s) sought to be excepted will be met;

(5) how the effective and efficient operation of the particular Offender Education Program or branch sites seeking the exception will be maintained; and

(6) how the health, safety, and welfare of Program participants will be protected under the proposed exception(s).

(c) The department will send the Program written notice of its decision. A decision to grant or deny an exception is final and not subject to review or appeal.

(d) Unless an earlier expiration date is specified in the department approval granting an exception, all exceptions granted will expire at the end of the Program certification period.

(e) No exceptions will be granted for statutory requirements and, except as specified in this chapter, no exceptions will be granted for Instructor teaching, in-service, or continuing education requirements.

Source Note: The provisions of this §453.121 adopted to be effective September 1, 2009, 34 TexReg 4336

Texas Administrative Code

<u>TITLE 25</u>	HEALTH SERVICES
<u>PART 1</u>	DEPARTMENT OF STATE HEALTH SERVICES
<u>CHAPTER 453</u>	OFFENDER EDUCATION PROGRAMS (FOR ALCOHOL AND DRUG-RELATED OFFENSES)
RULE §453.122	Action Against an Applicant or Certification Holder

(a) In addition to the bases for adverse action set forth in §453.123 of this title (relating to Criminal History Standards), the department may deny, refuse to renew, or revoke the application or certification of an offender education Instructor or of an Offender Education Program if the applicant for Program or Instructor certification, or the Instructor or Program certification holder, or a Program owner, Instructor, Administrator, or staff member:

(1) fails or has failed to comply with applicable requirements under this chapter or any other applicable statute or department rule;

(2) falsifies, submits or maintains, or has falsified, submitted, or maintained any substantially false, inaccurate, or incomplete documentation required under this chapter or related to the applicable Offender Education Program. This includes submission of any false or misleading statements in an application or other statement or correspondence to the department;

(3) engages or has engaged in conduct or promotes, permits, or has promoted or permitted one or more participants to engage in conduct inconsistent with behaviors and principles taught or advocated under the curriculum prescribed under §453.108 of this title (relating to Program Content and Materials);

(4) attends or has attended any Instructor training, instructs or is present at any class in an Offender Education Program, or performs duties related to an Offender Education Program while under the influence or impaired by alcohol or controlled substances, or provides one or more course participants with, or permits or encourages one or more course participants to use, any alcohol or controlled substance;

(5) engages or has engaged in conduct toward another that is violent or that constitutes abuse, neglect, or exploitation under applicable law; or

(6) engages or has engaged in conduct with respect to a participant that is inequitable, discriminatory, degrading, disrespectful, retaliatory, of a romantic or sexual nature, or which otherwise is or may be harmful to the health, safety, or welfare of a participant, to participants generally, or to the public.

(b) When sufficient evidence exists to indicate that action against a Program or Instructor applicant or certification holder is authorized under this section, the department may propose to take action under this section and shall give written notice to the person against whom action is proposed. The notice shall state the alleged violation(s) and the action proposed to be taken.

(c) The notice will be given in accordance with §453.124 of this title (relating to Procedures for Adverse Action Against a Program or Instructor Certificate), and will provide notice of the opportunity for a hearing on the allegations and/or proposed action. If a hearing is timely requested and the proposed action is not resolved by informal disposition, as provided for in §453.124 of this title, a hearing will be held in accordance with the provisions of the Administrative Procedure Act, Government Code, Chapter 2001; the Rules of Procedure for the

State Office of Administrative Hearings, 1 Texas Administrative Code, Chapter 155; and §§1.21, 1.23, 1.25, and 1.27 of this title (relating to Formal Hearing Procedures).

(d) A Program or Instructor whose certification has been denied, initially or at renewal, or revoked is not eligible to apply for Instructor or Program certification for any Offender Education Program for a period of at least two years from the date of denial or revocation. If the Program or Instructor thereafter reappplies, the Program or Instructor shall be required, with the application, to make an affirmative showing of facts and circumstances that demonstrate that the facts and circumstances that led to revocation, denial, or a refusal to renew no longer serve as a basis for denial. The department may consider the applicant's affirmative showing, as well as an applicant or certification holder's history of certification denial, refusal to renew, or revocation, and the facts underlying such action(s), in determining whether to grant or deny a Program or Instructor application.

(e) Where an applicant or certification holder has engaged in conduct outlined under subsection (a) of this section for which the department does not propose to take action under subsection (b) of this section, the department may send the applicant or certification holder a non-disciplinary letter providing the applicant or certification holder with an opportunity to cure or otherwise address the alleged conduct or noncompliance under subsection (a) of this section. Failure to submit and implement a corrective action plan adequately addressing the alleged conduct or noncompliance within the timeframe requested by the department may result in a proposal for action under subsection (b) of this section.

Source Note: The provisions of this §453.122 adopted to be effective September 1, 2009, 34 TexReg 4336

Texas Administrative Code

<u>TITLE 25</u>	HEALTH SERVICES
<u>PART 1</u>	DEPARTMENT OF STATE HEALTH SERVICES
<u>CHAPTER 453</u>	OFFENDER EDUCATION PROGRAMS (FOR ALCOHOL AND DRUG-RELATED OFFENSES)
RULE §453.123	Criminal History Standards

(a) An applicant for or holder of an initial or renewal certificate as an Offender Education Program or Instructor shall be subject to criminal history checks by the department.

(b) The department may suspend or revoke any existing Offender Education Program certificate or deny an Offender Education new or renewal certificate based upon the person's conviction of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of an Offender Education Program, its Instructors, or its personnel.

(c) The department may suspend or revoke an existing Offender Education Instructor certificate, deny an Instructor new or renewal certificate, or deny to an Instructor applicant the opportunity to be examined for an Instructor certificate based upon the person's conviction of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of the applicable type of Offender Education Program or an Instructor for that Program.

(1) In considering whether a criminal conviction directly relates to an Offender Education Program or Instructor, the department shall consider:

(A) the nature and seriousness of the crime;

(B) the relationship of the crime to the purposes of the applicable Offender Education Program or Instructor certification. The following felonies and misdemeanors relate to an Offender Education Program or Instructor certificate because these criminal offenses adversely reflect on the tendency or ability of an Offender Education Program or Instructor to act capably and with integrity and professionalism under the certificate, to uphold the public trust, and/or to protect the health and safety of participants:

(i) any misdemeanor or felony offense involving moral turpitude by statute or common law;

(ii) a misdemeanor or felony offense under various titles of the Penal Code:

(I) offenses against the person (Title 5);

(II) offenses against property (Title 7);

(III) offenses against public order and decency (Title 9);

(IV) offenses against public health, safety, and morals (Title 10); and

(V) offenses of attempting or conspiring to commit any of the offenses in this subsection (Title 4); and

(iii) any other misdemeanor or felony offense that adversely reflects on the tendency or ability of the applicable Offender Education Program or Instructor applicant or certification holder to act with integrity and professionalism under the certificate, to uphold the public trust, and/or to protect the health and safety of participants/participants.

(C) the extent to which the applicable certificate might offer an opportunity to engage in further criminal history activity of the same type as that in which the person previously has been involved; and

(D) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibility of an Offender Education Program or Instructor. In

making this determination, the department will consider the criteria outlined in Occupations Code, §53.023 (relating to Additional Factors for Licensing Authority to Consider).

(2) The misdemeanors and felonies listed in paragraph (1)(B) of this subsection are not exclusive in that the department may consider other particular crimes in special cases in order to promote the intent of this chapter; Occupations Code, Chapter 53; and this section.

(d) The department will give written notice to the person that the department intends to deny, suspend, or revoke the certificate. The notice will be given in accordance with §453.124 of this title (relating to Procedures for Adverse Action Against a Program or Instructor Certificate), and will provide notice of the opportunity for a formal hearing on the allegations and/or proposed action. If a hearing is timely requested and the proposed action is not resolved by informal disposition, as provided for in §453.124 of this title, a hearing will be held in accordance with the provisions of the Administrative Procedure Act, Government Code, Chapter 2001; the Rules of Procedure for the State Office of Administrative Hearings, 1 Texas Administrative Code, Chapter 155; and §§1.21, 1.23, 1.25, and 1.27 of this title (relating to Formal Hearing Procedures).

(e) If the department denies, suspends, or revokes a certification under this section after hearing, the department shall give the person written notice:

(1) of the Order reflecting the reasons for the decision;

(2) that the person, after exhausting administrative appeals, may file an action in a district court of Travis County, Texas for review of the evidence presented to the department and its decision;

(3) that the person must begin the judicial review by filing a petition with the court within 30 days after the department's action is final and appealable; and

(4) of the earliest date the person may appeal.

(f) If the department denies or revokes a certification under this section, the affected person shall not be eligible to apply for Instructor or Program certification for any Offender Education Program for a period of at least two years from the date of denial or revocation. If the Program or Instructor thereafter reapplies, the standards and procedures set forth in this section will apply to a determination at that time. In addition, the Program or Instructor shall be required, with the application, to make an affirmative showing of facts and circumstances that demonstrate that the facts and circumstances that led to revocation, denial, or a refusal to renew no longer serve as a basis for denial. The department may consider any facts relevant to its determination in deciding whether the new application should be granted.

Source Note: The provisions of this §453.123 adopted to be effective September 1, 2009, 34 TexReg 4336

Texas Administrative Code

<u>TITLE 25</u>	HEALTH SERVICES
<u>PART 1</u>	DEPARTMENT OF STATE HEALTH SERVICES
<u>CHAPTER 453</u>	OFFENDER EDUCATION PROGRAMS (FOR ALCOHOL AND DRUG-RELATED OFFENSES)
RULE §453.124	Procedures for Adverse Action Against a Program or Instructor Certificate

(a) The department, upon determination that grounds may exist to take action against an Offender Education Program or Instructor applicant or certification holder under §453.122 of this title (relating to Action Against an Applicant or Certification Holder) or §453.123 of this title (relating to Criminal History Standards), will issue a notice to the affected person of the proposed action. The notice will be sent via regular first-class and certified mail to the address of record of the affected person and will contain:

- (1) a statement of the action the department intends to take;
- (2) an explanation of the factual allegations forming the basis for the action the department intends to take;
- (3) a reference to the legal basis for the intended action, with citations to applicable statutes and rules;
- (4) an explanation of the affected person's right to request a hearing, to be held in accordance with the Administrative Procedure Act, Government Code, Chapter 2001; the Rules of Procedure for the State Office of Administrative Hearings, 1 Texas Administrative Code, Chapter 155; and §§1.21, 1.23, 1.25, and 1.27 of this title (relating to Formal Hearing Procedures);
- (5) the procedure by which an affected person may accept the proposed action or request a hearing, either exclusive of or in addition to an informal conference; and
- (6) a notice that, if the affected person does not request a hearing on or before the 20th day after receiving the notice, the allegations will be deemed to be true and the department will issue a default order implementing the proposed action.

(b) Within 20 days after receiving the notice, the affected person shall either accept the proposed action and findings or request, either exclusive of or in addition to an informal conference, an administrative hearing, to be held in accordance with the Administrative Procedure Act, Government Code, Chapter 2001; the Rules of Procedure for the State Office of Administrative Hearings, 1 Texas Administrative Code, Chapter 155; and §§1.21, 1.23, 1.25, and 1.27 of this title. It is a rebuttable presumption that the notice was received three days after mailing of the notice. If a person who is offered the opportunity for a hearing fails to request a hearing within the prescribed time for making such a request, the person is deemed to have waived the hearing and the allegations will be deemed to be true and the proposed action taken by default. A request for hearing is deemed to be timely if it is filed with the department or postmarked on or before the 20th day after the affected person receives the notice.

(c) The department shall implement a final order to suspend a certificate issued under this chapter for failure to pay child support, as provided for by Family Code, Chapter 232.

(d) If the affected person requests an informal conference, an opportunity will be given to the affected person to show compliance with the requirements of law necessary for retention of the certificate. A determination will be made whether the matters in controversy can be resolved

without further proceedings, including by agreed order. If the affected person fails to appear at a scheduled informal conference, the department may deem that person to have waived the right to an informal conference and may proceed to hearing, if a hearing has been requested.

Source Note: The provisions of this §453.124 adopted to be effective September 1, 2009, 34 TexReg 4336