

Chapter 153. School District Personnel

Subchapter DD. Criminal History Record Information Review

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.

- (8) National criminal history record information--In accordance with the TEC, §22.081, criminal

(A) the employee or applicant has or will have continuing duties related to the contracted services; and

the employee or applicant has or will have direct contact with students.

Adopted to be effective December 30, 2007, 32 TexReg 9626.

Certified Employees.

National criminal history record information review.

- (1) This section applies to a person described in the Texas Education Code (TEC), §22.0833, that is, any person who is not a holder of or applicant for Texas educator certification under the TEC, Chapter 21, Subchapter B, and who, after January 1, 2008, is offered employment by a school district or an open-enrollment charter school.
- (2) This section ~~also~~ applies to such a person who is offered employment by a shared services arrangement, if the employee's or applicant's duties are or will be performed on school property or at another location where students are regularly present.
- (3) Before being employed by a school entity, every person to whom this section applies shall submit

the TEA pursuant to the TEC, §22.0833, and must be terminated if the TEA makes a determination that the employee or applicant is ineligible for employment under the terms of the TEC, §22.085.

- (3) In the event that the school entity withdraws its offer of employment or terminates the employee under review, the school entity shall immediately notify the TEA, and no final determination of employability will be made.
- (e) Notice of proposed determination of ineligibility for employment.
- (1) The TEA shall notify the employee or applicant by certified mail, return receipt requested, if, based on its criminal history record information review, the TEA proposes to make a determination that an employee or applicant for employment is ineligible for employment under the terms of the TEC, §22.085.
 - (2) The notice shall specify the basis for the proposed determination, including, but not limited to, a description of the criminal charges or convictions involved.
 - (3) The notice shall state that the determination will be made unless the employee or applicant submits a written response to the TEA, which may include supporting documents or affidavits, within 15 calendar days from the date the notice was mailed, and such response demonstrates to the satisfaction of the TEA that the employee or applicant is eligible for employment under the terms of the TEC, §22.085.

- (2) Before being employed by a school entity, every person to whom this section applies, and who has not previously done so, shall submit fingerprint, photograph, and identification information to the Texas Department of Public Safety (DPS) as required by this section. All information shall be submitted in the form the DPS requires for the purpose of being included in the Clearinghouse.
- (b) Submission of required information.
 - (1) Upon notice from the Texas Education Agency (TEA), a school entity shall provide the TEA with the names, mailing addresses, and any other requested identifying information for all substitute teachers authorized to be employed by the school entity at that time.
 - (2) The school entity shall ensure that each such person shall obtain electronically from the TEA an authorization for submission of fingerprint, photograph, and identification information to the DPS in the form the DPS requires.
 - (3) Only fingerprint, photograph, and identification information that has been properly authorized by the TEA will be accepted by the DPS and included in the Clearinghouse as required by the TEC, §22.0836.
- (c) Fees.
 - (1) The TEA's fee for review of national criminal history record information shall be the same as that required by the State Board for Educator Certification for such a review and may be collected by any entity authorized to obtain the information necessary for the review, which shall then remit the TEA's portion of the fee to the TEA.
 - (2) A school entity may require a substitute teacher to pay all fees related to obtaining and reviewing the national criminal history record information required by this section.
- (d) Employment pending review.
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- (4) The following conditions are material violations of the school's charter, as provided by the TEC, §22.0832:
 - (A) failure of an open-enrollment charter school to provide the information required by this section; and
 - (B) continued employment by an open-enrollment charter school of a person in a position to which the TEC, §12.1059, applies, after receipt of notice from the TEA that the person has failed to submit the information required by this section.
- (c) Fees.
 - (1) The TEA's fee for review of national criminal history record information shall be the same as that required by the State Board for Educator Certification (SBEC) for such a review and may be collected by any entity authorized to obtain the information necessary for the review, which shall then remit the TEA's portion of the fee to the TEA.
 - (2) An open-enrollment charter school may require an employee to whom the TEC, §12.1059, applies to pay all fees related to obtaining and reviewing the national criminal history record information required by this section.
- (d) Employment pending review.
 - (1) An open-enrollment charter school shall ensure that a person subject to the TEC, §22.0832, submits the required information before that person's employment begins in a position to which the TEC, §12.1059, applies.
 - (2) After the required information is submitted, the person may begin employment, but that employment is conditional upon the review of that person's criminal history record information by the TEA pursuant to the TEC, §22.0832, and must be terminated if the TEA makes a determination that the employee or applicant is ineligible for employment under the terms of the TEC, §22.085.
 - (3) In the event that the open-enrollment charter school withdraws its offer of employment or terminates the employee under review, the school shall immediately notify the TEA, and no final determination of employability will be made.
- (e) Standard of TEA review for charter school educators.
 - (1) As required by the TEC, §22.0832, the TEA shall review the criminal history record information of a person to whom that section applies to determine if that person would be eligible for certification under the TEC, Chapter 21, Subchapter B, and shall review the certification status, if any, of the person to determine if the person presents a danger to the health, safety, or welfare of the students, as defined by the TEC, §12.1162(b).
 - (2) The TEA shall determine that a person to whom this section applies would not be eligible for educator certification if that person's criminal history record information provides satisfactory evidence that the person would not be eligible for educator certification under the TEC, Chapter 21, Subchapter B, and Chapter 249 of this title (relating to Disciplinary Proceedings, Sanctions, and Contested Cases), where it is provided that certification may be denied if:
 - (A) the person has engaged in conduct that would constitute an offense directly relating to public education;
 - (B) the person lacks good moral character; or
 - (C) the person is unworthy to instruct or supervise the youth of this state.
 - (3) The TEA may rely on the rules and reported decisions of educator certification cases in its interpretation of the standards for educator certification. The TEA may also determine that a covered charter school educator would not be eligible for educator certification because the educator's revoked or suspended certification status, if any, demonstrates that the educator

presents a danger to the health, safety, or welfare of the students, as defined by the TEC, §12.1162(b).

- (f) Notice of proposed determination of ineligibility for employment.
 - (1) The TEA shall notify the charter school educator by certified mail, return receipt requested, if, based on its criminal history record information review, the TEA proposes to make a determination that the charter school educator is ineligible for such employment under the terms of the TEC, §§12.1162(b) and/or 22.0832 and 22.085.
 - (2) The notice shall specify the basis for the proposed determination, including, but not limited to, a description of the criminal charges or convictions and/or the educator certification status, if any, related to the determination.
 - (3) The notice shall state that the determination will be made unless the charter school educator submits a written response to the TEA, which may include supporting documents or affidavits, within 15 calendar days from the date the notice was mailed, and such response demonstrates to the satisfaction of the TEA that the charter school educator is eligible for employment as a charter school educator under the terms of the TEC, §§12.1162(b) and/or 22.0832 and 22.085.
 - (4) After review of such response, if any, the TEA shall notify the charter school educator by certified mail, return receipt requested, of its determination and shall notify the open-enrollment charter school by e-mail.
- (g) Other charter school obligations.
 - (1) An open-enrollment charter school shall discharge or refuse to hire an employee or applicant for a position to which the TEC, §12.1059, applies if the charter school obtains information through a criminal history record information review or by notification from the TEA pursuant to the TEC, §22.0832, that:
 - (A) an employee or applicant has been determined to be ineligible for employment as a charter school educator pursuant to the TEC, §22.0832 and §22.085; or
 - (B) an employee or applicant has been determined to be ineligible for employment as a charter school educator pursuant to the TEC, §12.1162(b), because the employee or applicant is a certified educator whose certificate is currently revoked or suspended for reasons that indicate a danger to the health, safety, or welfare of students, as defined by the TEC, §12.1162(b).
 - (2) Pursuant to the TEC, §22.085(e), sanctions may be imposed on the certificate of a certified educator who fails to discharge an employee or fails to refuse to hire an applicant, if the educator knows or should have known that the employee or applicant has been convicted of an offense described in the TEC, §22.085(a).
 - (3) Each school year the chief operating officer of an open-enrollment charter school shall certify to the TEA that the school entity has complied with the TEC, §22.085.
 - (4) The charter school shall cooperate with the TEA and the DPS and its co5 1aBDC q0.00000912 0 612 792 f0000912i

