

Loggins, Scott@POST

From: Gregg Giusiana [ggiusiana@theacademy.ca.gov]
Sent: Wednesday, July 29, 2015 11:33 AM
To: Barnes, Michael@POST
Cc: Harp, Gabe@POST; Loggins, Scott@POST; Linda Vaughn
Subject: RE: Academy Information
Attachments: Director Review Kurian Grievance 07-09-2015 SB 130.docx

Mike

Sorry this took so long. Between Thursday and today I have had a Garlic Festival and Orientation to get done...

I am sending my memo to the file justifying my denial of the grievance. The document Mr. Kurian sent to POST is the same one he sent us so I think everything is covered.

Let me know if you need any more information

Thanks
Gregg

From: Barnes, Michael@POST [mailto:Michael.Barnes@post.ca.gov]
Sent: Thursday, July 23, 2015 1:43 PM
To: Gregg Giusiana
Cc: Harp, Gabe@POST; Loggins, Scott@POST; Linda Vaughn
Subject: FW: Academy Information

Gregg,

As discussed earlier, I have attached all the information I have related to Mr. Kurian's complaint about his testing and subsequent failure in your academy.

Pursuant to our procedures, I am requesting you investigate the incident and advise POST (me) of your findings within 60 days. POST will review your report and any other related materials and make a determination if the circumstances in question complied with course certification requirements. We will advise you and Mr. Kurian of our findings within 30 days of the commencement of our investigation.

We will only focus on certification-related issues and not presenter-specific (non-POST) aspects of course administration. But, please do provide any information you feel would be helpful in our understanding the incident in its entirety.

Thank you,

Mike

Mike Barnes
Law Enforcement Consultant II
Basic Course Coordinator
Basic Training Bureau
Commission on POST
916-227-3454 Office

From: vikas kurlan [REDACTED]
Sent: Friday, July 17, 2015 2:31 PM
To: Barnes, Michael@POST
Subject: RE: Academy Information

Thank you for taking time out of your busy day to talk to me. I attached the letter I wrote to the academy. If you have any question, please feel free to contact me. Also, thank you for giving me the information about trying to appeal the three year requirement. I know it will be a hard process, but I have to try.

vikas kurlan

From: Michael.Barnes@post.ca.gov
To: vikaskurian [REDACTED]
Subject: Academy Information
Date: Fri, 17 Jul 2015 20:51:44 +0000

Mr. Kurlan,

As discussed over the phone, please provide me with a narrative as to your concerns and requests related to your attendance/dismissal from South Bay's academy earlier this month. Be as specific as possible regarding the details of your concern and include your name and mailing address.

Any investigation by POST into the issues will be focused on the academy's compliance with their certification requirements rather than academy-specific procedures beyond POST requirements. Once we review your comments, we will forward them to the academy for an investigation. The academy will have 60 days to respond to our request and we will make a finding as to compliance after reviewing the academy's report along with any other items as may be required. You will typically be notified as to our findings 30 days after we receive the academy's report.

If you want to appeal the three-year requirement in Regulation 1008(a)(1)(A) related to the Basic Course Walver only being valid for three/six years, you may address a written request to our Executive Director, Robert Stresak, at 860 Stillwater Road, Suite 100, West Sacramento, CA, 95605. In the letter, state the facts in support of your request and what it is you are asking for. The Executive Office will process your request and advise of the next steps.

Thank you,

Mike Barnes
Law Enforcement Consultant II
Basic Course Coordinator
Basic Training Bureau
Commission on POST
916-227-3454 Office

Kurian, Vikas R-1
SB 130
7-2-14
Recruit Grievance Report Form

To whom this may concern,

On June 30th 2015, at approximately 1330 hours, I was selected to demonstrate my remedial training for the Search Incident to Arrest section of the ACT test. The remediation exam took place at the entrance of the mat room at the Evergreen Community College campus in San Jose, California. I was selected to perform my remediation test on recruit Pherigo, Andreas R 16 in the presence of Coordinator Erin Hogan and Training Officer Phil Tejero. To begin, I first conducted a visual search of Pherigo. I then instructed Pherigo to turn around and face away from me. I took a second visual search of him. I told him to spread his feet, place his hands behind his back, put his hands together, and interlock his fingers. I told him to look to his right and not to move any more. I then proceeded to walk toward Pherigo, with officer safety in mind, and locked my right hand with Pherigo's interlocked fingers. I began to conduct my search incident to arrest on Pherigo. With my left hand, I searched around the left side of his waist, both front and back, and around the left front and back pants pockets. I took out the left front and back pockets and I attempted to take out the middle pocket of the pants but it would not come out. I patted Pherigo down starting from the left side of the chest and proceeded down to the groin and left crotch area. Then I went up the side of the body and to the arm pit. Then I searched down his back and his arms. I stopped searching the arm where Pherigo's t-shirt ended because I visually observed that there was no weapon or contraband on his arms where his skin was and I continued my search by going down his back. As a former Police Officer from

Illinois, and from the training I received from this academy, my instincts told me there was no need to search the arm area where there was only skin showing because from training and experience that no weapon or contraband would be found. I did however conduct a visual search of Pherigo's skin on his arms. I then searched the left leg of his pants, seam to seam, starting from the inner thigh to the ankle, both front and back. Continuing to keep officer safety in mind, I continued to proceed to the right side of Pherigo's body. First I carefully switched my control hand from right to left and proceeded to conduct my search on Pherigo's right side the same way I searched his left side. When I was finished, I put Pherigo in an elongated wrist lock and I announced that I was finished. Training officer Phil Tejero went over to Coordinator Erin Hogan and said something to her quietly. I was then instructed to conduct the search over again.

I conducted this second search the same way as I described above. When I was finished I was told that I missed two areas during my search; the arms and the arm pits. I did not search the arms physically because there was no clothing covering his arms beyond the point where Pherigo's t-shirt ended. I did however, visually search his exposed arms. Also, as a former Police Officer from Illinois, and from the training I received from this academy, I did not physically search the arm area where the skin was exposed because I knew, from training and experience, that no weapon or contraband would be found. If Pherigo or a suspect was wearing a long sleeved shirt then I would have proceeded to check the entire arm down to the wrists. For the arm pit, I went up the sides of Pherigo's body toward the arm pit to a point after which I believed I could not go up any further.

Our training is meant to prepare us for real life scenarios. We were told if a suspect is wearing spandex, we were taught that there was no need to search that area because we could physically see if there was any contraband or weapons there. Using that same rationale I did not

physically touch the whole arm because I could visually see that there was nothing there. Would it make sense to search a suspect if he/she was wearing a tank top to search the entire arm? Or if a male suspect was wearing shorts and no shirt, should I have physically touched the upper body to conduct my search? I know that I conducted a good quality search and that I effectively used the skills and techniques that I have been taught throughout my previous training and my current training while attending the South Bay Regional Police Academy. I do not believe that I should have failed based on my performance during this ACT remediation. I conducted this search with the same techniques (besides the crotch area) that I used previously when I passed the felony prone search test and the original ACT test.

As a result of my original ACT test, I was told that I did not pass the test solely because I checked/searched the crotch area wrong and nothing else. According to the student handbook, section 7.3.1.2 "Recruits will be placed on academic notice identifying performance deficiencies and areas of focus for remedial training". I was only told that I searched the crotch area the wrong way with no other areas to train. Thus, for the felony prone search test that followed, I made sure to check the crotch area the right way. I conducted the body area search the same way as the first test and as a result I passed. Throughout my time in the academy, I have spent many hours practicing my techniques and skills at home with family members, and when able to, I have stayed after school for additional practice and help. I never asked Training Officer Phil Tejero to look over my search techniques during his volunteer training sessions after class because it was never indicated to me after my original ACT test or after my felony prone test that my search technique was wrong. I was only informed that I did not pass the original ACT test based on an incorrect method used to check/search the crotch area. If I had been told that I was conducting my searches wrong, I would definitely have practiced my search techniques even

more and I would have obtained help in learning the correct way to conduct a proper search if I was told I was done something else wrong.

Also, when our class took the original ACT test, approximately twenty percent of the recruits did not take the test on the day it was assigned due to a time constraint. These students took the test a week later, allowing them extra time to practice and prepare for the test. Of those students who took the test a week later, I believe most of them passed the tests. I believe the test should have been more organized so that everyone had to take the test on the same day, giving no one an extra advantage. During the same original ACT test, recruits were given two to three chances to conduct a search or display their hand cuffing technique, where I was only given one chance per test. Based on their performance, they either passed or failed. Some of the recruits who failed the test did not have to remediate because some parts of the test were afterward changed to be considered only "training sessions". During our Red Man test day, many recruits failed the felony prone search test. Recruits failed to locate a gun and or magazine, where I therefore found both items. Recruits who failed this test did not have to remediate because the test was also changed to "training sessions." I believe anyone would agree with me that not searching a subject's bare skin arms is far less detrimental than searching a body and missing a gun and/or magazine.

I know that I made a mistake during my search on the original ACT test, but I truly believe I did nothing incorrectly during my search for the final/remediation test. I corrected what I had done incorrectly on the original test and otherwise performed my search exactly the same way for the remediation test. If I had been conducting other parts of my searches incorrectly, I should have been informed during the original ACT test and during my felony prone test, so that

I could have the opportunity to correct my technique and learn the correct way to perform this part of the search.

During the academy, some of our ACT instructors told us we could have our own search method as long as we search all the areas of the body and be consistent about it. The search method I've developed for the back and arms is if I was checking a suspect's right side, I would begin by placing my right hand a little left of the spine of the upper middle back area then apply pressure and move my right hand in a horizontal fashion towards the right side of the shoulder and arms. Then I proceed to go down a little lower from where I originated my search a little left from the spine and go from the back to the arms and so on. I stop where there is no more clothing on the arms but continue search all of the back.. If there is any more clothing on the arms, I continue searching the arms. If there is no more clothing on the arms, I visually look at the arms and continue physically searching the back. I would search the left side of the back and arms in the same manner as I've searched the right side of the body.

It is also true that during the first half of the academy we had three or four different ACT instructors teaching us to search the body, each in a slightly different manor. This has caused confusion and frustration among my fellow recruits and myself. Having a steady ACT instructor would have caused us all to learn and practice one correct way to perform our skills. I believe that this would have led to more people passing the original ACT test the first time and would have prevented a lot of recruits from failing. On the Red Man Demo day, I overheard a Training Officer from the Monterey academy talk to a training officer from our academy saying, that she can't believe our academy does not have a steady ACT instructor. Then the Training Officer from our academy said, that he agrees and that he just found out today. Even faculty members are

aware of ACT training issues. All these factors show there is too much inconsistency in the ACT portion of this current Academy class.

I have taken this academy very seriously and have placed it as a very high priority in my life, often placing the academy ahead of my wife, 3.5 year old son, and 4 month daughter. I have never been in any trouble with any of the training officers, I am always on time, and I have studied hard and passed all my LD exams on the first attempt. I am not a recruit that is simply attending the academy; I am a recruit that has made the academy my life. Through the course of the academy thus far, I have helped my fellow recruits work through some issues that they have had, let recruits borrow my LD books to study when they have failed an exam, and have gone to group study as often as I was able.

In regards to my being dropped from the academy based on my ACT remediation, I have been in contact with Coordinator Hogan via email asking that she reconsider my test score. I have also suggested that I would try to attend a POST certified ACT class if possible, upon my hopeful reinstatement into South Bay Regional Police Academy. ACT training is always going to be lifelong learning experience. Even after graduation, my department would have gave me ACT training at least two times a year. Upon completion of the academy, I was hoping that I would return to South Bay Regional to recruit for the agency that hired me and keep in touch with my training officers. I was also hoping in the future to one day return to South Bay Regional to teach the Alcohol Beverage Control portion of the academy being that it would have been the department that hired me. I know that I have the potential to be a great officer and I really hope that my test score may be reconsidered and that I may be reinstated into the South Bay Regional Police Academy so that I may advance my career and become an important asset to the law enforcement team in California.

This is a great academy, but I have fallen through the cracks of the first half of the ACT portion of the academy because of inconsistency. I believe the second half will be much better because we have two great consistent instructors now. I thank you for your time and consideration with this matter. I hope that there is a reasonable solution that can be found and that I may be reinstated into the South Bay Regional Police Academy as soon as possible, as I fear that I am currently missing important information that I need to learn as an officer. I plan to continue to give this academy my all and excel in my skills and techniques as a police recruit and a future Police officer for the State of California. If you have any questions or concerns, please feel free to contact me at [REDACTED] or email me at [REDACTED]. Thank you again and have a wonderful day.

Sincerely,

Vikas Kurian

Memorandum

To: Kurian File
From: Academy Director Giusiana
Subject: Review of investigation into grievance filed by Recruit Vikas Kurian
Date: July 9, 2015

Grievance

On July 6, 2015 Recruit Kurian filed a grievance to his dismissal from academy class SB 130. He was dismissed for failing to pass a retest on the Full Body Search Incident to Arrest test conducted on June 30, 2015. After a review of the investigation conducted by Coordinator Hogan along with personal interviews with RTO Gomez, and Arrest and Control Instructors McCarron and Tejero and a review of the grievance and associated documents, I denied the grievance. The test, remediation and retest were all conducted properly. The dismissal was warranted and there was no justification to overturn the decision.

Facts

On May 19, 2015 Recruit Kurian failed the Arrest Control (LD 33) test for Full Body Search Incident to Arrest.

On May 26, 2015 Recruit Kurian was given Remedial Notice notifying him of his test failure and that remediation would be conducted that day.

Recruit Kurian attended the remediation training on May 26.

On June 30, 2015 Recruit Kurian was given the retest and graded as a failure by Instructor Tejero. This retest was witnessed by Coordinator Hogan.

Reasons for the Grievance

Recruit Kurian submitted a five page grievance on his dismissal from the academy. The grievance jumps around between initial test and retest. It also discussed many items which are irrelevant to the grievance. The four general areas covered in the grievance are; the initial test; remediation; the retest and areas irrelevant to the grievance.

Initial Test

The Initial test is discussed on Page Three and Four.

His main complaint is he was only told he did an improper search of the groin area of the suspect during the initial test and that no other areas were discussed.

This is correct. He double searched the groin area of the suspect. This is improper technique as it leads to complaints. The proper way to search is taught to the students and they need to demonstrate it during the test or it is considered a failure. During the test, the groin search was the only improper search technique he used. The rest of the search was acceptable. He was not put on notice of any other deficiencies because there were none.

In fact he states at the bottom of Page Four "I know that I made a mistake during the original ACT test..."

The initial test was properly administered and scored on the day students were told the test would be administered. Instructor McCarron observed an improper search being conducted and noted it on the score sheet. This resulted in a failure.

Remediation

Kurian was given proper notification as to when remediation training would be conducted. He was given remediation on the day he was scheduled to get the remediation training. He does not claim anywhere in the grievance that he was not given remediation training.

He states in the grievance that during remediation, he practiced searching the crotch area of the suspect because that is the area identified as the problem in his failure. "If I had been told that I was conducting my searches wrong, I would definitely have practiced my search techniques even more and would have obtained help in learning the correct way to conduct a proper search..."

There are three flaws with this logic. First, Kurian may very well have been conducting the search properly during remediation. That does not always translate into correct performance during the test.

Second, the retest is of the entire exercise, not just the one part he failed. This is like studying only the questions missed in a written test LD and not reviewing the rest of the material. The retest is on the entire LD not just the areas missed. On the retest, the student could get 100% correct on the test question he missed and still fail the test by missing other questions.

Third, the student has an obligation to seek help from the instructors. The student is in danger of failing and it is expected they will make the effort to ensure they are performing correctly.

Retest

Recruit Kurian spend two and a half pages describing what he did during the testing. For the most part, this dialog is irrelevant. It does not matter what he says he did, what matters is what was observed. Even though he was given two chances to make a proper search, he did not. The instructor, observer and even the role-player all agreed, he missed the full waist band, the arms and inner thighs during both attempts.

Recruit Kurian also disputes the need to search the arms of a suspect in short sleeves. The role player was wearing short sleeves and Kurian wrote "I did however visually search his exposed arms." This is admitting he did not do the search of the bare arms as he was trained to do.

From the very start of the Arrest Control Class, students are taught to treat arms as if the suspect wore a long sleeve shift. This is done because all the "suspects" are fellow students and they all wear short sleeve shirts. We would be developing bad search techniques if they did not search them at all times. This is part of the training and a requirement to pass the test.

He further argues "Our training is meant to prepare us for real life scenarios" so there was no need to search the bare arms. Testing is a controlled activity to confirm the student understands the concepts being taught. In scenario test we use rubber knives not real ones but if threatened by the knife, we expect the student to react as if it is real. In firearms we load only six rounds in a magazine whereas in real life situations, the magazines would be fully loaded. Students know starting on the first day of training, suspects arms are deemed to be covered for the purposes of doing a search.

Even if we were to discount the bare arm search, he also failed to properly search the full waist band and the inner thighs of the suspect thus it is a failure.

The retest was conducted properly and Recruit Kurian failed to successfully complete the exercise.

Areas irrelevant to the grievance

These items are being addressed briefly only so there can be no claim they were simply ignored.

There was a discussion about some students not being tested on the original day of the test. This occurred because of a time constraint. This has no bearing on Kurian's performance. He was tested on the proper test day. He should have been prepared on that day to conduct the test. The fact that other students were tested on a later day does not affect whether or not Kurian performed properly during his exercises.

There was a discussion about the use of multiple instructors in arrest control. Although this did occur, it does not have relevance to the test. The instructors have worked together for several

academies, worked off the same lesson plan and discussed with each other, how the class would be conducted to ensure consistency in the training. Of the 51 students who took the test, 48 successfully passed. This is a good indication, the instruction was proper.

On page five he says "during the academy, some of our ACT Instructors told us we could have our own search method as long as we search all the areas of the body..." This is true, the issue in this instance is that all the areas were not searched.

In two places there is mention of some students getting to retake tests and other students failing tests but not being made to retake them. If an evaluator sees a minor error and wants to be sure about it before failing a student, they will ask the student to redo a section of the test. This is to give the benefit of the doubt to the student. It is not done when the violation is clear, only when the evaluator feels the need to recheck a student's performance to be sure they did make an error.

As to the failing of tests, no student failed a test which was to be given on May 19th without having to remediate it. There were a few students given tests which were not schedule on that day. They are tests which should be given at a later session. Because of this, they were considered practice. It would be unfair to fail a student on a test, they were not prepared to take.

The last two pages talk about the effect the failure has on Recruit Kurian. POST regulations are clear that a student failing a retest is dismissed from the academy no matter the consequences on their personal life.

Dismissal upheld.