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**Notification of
Criminal History**

A person or business entity that enters into a contract with a district must give advance 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. The 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), (k)

*Employment
Offered on or
After January 1,
2008*

A person who is not an applicant for or holder of a certificate under Education Code Chapter 21, Subchapter B, and 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.

Before or immediately after employing or securing the services of a person described above, the entity contracting with a district shall send or ensure that the person sends to the Department of Public Safety (DPS) information that is required by DPS for obtaining national criminal history record information, which may include fingerprints and photographs.

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.

Education Code 22.0834(a), (b), (c), (d), (k)

A contracting entity shall require that a subcontracting entity obtain all criminal history record information that relates to an employee described above. If a contracting or subcontracting entity determines that the conditions above 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 that the contracted services are provided. *Education Code 22.0834(l)*

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 shall certify to the district that it received all of the criminal history record information relating to a person described above at Employment Offered On or After January 1, 2008. *Education Code 22.0834(d)*

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)*

An entity and any subcontractor of the entity shall certify to the district that it received all of the criminal history record information relating to a person described above at Employed Before January 1, 2008. *Education Code 22.0834(i)*

A contracting entity complies with the requirements of Education Code 22.0834 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)*

District
Responsibilities

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. *Education Code 22.0834(h)*

CONTRACTED SERVICES
CRIMINAL HISTORY

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| | <p>A district may obtain the criminal history record information of a person described above at Employed Before January 1, 2008, through the criminal history clearinghouse as provided by Government Code 411.0845. <i>Education Code 22.0834(e)</i></p> |
| Disqualifying Conviction | <p>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). <i>Education Code 22.0834(o)</i></p> <p>A district may not allow a person who is an employee of or applicant for employment by an entity that contracts with the district to serve at the district if the district obtains information described by Education Code 22.085(a) through a criminal history record information review concerning the employee or applicant. A district must ensure that an entity that the district contracts with for services has obtained all criminal history record information as required by Section 22.0834. <i>Education Code 22.085(c)</i></p> |
| Emergency | <p>In the event of an emergency, a district may allow a person to whom these requirements apply to enter district property if the person is accompanied by a district employee. A district may adopt rules regarding an emergency situation under this provision. <i>Education Code 22.0834(f)</i></p> |
| Definitions | |
| “Contracting Entity” | “Contracting entity” means an entity that contracts directly with a district to provide services to the district. <i>Education Code 22.0834(p)(1)</i> |
| “Subcontracting Entity” | “Subcontracting entity” means 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> |
| “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. <i>19 TAC 153.1101(2)</i> |
| “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 or 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
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 above 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)*

Contractor
Responsibilities

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

1. Send or ensure that the person sends to DPS information that is required for obtaining national criminal history record information, which may include fingerprints and photographs; and
2. Obtain all criminal history record information that relates to the person through the criminal history clearinghouse as provided by Government Code 411.0845.

Education Code 22.08341(e)(1), (2)

Certification to
District

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

CONTRACTED SERVICES
CRIMINAL HISTORY

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tracting entity has complied with the above as it relates to the sub-contracting entity's employees.

Education Code 22.08341(e)(3), (f)

District
Responsibilities

A district may directly obtain the criminal history record information of a person described at Applicability, above, through the criminal history clearinghouse as provided by Government Code 411.0845.
Education Code 22.08341(h)

Disqualifying
Conviction

A contracting or subcontracting entity may not permit an employee described at Applicability, above, 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
3. An offense under the laws of another state or federal law that is equivalent to 1 or 2.

Education Code 22.08341(d)

A district may not allow a person who is an employee of or applicant for employment by an entity that contracts with the district to serve at the district if the district obtains information described by Education Code 22.085(a) through a criminal history record information review concerning the employee or applicant. A district must ensure that an entity that the district contracts with for services has obtained all criminal history record information as required by Section 22.08341. *Education Code 22.085(c)*

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 district.

Education Code 22.08341(a)

*Direct Contact
with Students*

For purposes of the applicability of these provisions, 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 separated 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)

**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 of the district. *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

information that a person employed or to be employed 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 a commercial transportation company obtains criminal history record information, a district is not required to do the same. *Education Code 22.084(c)-(d)*

District Authority

A district is entitled to obtain from DPS criminal history record information maintained by DPS that the district is required or authorized to obtain under Education Code Chapter 22, Subchapter C, that relates to a person who is:

1. An employee of or an applicant for employment with a public or commercial transportation company that contracts with the district to provide transportation services if the employee drives or the applicant will drive a bus in which students are transported or is employed or is seeking employment as a bus monitor or bus aide on a bus in which students are transported; or
2. An employee of or applicant for employment by an entity that contracts to provide services to a district, charter school, or shared services arrangement as provided by Education Code 22.0834 or 22.08341.

Gov't Code 411.097(a)