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CONTRACTED SERVICES
CRIMINAL HISTORY

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**Notification of
Criminal History**

A person or business entity that enters into a contract with a district must give notice to the district if the person or an owner or operator of the business entity has been convicted of a felony. A district may terminate a contract with a person or business entity if the district determines that the person or business entity failed to give such notice or misrepresented the conduct resulting in the conviction. A district must compensate the person or business entity for services performed before the termination of the contract. *Education Code 44.034*

**Criminal History—
Certain Contractor
Employees**

Contractor
Responsibilities

*Employed Before
January 1, 2008*

An entity that contracts with a district to provide services and any subcontractor of the entity shall obtain from any law enforcement or criminal justice agency or a private entity that is a consumer reporting agency governed by the Fair Credit Reporting Act (15 U.S.C. Section 1681 et seq.), all criminal history record information that relates to an employee of the entity who is employed before January 1, 2008, and who is not subject to a national criminal history record information review under Education Code 22.0834(b) if:

1. The employee has continuing duties related to the contracted services; and
2. The employee has direct contact with students.

Education Code 22.0834(g)

*Employment
Offered on or
After January 1,
2008*

A person who, on or after January 1, 2008, is offered employment by an entity that contracts with a school district or any subcontractor of the entity must submit to a national criminal history record information review if:

1. The employee or applicant has or will have continuing duties related to the contracted services; and
2. The employee or applicant has or will have direct contact with students.

The person must submit to the review before being employed or serving in a capacity described above.

An entity contracting with a school district and any subcontractor of the entity shall obtain all criminal history record information that relates to a person described above through the criminal history clearinghouse as provided by Government Code 411.0845.

A contracting entity shall require that a subcontracting entity obtain all criminal history record information that relates to a person described above.

Education Code 22.0834(a), (b), (d), (l)

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Education Code 22.0834 does not apply to a contracting entity, subcontracting entity, or other person subject to Education Code 22.08341. [See Criminal History—Certain Public Works Contractors, below] *Education Code 22.0834(a-1)*

Certification to
District

The entity and any subcontractor of the entity shall certify to the school district that it received all of the criminal history record information required above. The entity and any subcontractor of the entity shall also certify that it will take reasonable steps to ensure that the conditions or precautions that have resulted in a determination that any person is not a covered contract employee continue to exist throughout the time that the contracted services are provided. *Education Code 22.0834(d), (l); 22 TAC 153.1117(c)(5)*

A subcontracting entity must certify to the district and the contracting entity that the subcontracting entity has obtained all criminal history record information that relates to an employee described above at Employment Offered On or After January 1, 2008, and has obtained similar written certifications from the subcontracting entity's subcontractors. *Education Code 22.0834(n)*

A contracting entity and any subcontractor of the entity shall provide a school district, at its request, the information necessary for the school district to obtain criminal history record information for all covered contract employees. *22 TAC 153.1117(c)(4)*

A contracting entity complies with the requirements of this section if the contracting entity obtains a written statement from each subcontracting entity certifying that the subcontracting entity has obtained the required criminal history record information for employees of the subcontracting entity and the subcontracting entity has obtained certification from each of the subcontracting entity's subcontractors. *Education Code 22.0834(m)*

*Disqualifying
Conviction*

A contracting or subcontracting entity may not permit a person described above at Employment Offered On or After January 1, 2008, to provide services at a school if the employee has been convicted of a felony or misdemeanor offense that would prevent a person from being employed under Education Code 22.085(a). *Education Code 22.0834(o)*

A service contractor shall not permit a covered contract employee to provide services at a district if the employee has a disqualifying conviction under Education Code 22.085. *22 TAC 153.1117(c)(6)*

A district may not allow a covered contract employee to serve at the district if the district obtains information through a criminal history record information review that the covered contract employee

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	has a disqualifying conviction under Education Code 22.085. The district may adopt a stricter standard. <i>22 TAC 153.1117(b)(3)</i>
District Responsibilities	<p>A district may obtain from any law enforcement or criminal justice agency all criminal history record information that relates to a person described above at Employment Offered On or After January 1, 2008. <i>Education Code 22.0834(h)</i></p> <p>A district may obtain the criminal history record information of a person described above at Employment Offered On or After January 1, 2008, through the criminal history clearinghouse as provided by Government Code 411.0845. <i>Education Code 22.0834(e)</i></p>
<i>Certification from Contractor</i>	A district shall ensure that each of its service contractors certify that the service contractor has obtained all required criminal history record information for covered contract employees. <i>22 TAC 153.1117(b)(1)</i>
SBEC Notification	Pursuant to 19 Administrative Code 249.14(d)(1), if a district obtains information that a covered contract employee who holds a certificate issued by the State Board for Educator Certification (SBEC) has a reported criminal history, the superintendent or the superintendent's designee shall notify SBEC of that criminal history within seven calendar days of the date that information is obtained. <i>19 TAC 153.1117(b)(4)</i> [See DHB(LEGAL)]
Emergency Exception to Criminal History Check	In the event of an emergency, a district may allow a covered contract employee to enter district property, without the required criminal history record information review, if the person is accompanied by a district employee. A district may adopt rules regarding an emergency situation. <i>Education Code 22.0834(f); 19 TAC 153.1117(b)(2)</i>
Definitions	A "contracting entity" is an entity that contracts directly with a district to provide services to the district. <i>Education Code 22.0834(p)(1)</i>
<i>"Contracting Entity"</i>	
<i>"Subcontracting Entity"</i>	A "subcontracting entity" is an entity that contracts with another entity that is not a district to provide services to a district. <i>Education Code 22.0834(p)(2)</i>
<i>"Service Contractor"</i>	A "service contractor" is an entity, including a government entity and an individual independent contractor, that contracts or agrees with a district by written agreement or verbal understanding to provide services through individuals who receive compensation. However, when conducting an investigation or intervention regarding an alleged crime or act of child abuse on a school campus, a law enforcement agency or the Department of Family and Protective Services is not a contracting entity, and the investigator or intervener is not a covered contract employee. <i>19 TAC 153.1101(10)</i>

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*“Continuing
Duties Related to
Contracted
Services”*

“Continuing duties related to contracted services” are work duties that are performed pursuant to a contract to provide services to a district on a regular, repeated basis rather than infrequently or one-time only. *19 TAC 153.1101(2)*

*“Covered
Contract
Employee”*

A “covered contract employee” is an individual who:

1. Is employed or offered employment by a service contractor or a subcontractor of a service contractor, is an individual independent contractor of the district, or is an individual subcontractor of a service contractor;
2. Has or will have continuing duties related to the contracted services;
3. Has or will have direct contact with students; and
4. Is not a student of (or enrolled in) the district for which the services are performed.

19 TAC 153.1101(3)

*“Direct Contact
with Students”*

“Direct contact with students” is the contact that results from activities that provide substantial opportunity for verbal or physical interaction with students that is not supervised by a certified educator or other professional district employee. Contact with students that results from services that do not provide substantial opportunity for unsupervised interaction with a student or students, such as addressing an assembly, officiating a sports contest, or judging an extracurricular event, is not, by itself, direct contact with students. However, direct contact with students does result from any activity that provides substantial opportunity for unsupervised contact with students, which might include, without limitation, the provision of coaching, tutoring, or other services to students. *19 TAC 153.1101(7)*

Note: See DBAA for definitions and provisions regarding confidentiality, consumer credit reports, records retention, and criminal history record checks of employees.

**Criminal History—
Certain Public Works
Contractors**

Applicability

The following provisions apply to a person who is not an applicant for a holder of a certificate under Education Code Chapter 21, Subchapter B, and who is employed by a contracting or subcontracting entity on a project to design, construct, alter, or repair a public work if the person has or will have:

1. Continuing duties related to the contracted services; and

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2. The opportunity for direct contact with students in connection with the person's continuing duties.

Education Code 22.08341(b)

If a contracting or subcontracting entity determines that the conditions at Applicability do not apply to an employee, the entity shall make a reasonable effort to ensure that the conditions or precautions that resulted in that determination continue to exist throughout the time the contracted services are provided. *Education Code 22.08341(i)*

Certification to
District

The contracting entity or subcontracting entity that employs a person described at Applicability, above, shall:

1. Send or ensure that the person sends to the Department of Public Safety information that is required for obtaining national criminal history record information, which may include fingerprints and photographs;
2. Obtain all criminal history record information that relates to the person through the criminal history clearinghouse as provided by Government Code 411.0845; and
3. Certify to the district or contracting entity, as applicable, that the contracting entity or subcontracting entity that employs the person has received all criminal history record information relating to the person.

A contracting entity shall certify to the district that it has obtained written certification from any subcontracting entity that the subcontracting entity has complied with the above as it relates to the subcontracting entity's employees.

Education Code 22.08341(e), (f)

District
Responsibilities

A district may directly obtain the criminal history record information of a person described above through the criminal history clearinghouse. *Education Code 22.08341(h)*

Disqualifying
Conviction

A contracting or subcontracting entity may not permit an employee to provide services at an instructional facility if the employee, during the preceding 30 years, was convicted of any of the following offenses and the victim was under 18 years of age or was enrolled in a public school:

1. A felony offense under Penal Code Title 5;
2. An offense on conviction of which a defendant is required to register as a sex offender; or

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3. An offense under the laws of another state or federal law that is equivalent to 1 or 2.

Education Code 22.08341(d)

Emergency

In the event of an emergency, a district may allow a person described at Applicability, above, to enter an instructional facility if the person is accompanied by a district employee. A district may adopt a policy regarding an emergency for purposes of this provision.

Education Code 22.08341(j)

Definitions

“Contracting Entity”

“Contracting entity” means an entity that contracts directly with a district to provide engineering, architectural, or construction services to the district.

“Instructional Facility”

“Instructional facility” has the meaning assigned by Education Code 46.001.

“Subcontracting Entity”

“Subcontracting entity” means an entity that contracts with another entity that is not a district to provide engineering, architectural, or construction services to a school district.

Education Code 22.08341(a)

Direct Contact with Students

A person does not have the opportunity for direct contact with students if:

1. The public work does not involve the construction, alteration, or repair of an instructional facility;
2. For a public work that involves construction of a new instructional facility, the person’s duties related to the contracted services will be completed not later than the seventh day before the first date the facility will be used for instructional purposes; or
3. For a public work that involves an existing instructional facility,
 - a. The public work area contains sanitary facilities and is separate from all areas used by students by a secure barrier fence that is not less than six feet in height; and
 - b. The contracting entity adopts a policy prohibiting employees, including subcontracting entity employees, from interacting with students or entering areas used by students, informs employees of the policy, and enforces the policy at the public work area.

Education Code 22.08341(c)

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**Contractors
Providing
Transportation
Services**

Except as provided below at Commercial Transportation Company, a district that contracts with a person for transportation services shall obtain from any law enforcement or criminal justice agency all criminal history record information that relates to a person employed by the person as a bus driver or a person the person intends to employ as a bus driver. A person who contracts with a district to provide transportation services shall submit to the district the name and other identification data required to obtain the criminal history record information of such persons. If a district obtains information that such a person has been convicted of a felony or a misdemeanor involving moral turpitude, the district shall inform the chief personnel officer of the person with whom the district has contracted, and the person may not employ that person to drive a bus on which students are transported without the permission of the board. *Education Code 22.084(a)–(b)*

Commercial
Transportation
Company

A commercial transportation company that contracts with a district to provide transportation services may obtain from any law enforcement or criminal justice agency all criminal history record information that relates to a person employed by the company as a bus driver, bus monitor, or bus aide, or a person the company intends to employ in one of these positions. If the company obtains criminal history record information indicating that a person it employs or intends to employ has been convicted of a felony or a misdemeanor involving moral turpitude, the company may not employ that person to drive or to serve as a bus monitor or bus aide on a bus on which students are transported without the permission of the board of the district. If the commercial transportation company obtains the criminal history record information, a district is not required to do the same. *Education Code 22.084(c)–(d)*