Information Sheet – 2/08/2022 - Board of Trustees Meeting

TO: Board of Trustees Item: 8.3

FR: Celli Coeville

DATE: February 2, 2022

RE: Revised AR 3515.6, Criminal Background Check for Contractors, Consider for Adoption

Revised AR 3515.6, Criminal Background Check for Contractors, has been updated to revised to reflect NEW LAW (AB 130, 2021) which requires any entity, including a sole proprietor, that has a contract with a district to ensure that employees who interact with students outside of the immediate supervision and control of the student's parent/guardian or school staff have a valid criminal records summary and to immediately provide any subsequent arrest and conviction information received pursuant to the subsequent arrest service. Regulation also updated to delete the list of service providers as the services in Items #1-5 are no longer listed in law and the services in Item #6 regarding the construction, reconstruction, rehabilitation, or repair of a school facility are considered in another portion of the regulation, delete material regarding an exception for employees with limited contact with students as it is no longer provided for in law, generalize information regarding steps that may be taken to protect the safety of students who may come in contact with employees of contracting entities, and rearrange placement of material for clarity and context.

Recommended Action: Approved Revised AR 3515.6, Criminal Background Check for Contractors as presented

CRIMINAL BACKGROUND CHECKS FOR CONTRACTORS

CSBA NOTE: Education Code 45125.1, as amended by AB 130 (Ch. 44, Statutes of 2021), and 45125.2 require any entity that has a contract with the district to ensure that employees who interact with students outside of the immediate supervision and control of the student's parent/guardian or school staff, have a valid criminal records summary as described in Education Code 44237.

Except in an emergency or exceptional situation, such as when student health or safety is endangered or when repairs are needed to make school facilities safe and habitable, ~~When the employees of~~ any entity contracting with the district ~~to provide specified~~ for services that may require the entity's employees to interact ~~will have contact~~ with students, ~~the entity~~ outside of the immediate supervision and control of parents/guardians or school staff, shall certify ~~in writing to the Superintendent or designee~~ to the district that each of its employees who may interact with students has a valid criminal records summary as described in Education Code 44237 and that neither the entity nor any ~~that none~~ of those employees has been convicted of a violent or serious felony as defined in Education Code 45122.1. Such contracting entity shall also be required to immediately provide the district with any subsequent arrest and conviction information received pursuant to the subsequent arrest service. (Education Code 44237, 45125.1)

~~In the case of a sole proprietor, the Superintendent or designee shall prepare and submit the employee's fingerprints to the Department of Justice. If any contracting employee who may have contact with students has been convicted of a violent or serious felony as defined, a certificate of rehabilitation and a pardon as required pursuant to Education Code 45125.1 shall be submitted to the Superintendent or designee before the contracting employee is authorized to perform the work for the district. (Education Code 45125.1)~~

~~These requirements shall apply to a sole proprietor or entity contracting with the district to provide any of the following services: (Education Code 45125.1, 45125.2)~~

~~1. School and classroom janitorial services~~

~~2. School site administrative services~~

~~3. School site grounds and landscape maintenance services~~

~~4. Student transportation services~~

~~5. School site food-related services~~

~~6. Construction, reconstruction, rehabilitation, or repair of a school facility~~

~~*(cf. 3540 - Transportation)*~~
~~*(cf. 3551 - Food Service Operations/Cafeteria Fund)*~~

CRIMINAL BACKGROUND CHECKS FOR CONTRACTORS

~~*(cf. 3600 - Consultants)*~~
~~*(cf. 7140 - Architectural and Engineering Services)*~~

On a case-by-case basis, the Superintendent or designee may require ~~a contracting~~ any entity ~~providing school site services other than those listed above~~ with which the district has a contract to comply with these same requirements. (Education Code 45125.1)

CSBA NOTE: Pursuant to Education Code 45125.1, as amended by AB 130, the requirement for a criminal records summary also applies to any individual operating as a sole proprietor who contracts with the district. In the case of a sole proprietor, Education Code 45125.1 provides that it is the responsibility of the district to prepare and submit the sole proprietor's fingerprints to the Department of Justice.

For an individual who is operating as the sole proprietor of an entity, the Superintendent or designee shall treat the individual as an employee of the entity and shall prepare and submit the individual's fingerprints to the Department of Justice (DOJ). (Education Code 45125.1)

Any contracting entity's employee who has been convicted of a violent or serious felony, as defined in Education Code 45122.1, shall not be permitted to interact with students unless a certificate of rehabilitation and pardon pursuant to Penal Code 4852.01-4852.22 has been submitted to the Superintendent or designee. (Education Code 45125.1)

The Superintendent or designee may determine that criminal background checks will not be required if the contract is for the construction, reconstruction, rehabilitation, or repair of a school facility and the contracting entity is providing services in an emergency or exceptional situation, or the district uses one or more of the following methods to ensure student safety: (Education Code 45125.2)~~:~~

~~1. The contracting entity is providing services in an emergency or exceptional situation, such as when student health or safety is endangered or when repairs are needed to make school facilities safe and habitable. (Education Code 45125.1)~~

~~2. The employees of the contracting entity will have limited contact with students. In determining whether a contract employee has limited contact with students, the Superintendent or designee shall consider the totality of the circumstances, including factors such as the length of time the contractors will be on school grounds, whether students will be in proximity with the site where the contractors will be working, and whether the contractors will be working by themselves or with others. (Education Code 45125.1)~~

~~Upon a determination that an employee will have limited contact with students, the Superintendent or designee shall take appropriate steps to protect the safety of any students who may come in contact with this employee. (Education Code 45125.1)~~

~~These steps may include, but are not limited to, ensuring that the employee is working during non-school hours, providing for regular patrols or supervision of the site from district security or personnel,~~

CRIMINAL BACKGROUND CHECKS FOR CONTRACTORS

~~ensuring that the employee is not working alone when students are present, limiting the employee's access to school grounds, and/or providing the employee with a visible means of identification.~~

~~*(cf. 3515.3 - District Police/Security Department)*~~

~~3. The contract is for the construction, reconstruction, rehabilitation, or repair of a school facility and either item #1 or #2 above applies or the district uses one or more of the following methods to ensure student safety: (Education Code 45125.2)~~

~~a.~~1. The installation of a physical barrier at the worksite to limit contact with students

~~b.~~2. Continual supervision and monitoring of all employees of the entity by an employee of the entity whom the Department of Justice has ascertained has not been convicted of a violent or serious felony

~~c.~~3. Surveillance of employees of the entity by school personnel

CSBA NOTE: The following paragraph is optional and may be revised to reflect district practice.

The Superintendent or designee may take appropriate steps to protect the safety of any students who may come in contact with employees of contracting entities, including, but not limited to, ensuring that the employees of such entities perform work during nonschool hours, do not work alone when students are present, have limited access to school grounds, are provided with a visible means of identification, and/or that there are regular patrols or supervision of the site from district security or personnel.

Legal Reference:

EDUCATION CODE
41302.5 School districts, definition
45122.1 Classified employees, conviction of a violent or serious felony
45125.1 Criminal background checks for contractors
45125.2 Criminal background checks for construction

PENAL CODE
667.5 Prior prison terms, enhancement of prison terms
1192.7 Plea bargaining limitation

Management Resources:

WEB SITES
Department of Justice: https://oag.ca.gov/fingerprints