

CSBA Sample

Administrative Regulation

Business and Noninstructional Operations

AR 3515.6(a)

CRIMINAL BACKGROUND CHECKS FOR CONTRACTORS

Note: Education Code 45125.1 requires entities having contracts with districts, as specified below, to submit fingerprints to the Department of Justice (DOJ) for processing. As amended by AB 2102 (Ch. 840, Statutes of 1998), Education Code 45125.1 has been narrowed to require the fingerprinting of only those contract employees who are working at a school site.

Pursuant to Education Code 45125.1(i), this regulation also applies to charter schools.

Education Code 45125.1 and 45125.2 require certain employees of entities contracting to provide services to the district, as specified below, to obtain a criminal background check. Pursuant to Education Code 45125.1, as amended by AB 949 (Ch. 84, Statutes of 2017), the requirement for a criminal background check 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, as amended, provides that it is the responsibility of the district to prepare and submit the employee's fingerprints to the Department of Justice (DOJ) for processing.

~~Whenever the district contracts for school and classroom janitorial, school site administrative, school site grounds and landscape maintenance, student transportation, and school site food-related services, the Superintendent or designee shall ensure that the contracting entity certifies in writing that any employees who may come into contact with students have not~~ **When the employees of any entity contracting with the district to provide specified services will have contact with students, the entity shall certify in writing to the Superintendent or designee that none of those employees has been convicted of a violent or serious felony as defined in Education Code 45122.1, unless the employee has received a certificate of rehabilitation and a pardon. 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**

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4. Student transportation services

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CRIMINAL BACKGROUND CHECKS FOR CONTRACTORS (continued)

5. School site food-related services

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

Note: Pursuant to Education Code 45125.1, as amended by AB 2102 (Ch. 840, Statutes of 1998), a contractor may employ a person who has been convicted of a serious felony, as long as (1) the serious felony is not a violent felony and (2) the employee can prove to the sentencing court that he/she has been rehabilitated, for the purposes of school site employment, for at least one year.

(cf. 3540 - Transportation)
(cf. 3551 - Food Service Operations/Cafeteria Fund)
(cf. 3600 - Consultants)
(cf. 7140 - Architectural and Engineering Services)

Note: Education Code 45125.1, as amended by AB 2102 (Ch. 840, Statutes of 1998), allows districts to determine on a case-by-case basis that entities providing other school site services should also submit fingerprints, unless the district determines that the employees will have limited contact with students as defined below:

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

Note: As amended by AB 2102 (Ch. 840, Statutes of 1998), Education Code 45125.1 no longer requires the contracting entity to present to the Board a list of employees who may come into contact with students.

These requirements shall not apply. The Superintendent or designee may determine that criminal background checks will not be required if:

1. ~~if the Superintendent or designee determines that~~ 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. ~~In addition, these requirements shall not apply if the Superintendent or designee determines that~~ the The employees of the contracting entity will have limited contact with students and the work cannot be scheduled outside of school hours. The Superintendent or designee shall review the details of the circumstances on a case by case basis ~~in~~ determining whether a contract employee has limited contact with

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students. The Superintendent or designee shall consider the totality of the circumstances, including the following factors such as: 1. The length of time the contractors will be on school grounds, 2. Whether students will be in proximity with the site where the contractors will be working, and 3. Whether the contractors will be working by themselves or with others. (Education Code 45125.1)

Comment [J1]: For most if not all projects-Facilities or Technology staff will be on site during the project. All efforts are made to do projects before or after school hours

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CRIMINAL BACKGROUND CHECKS FOR CONTRACTORS (continued)

Note: If it is determined that the employee will have limited contact with students, the employee is not required to submit a fingerprint identification card to the DOJ.

Upon a determination that an employee shall 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)

Note: The following paragraph may be revised to reflect district practice.

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

Other Facility Contractors

Note: Education Code 45125.2, as added by AB 2102 (Ch. 840, Statutes of 1998) requires districts contracting with an entity for construction, reconstruction, rehabilitation or repair of a school facility to ensure the safety of students by complying with the following requirements. If the district utilizes one of the three methods listed below, the contracting entity is not required to comply with the requirement to submit fingerprints pursuant to Education Code 45125.1.

When the district contracts for construction, reconstruction, rehabilitation or repair of a school facility where the employees of the entity will have contact, other than limited contact with students, the Superintendent or designee shall ensure the safety of students by utilizing one or more of the following methods: (Education Code 45125.2)

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

~~The supervising employee may submit his/her fingerprints to the Department of Justice pursuant to Education Code 45125.1.~~

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CRIMINAL BACKGROUND CHECKS FOR CONTRACTORS (continued)

- 3.c. Surveillance of employees of the entity by school personnel directly connected with the project.

Comment [J2]: In most cases this will be Technology or Facilities Staff.

~~These requirements shall not apply if the Superintendent or designee determines that the contracting entity is providing construction, reconstruction, rehabilitation, or repair 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 45125.2)~~

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>

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Policy Reference UPDATE Service

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