Personnel

Criminal Record Check

The Superintendent or designee shall not hire or retain in employment, in a certificated or classified position, a person who has been convicted of a violent or serious felony as defined in Penal Code 667.5(c) or 1192.7(c), a controlled substance offense as defined in Education Code 44011, or a sex offense as defined in Education Code 44010. However, the Superintendent or designee shall not deny or terminate employment if: (Education Code 44830.1, 44836, 45122.1, 45123)

1. The conviction for a violent or serious felony, controlled substance offense, or sex offense is reversed and the person is acquitted of the offense in a new trial or the charges against the person are dismissed, unless the sex offense for which the conviction is dismissed pursuant to Penal Code 1203.4 involves a victim who was a minor.

2. A person convicted of a violent or serious felony has obtained a certificate of rehabilitation or a pardon.

3. A person who has been convicted of a serious felony, that is not also a violent felony, proves to the sentencing court that he/she has been rehabilitated for purposes of school employment for at least one year.

4. A person who has been convicted of a controlled substance offense is applying for or is employed in a certificated position and has a credential issued by the Commission on Teacher Credentialing.

5. A person who has been convicted of a controlled substance offense is applying for or is employed in a classified position and has been determined by the Governing Board, from the evidence presented, to have been rehabilitated for at least five years.

(cf. 4112 - Appointment and Conditions of Employment)
(cf. 4112.2 - Certification)
(cf. 4118 - Dismissal/Suspension/Disciplinary Action)
(cf. 4127/4227/4327 - Temporary Athletic Team Coaches)
(cf. 4218 - Dismissal/Suspension/Disciplinary Action)

A certificated employee may be hired by the district without obtaining a criminal record summary if that employee is employed as a certificated employee in another California school district and became a permanent employee of another California school district as of October 1, 1997. (Education Code 44830.1, 44836)

The Superintendent or designee shall not issue a temporary certificate of clearance to a person whose application for a credential, certificate, or permit is being processed by the Commission on Teacher Credentialing if that person has been convicted of a violent or serious felony, unless the person is otherwise exempt pursuant to Education Code 44332.6 or 44830.1. (Education Code 44332.5, 44332.6)
Criminal Record Check (Cont.)

Pre-Employment Record Check

The Superintendent or designee shall require each person to be employed by the district to submit his/her fingerprints electronically through the Live Scan system so that a criminal record check may be conducted by the Department of Justice (DOJ). The Superintendent or designee shall provide the applicant with a Live Scan request form and a list of nearby Live Scan locations.

When a person is applying for a position, the Superintendent or designee shall request that the DOJ also obtain a criminal record check through the Federal Bureau of Investigation whenever the applicant meets one of the following conditions: (Education Code 45125)

1. The applicant has not resided in California for at least one year immediately preceding the application for employment.

2. The applicant has resided in California for more than one year, but less than seven years, and the DOJ has ascertained that the person was convicted of a sex offense where the victim was a minor or a drug offense where an element of the offense is either the distribution to or the use of a controlled substance by a minor.

The Superintendent or designee shall immediately notify the DOJ when an applicant who has submitted his/her fingerprints to the DOJ is not subsequently employed by the district. (Penal Code 11105.2)

Subsequent Arrest Notification

The Superintendent or designee shall enter into a contract with the DOJ to receive notification of subsequent arrests resulting in conviction of any person whose fingerprints have been submitted to the DOJ. (Education Code 44830.1, 45125; Penal Code 11105.2)

Upon telephone or email notification by the DOJ that a current temporary employee, substitute employee, or probationary employee serving before March 15 of his/her second probationary year has been convicted of a violent or serious felony, the Superintendent or designee shall immediately place that employee on leave without pay. (Education Code 44830.1, 45122.1)

(cf. 4116 - Probationary/Permanent Status)
(cf. 4121 - Temporary/Substitute Personnel)

When the district receives written electronic notification by the DOJ of the fact of conviction, the temporary employee, substitute employee, or probationary employee serving before March 15 of his/her second probationary year shall be terminated automatically unless the employee challenges the DOJ record and the DOJ withdraws its notification in writing. Upon receipt of the written withdrawal of notification by the DOJ, the Superintendent or designee shall immediately reinstate that employee with full restoration of salary and benefits for the period of time from the suspension without pay to the reinstatement if the employee is still employed by the district. (Education Code 44830.1, 45122.1)

The Superintendent or designee shall immediately notify the DOJ whenever a person whose fingerprints are maintained by the DOJ is terminated. (Penal Code 11105.2)
Notification of Applicant/Employee

The Superintendent or designee shall expeditiously furnish a copy of any DOJ notification to the applicant or employee to whom it relates if the information is a basis for an adverse employment decision. The copy shall be delivered in person or to the last contact information provided by the applicant or employee. (Penal Code 11105, 11105.2)

(cf. 4112.9/4212.9/4312.9 - Employee Notifications)

Maintenance of Records

The Superintendent shall designate at least one custodian of records who shall be responsible for the security, storage, dissemination, and destruction of all Criminal Offender Record Information (CORI) furnished to the district and shall serve as the primary contact for the DOJ for any related issues. (Penal Code 11102.2)

An employee designated as custodian of records shall receive a criminal background check clearance from the DOJ prior to serving in that capacity. (Penal Code 11102.2)

The custodian of records shall sign and return to the DOJ the Employee Statement Form acknowledging his/her understanding of the laws prohibiting misuse of CORI. In addition, the custodian of records shall ensure that any individual with access to CORI has on file a signed Employee Statement Form.

To ensure its confidentiality, CORI shall be accessible only to the custodian of records and shall be kept in a locked file separate from other files. CORI shall be used only for the purpose for which it is requested and its contents shall not be disclosed or reproduced. (Education Code 44830.1, 45125)

(cf. 4119.23/4219.23/4319.23 - Unauthorized Release of Confidential/Privileged Information)
(cf. 9011 - Disclosure of Confidential/Privileged Information)

Once a hiring determination is made, the applicant’s CORI shall be destroyed to the extent that the identity of the individual can no longer be reasonably ascertained. (Education Code 44830.1, 45125; 11 CCR 708)

The Superintendent or designee shall immediately notify the DOJ whenever a designated custodian of records ceases to serve in that capacity. (Penal Code 11102.2)

Interagency Agreement

Subject to an interagency agreement with other school districts, the district shall submit and receive CORI on behalf of all participating districts. (Education Code 44830.2, 45125.01)

Upon receipt from the DOJ of a report of conviction of a serious or violent felony, the district shall communicate that fact to participating districts and shall remove the affected employee from the common list of persons eligible for employment. (Education Code 44830.2, 45125.01)
Criminal Record Check (Cont.)

In addition, upon receipt from the DOJ of a criminal history record or report of subsequent arrest for any person on a common list of persons eligible for employment, the district shall give notice to the superintendent of any participating district, or the person designated in writing by that superintendent, that the report is available for inspection on a confidential basis by the superintendent or the authorized designee. The report shall be made available at the district office for 30 days following the receipt of the notice. (Education Code 44830.2, 45125.01)

The district shall not release a copy of that information to any participating district or any other person. In addition, the district shall retain or dispose of the information in the manner specified in law and in this administrative regulation after all participating districts have had an opportunity to inspect it in accordance with law. (Education Code 44830.2, 45125.01)

The district shall maintain a record of all persons to whom the information has been shown and shall make this record available to the DOJ. (Education Code 44830.2, 45125.01)

Legal Reference:
EDUCATION CODE
44010 Sex offense
44011 Controlled substance offense
44332-44332.6 Temporary certificate of clearance
44346.1 Applicants for credential, conviction of a violent or serious felony
44830.1 Certificated employees, conviction of a violent or serious felony
44830.2 Certificated employees; interagency agreement for sharing criminal record information
44836 Conviction of a sex or controlled substance offense
44932 Grounds for dismissal of permanent certificated employees
45122.1 Classified employees, conviction of a violent or serious felony
45125 Use of personal identification cards to ascertain conviction of crime
45125.01 Classified employees; interagency agreement for sharing criminal record information
45125.5 Automated records check
45126 Duty of Department of Justice to furnish information
49024 Activity supervisor clearance certificates
PENAL CODE
667.5 Violent felonies
1192.7 Serious felonies
1203.4 Dismissal of conviction
11075-11081 Criminal record dissemination
11102.2 Maintenance of criminal offender records; custodian of records
11105 Access to criminal history information
11105.2 Subsequent arrest notification
11105.3 Record of conviction involving sex crimes, drug crimes or crimes of violence; availability to employer for applicants for positions with supervisory or disciplinary power over minors
11140-11144 Furnishing of state criminal history information
13300-13305 Local summary criminal history information
CODE OF REGULATIONS, TITLE 11
701-708 Criminal offender record information
720-724 Incomplete criminal history information
994-994.15 Certification of individuals who take fingerprint impressions
COURT DECISIONS

Management Resources:
WEB SITES
Office of the Attorney General, Department of Justice, Background Checks:
http://www.oag.ca.gov/fingerprints

Adopted: 12/6/06
Amended: 3/4/15
If an applicant has been convicted of any of the penal codes listed below, the applicant will automatically be denied employment.

All applicants should review this list carefully to avoid wasting their time, effort and money to get their fingerprints processed as they cannot receive the required criminal background clearance if they have been convicted of any of these violations.

Section

187  Murder
192(a) Manslaughter, Voluntary
203  Mayhem
205  Aggravated Mayhem
206  Torture
207  Kidnapping
209  Kidnapping for ransom, reward, or extortion or robbery
210  Extortion by posing as kidnapper
210.5 False imprisonment
211  Robbery (Includes degrees in 212.5 (a) and (b))
220  Assault with intent to commit mayhem, rape, sodomy, oral copulation
222  Administering stupefying drugs to assist in commission of a felony
243.4 Sexual battery (Includes degrees (a) - (d))
245  Assault with deadly weapon, all inclusive
261  Rape (Includes degrees (a)-(c))
262  Rape of spouse (Includes degrees (a)-(e))
264.1 Rape or penetration of genital or anal openings by foreign object
265  Abduction for marriage or defilement
266  Inveiglement or enticement of female under 18
266a Taking person without will or by misrepresentation for prostitution
266b Taking person by force
266c Sexual act by fear
266d Receiving money to place person in cohabitation
266e Placing a person for prostitution against will
266f Selling a person
266g Prostitution of wife by force
266h Pimping
266i Pandering
266j Placing child under 16 for lewd act
266k Felony enhancement for pimping/pandering
267  Abduction of person under 18 for purposes of prostitution
273a Willful harm or injury to a child; (Includes degrees (a)-(c))
273d Corporal punishment/injury to a child (Includes degrees (a)-(c))
273.5 Willful infliction of corporal injury (Includes (a)-(h))
285  Incest
286(c) Sodomy with person under 14 years against will
Section 286(d)  Voluntarily acting in concert with or aiding and abetting in act of sodomy against will
Section 286(f)  Sodomy with unconscious victim
Section 286(g)  Sodomy with victim with mental disorder or developmental or physical disability
Section 288(a)  Lewd or lascivious acts with child under age of 14
Section 288(c)  Oral copulation with person under 14 years against will
Section 288(d)  Voluntarily acting in concert with or aiding and abetting
Section 288(f)  Oral copulation with unconscious victim
Section 288(g)  Oral copulation with victim with mental disorder or developmental or physical disability
Section 288.5  Continuous sexual abuse of a child (Includes degree (a))
Section 289  Penetration of genital or anal openings by foreign object (Includes degrees (a)-(j))
Section 289.5  Rape and sodomy (Includes degrees (a) and (b))
Section 368  Elder or dependent adult abuse; theft or embezzlement of property (Includes (b)-(f))
Section 451  Arson (Includes degrees (a)-(e))
Section 459  Burglary (Includes degrees in 460 (a) and (b))
Section 470  Forgery (Includes (a)-(e))
Section 475  Possession or receipt of forged bills, notes, trading stamps, lottery tickets or shares (Includes degrees (a) - (c))
Section 484  Theft
Section 484b  Intent to commit theft by fraud
Section 484d-j  Theft of access card, forgery of access card, unlawful use of access card
Section 487  Grand theft (Includes degrees (a)-(d))
Section 488  Petty theft
Section 496  Receiving stolen property (Includes (a)-(c))
Section 503  Embezzlement
Section 518  Extortion
Section 666  Repeat convictions for petty theft, grand theft, burglary, carjacking, robbery and receipt of stolen property

Per Board Policy and Administrative Regulation 4112.5, 4212.5 and 4312.5, the Superintendent or designee shall ensure that no person is hired in a position requiring certification qualifications or supervising positions requiring certification qualifications who has been convicted of a violent or serious felony as listed in Penal Code 667.5(c) or 1192.7(c), unless that person has obtained a certificate of rehabilitation and a pardon. (Education Code 44830.1)

Cases dismissed by penal code 1204.3 may still disqualify applicants from employment in the Oroville Union High School District. The Board of Trustees will make the final determination.

Any applicant who attempts to contact and individual board member with the intention of influencing the decision of the Board will be disqualified by that action.

Adopted: 11/7/12