

581-021-0510

Definitions

As used in OAR 581-021-0510 through 581-021-0512, the following definitions apply:

(1)(a) "Conviction" means:

(A) Any adjudication in any criminal court of law, in this state or in any other jurisdiction, finding the individual committed a crime. A crime is an offense for which a sentence of imprisonment is authorized.

(B) Any adjudication in a juvenile proceeding, in this state or in any other jurisdiction, determining that the individual committed an offense, which if done by an adult, would constitute a crime listed in ORS 342.143.

(C) Any conduct which resulted in mandatory registration reporting as a sex offender in this state or any other jurisdiction. A later court order or other action relieving the individual of the sex offender registration/reporting requirement does not affect the status of the conduct as a conviction for purposes of this rule.

(D) Any plea of guilty, no contest or nolo contendere in connection with a crime, in this state or in any other jurisdiction.

(b) Notwithstanding subsection (a) of this section, the following additional guidelines apply when determining whether a conviction exists:

(A) A conviction does not exist where a dismissal was later entered into the record in connection with a diversion or on any sort of deferred adjudication or delayed entry of judgment.

(B) A conviction does not exist where an Oregon court has expunged or otherwise removed a conviction from the record of an individual. A conviction does exist for purposes of this rule even if a crime was expunged or removed from the record of the individual under the laws of another jurisdiction if the crime would be ineligible under ORS 137.225 for expunction or removal from the record if the conviction had occurred in Oregon.

(C) A conviction does not exist where an individual was granted a full pardon by executive order of the Governor of this state. A conviction does exist for purposes of this rule even if a crime was pardoned by executive order in another jurisdiction, unless the Superintendent of Public Instruction determines that the pardon issued by the other jurisdiction is the equivalent of a full pardon by executive order in this state.

(D) Except as noted above, a conviction does not exist only where there was a judicial adjudication that the individual did not commit the offense in question, or when a conviction, adjudication or plea is overturned by an appellate court of record and no later conviction, adjudication or plea indicating the individual committed the offense in question is on the record.

(2) "DAS" means State of Oregon, Department of Administrative Services;

(3) "Direct, unsupervised contact with students" means contact with students that provides the person opportunity and probability for personal communication or touch when not under direct supervision;

(4) "DOB" means date of birth;

(5) "FBI" means the Federal Bureau of Investigations;

(6) "Knowingly made a false statement" means the failure to disclose on the Oregon Department of Education fingerprint based criminal history verification form as part of the criminal background check process any of the following:

(a) A conviction of a felony;

(b) Any conviction of a misdemeanor within the previous 20 years;

(c) Any conviction of a misdemeanor that is listed in ORS 342.143 or its substantial equivalent in another jurisdiction.

(7) "LEDS" means the Law Enforcement Data System;

(8) "SSF" means State School Fund.

Statutory/Other Authority: ORS 326.051

Statutes/Other Implemented: ORS 326.603 & 326.607

581-021-0511

Fingerprinting of Subject Individuals in Positions Not Requiring Licensure as Teachers, Administrators, Personnel Specialists, School Nurses

(1) Definitions – As used in this rule, the following definitions apply:

(a) "Applicant" means a subject individual for whom fingerprints and other required information have been submitted to the Oregon Department of Education for a criminal history check and review;

(b) "Fee" means the total charges deducted from a school district's SSF payment or invoiced to a school district that does not receive SSF payments. The fee shall be \$59 per applicant;

(c) "Information to be required" means all information requested by the Oregon Department of Education for processing the fingerprint application, including the following:

(A) One properly completed fingerprint submission; and

(B) A properly completed Oregon Department of Education fingerprint based criminal history verification form.

(d) "Newly hired" means a person employed for three months or less after application or request for a position.

(e) "School district" means:

(A) A taxing district providing public elementary or secondary education, or any combination thereof, within the state;

(B) An education service district;

(C) The Oregon School for the Deaf;

(D) An educational program under the Youth Corrections Education Program; and

(E) A public charter school.

(f) "Subject individual" means:

(A) Any person newly hired by a school district and not requiring licensure under ORS 342.223;

(B) Any person employed as or by a contractor into a position having direct, unsupervised contact with students and not requiring licensure under ORS 342.223;

(C) Subject individual excludes a newly hired employee so long as the school district has on file evidence that the newly hired employee previously successfully completed Oregon and FBI criminal records check for a previous employer that was a school district and the employer has additional evidence that the employee has not resided outside the state between the two periods of employment;

(D) A person who is a community college faculty member providing instruction:

(i) At the site of an early childhood education program or at a school site as part of an early childhood program; or

(ii) At a kindergarten through grade 12 school site during the regular school day; and

(E) A person who is an employee of a public charter school and not requiring licensure under ORS 342.223.

(2) School districts shall adopt and implement local board policy related to fingerprint collection and processing which shall:

(a) Specify that subject individuals as defined by this rule are subject to fingerprinting and criminal record checks required by law;

(b) Specify which contractors will be considered to have unsupervised access to children and are subject to fingerprinting and criminal records checks required by law;

(c) Specify the format used to notify subject individuals that fingerprinting and criminal record checks are required by law and that any action resulting from those checks may be appealed as a contested case;

(d) Provide a clear statement that the district will terminate the employee, if it receives notification by the Superintendent of Public Instruction that the person has a conviction for any of the crimes prohibiting employment that are identified under section (9) of this rule;

(e) Provide a clear statement that the district may terminate the employee, if it receives notification by the Superintendent of Public Instruction that the person has knowingly made a false statement as to the conviction of any crime;

(f) Specify that subject individuals may begin to carry out terms of a contract or employment on a probationary basis pending the return of criminal record checks by the FBI;

(g) Identify that employment shall be offered prior to collecting fingerprints for submission to the Oregon Department of Education and that fees may be collected from the applicant. The applicant may request

that the amount of the fee be withheld from the amount otherwise due the individual, and the school district shall withhold the amount only upon the request of the subject individual; and

(h) Identify a procedure that ensures the integrity of fingerprint collection and will prevent any possible compromise of the process.

(3) Fingerprints may be collected by one of the following:

(a) Employing school district staff;

(b) Contracted agent of employing school district;

(c) Local or state law enforcement agency.

(4) School districts shall send to the Oregon Department of Education for purposes of a criminal records check any information, including fingerprints for each subject individual defined in this rule immediately following offer and acceptance of employment or contract.

(5) The Oregon Department of Education shall request criminal information from the Oregon State Police in the manner prescribed by law and may charge the school district a fee not to exceed the actual cost of acquiring and furnishing the information.

(6) The Oregon Department of Education shall review the criminal records of a subject individual upon the district's submission of the required FBI and state forms and the State Superintendent of Public Instruction or designee shall issue a statement of criminal history status and related impact on employment or contract qualification. The Superintendent of Public Instruction or designee shall also notify the school district if the subject individual has knowingly made a false statement as to conviction of a crime.

(7) The Oregon Department of Education shall not provide copies of criminal records to anyone except as provided by law. The subject individual may inspect his or her personal criminal records under the supervision of properly certified LEDS personnel at the Oregon Department of Education.

(8) Subject individuals who refuse to consent to the criminal records check or refuse to be fingerprinted shall be terminated from employment or contract status by the district.

(9) Subject individuals who have a conviction for any of the crimes listed in ORS 342.143(3)(a)(A) or (B), or the substantial equivalent of any of those crimes if the conviction occurred in another jurisdiction or in Oregon under a different statutory name or number, shall be refused continued employment or have employment terminated upon notification from the Superintendent of Public Instruction.

(10) A school district may terminate the employment of any subject individual who knowingly makes a false statement as to the conviction of a crime upon notification of the false statement by the Superintendent of Public Instruction.

(11) Evaluations of crimes shall be based on Oregon laws in effect at the time of conviction, regardless of the jurisdiction in which the conviction occurred.

(12) Prior to making a determination that results in a notice and opportunity for hearing, the Superintendent of Public Instruction may cause an investigation to be undertaken. Subject individuals and districts shall cooperate with the investigation and may be required to furnish oral or written statements by affidavit or under oath. If the Superintendent of Public Instruction determines through investigation that a

violation of this rule has not occurred, a written decision explaining the basis for the decision will be provided to the subject individual.

(13) Applicants may appeal a determination that prevents their employment or eligibility to contract with a school district as a contested case under ORS 183.413 to 183.470 to the Oregon Superintendent of Public Instruction.

(14) Requests shall be submitted electronically through the statewide vendor identified by DAS. Exemptions from this requirement may be granted by the Oregon Department of Education on an individual basis. Reasons for exemption include, but are not limited to, geographic location and ability for vendor to meet needs. School districts exempted from the electronic process indicated here shall submit fingerprints on forms provided by the Oregon Department of Education.

(15) The Oregon Department of Education shall maintain a record of all properly submitted fingerprint information. The record shall include at least the following:

(a) Fingerprint sequence number;

(b) District submitting the fingerprints;

(c) Date the Department form is received;

(d) Date fingerprint information is sent to Oregon State Police; and

(e) Date denial or final approval sent to district.

Statutory/Other Authority: ORS 326.051

Statutes/Other Implemented: ORS 326.603

581-021-0512

Non-employment criminal background checks for school districts

(1) Definitions – As used in this rule, the following definitions apply:

(a) “School District” means:

(A) A school district as defined in ORS 330.005;

(B) The Oregon School for the Deaf;

(C) An educational program under the Youth Corrections Education Program;

(D) A public charter school as defined in ORS 338.005; and

(E) An education service district.

(b) “Subject individual” means:

(A) A volunteer with a school district; or

(B) An applicant for employment for a school district.

(2) School districts that have volunteers that have direct unsupervised contact with students shall have a policy requiring those volunteers to undergo a background check.

(3) State criminal history check based on name and DOB:

(a) A school district may submit a request to the Oregon Department of Education for an in-state background check based on name and DOB on any subject individual. Requests shall:

(A) Use forms provided by the Oregon Department of Education;

(B) Include an authorization from the volunteer for the Oregon Department of Education to perform a background check; and

(C) Include payment of the processing fee of \$5 per person to be checked.

(b) A name and DOB criminal history check conducted in accordance with this section will be an in-state check in LEDS per the Oregon Department of Education's non-criminal justice agency agreement with the Oregon State Police.

(4) State and Nationwide criminal history check based on fingerprints:

(a) A school district may submit a request to the Oregon Department of Education for a fingerprint-based criminal history check for subject individuals identified in local board policy as requiring a fingerprint-based criminal history check.

(b) Requests shall be submitted electronically through the statewide vendor identified by DAS. Exemptions from this requirement may be granted by the Oregon Department of Education on an individual basis. Reasons for exemption include, but are not limited to, geographic location and ability for vendor to meet needs.

(c) School districts exempted from the electronic process indicated in subsection (a) of this section shall submit fingerprints on forms provided by the Oregon Department of Education;

(d) A fee of \$59 will be:

(A) Deducted from the SSF payment for school districts that receive SSF payments; or

(B) Invoiced to the school district for school districts that do not receive SSF payments.

(e) A fingerprint-based criminal history check conducted in accordance with this section will be a state and national check through the Oregon State Police and the FBI.

(5) The Oregon Department of Education shall review the criminal history when a request is made under section (3) or (4) of this rule, make a fitness determination, and notify the school district of that determination.

(a) A subject individual does not meet the fitness standards of this rule if the individual has:

(A) A conviction for a crime listed in ORS 342.143; or

(B) Knowingly made a false statement.

(b) The Oregon Department of Education shall not provide copies of criminal records to anyone except as provided by law.

(6) Subject individuals may appeal a fitness determination resulting from a fingerprint-based criminal history under section (4) of this rule as a contested case under ORS 183.413 to 183.470 to the Oregon Superintendent of Public Instruction.

(7) Notwithstanding the fitness determination made by the Oregon Department of Education pursuant to this rule, a school district may allow a volunteer that has undergone a background check to have direct, unsupervised contact with school children.

Statutory/Other Authority: ORS 326.051

Statutes/Other Implemented: ORS 326.607

581-021-0500 (Repealed)

~~Fingerprinting of Subject Individuals in Positions Not Requiring Licensure as Teachers, Administrators, Personnel Specialists, School Nurses~~

~~(1) Definitions of terms shall be as follows:~~

~~(a) "Applicant" means a subject individual for whom fingerprint cards and other required information have been submitted to the Oregon Department of Education for a criminal history check and review;~~

~~(b) "Direct, unsupervised contact with students" means contact with students that provides the person opportunity and probability for personal communication or touch when not under direct supervision;~~

~~(c) "Fee" means the total charges assessed the local school district's State School Fund by the Department of Education for processing each fingerprint card submitted. The fee amount and distribution shall be as follows:~~

~~(A) Oregon State Police (OSP) — \$28;~~

~~(B) Federal Bureau of Investigation (FBI) — \$16.50;~~

~~(C) Oregon Department of Education — \$14.50;~~

~~(D) TOTAL — \$59.~~

~~(d) "Information to be required" means all information requested by the Oregon Department of Education for processing the fingerprint application, including the following:~~

~~(A) One properly completed FBI fingerprint cards #USGPO 1990-262-201-2000; and~~

~~(B) A properly completed Department of Education form #581-2283-M.~~

~~(e) For purposes of criminal background checks pursuant to ORS 326.603 and 326.607, conducted in relation to individuals subject to such criminal background verification, the following definitions of "conviction" of a crime applies:~~

~~(A) Any adjudication in any criminal court of law, in this state or in any other jurisdiction, finding the individual committed a crime. A crime is an offense for which a sentence of imprisonment is authorized.~~

~~(B) Any adjudication in a juvenile proceeding, in this state or in any other jurisdiction, determining that the individual committed an offense, which if done by an adult, would constitute a crime listed in ORS 342.143.~~

~~(C) Any conduct which resulted in mandatory registration reporting as a sex offender in this state or any other jurisdiction. A later court order or other action relieving the individual of the sex offender registration/reporting requirement does not affect the status of the conduct as a conviction for purposes of this rule.~~

~~(D) Any plea of guilty, no contest or nolo contendere in connection with a crime, in this state or in any other jurisdiction.~~

~~(E) A conviction exists for purposes of this rule, regardless of whether a dismissal was later entered into the record in connection with a diversion or on any sort of deferred adjudication or delayed entry of judgment.~~

~~(F) A conviction exists for purposes of this rule even if a crime was expunged or removed from the record of the individual under the laws of another jurisdiction if the crime would be ineligible under ORS 137.225 for expunction or removal from the record if the conviction had occurred in Oregon. A conviction does not exist where an Oregon court has expunged or otherwise removed a conviction from the record of an individual.~~

~~(G) A conviction does not exist, except as noted above, only where there was a judicial adjudication that the individual did not commit the offense in question, or when a conviction, adjudication or plea is overturned by an appellate court of record and no later conviction, adjudication or plea indicating the individual committed the offense in question is on the record.~~

~~(f) "Knowingly made a false statement" means that a subject individual has failed to disclose on the Department of Education form #581-2283-M as part of the criminal background check process any of the following:~~

~~(A) A felony;~~

~~(B) Any misdemeanor conviction less than twenty years from date of conviction;~~

~~(C) Any misdemeanor that is listed in ORS 342.143 or its substantial equivalent in another jurisdiction.~~

~~(g) "Newly hired" means a person employed for three months or less after application or request for a position.~~

~~(h) "School district" means:~~

~~(A) A taxing district providing public elementary or secondary education, or any combination thereof, within the state;~~

~~(B) An education service district;~~

~~(C) The Oregon School for the Deaf;~~

~~(D) An educational program under the Youth Corrections Education Program; and~~

~~(E) A public charter school.~~

~~(i) "Subject individual" means:~~

~~(A) Any person newly hired by a school district and not requiring licensure under ORS 342.223;~~

~~(B) Any person employed as or by a contractor into a position having direct, unsupervised contact with students and not requiring licensure under ORS 342.223;~~

~~(C) Subject individual excludes a newly hired employee so long as the school district has on file evidence that the newly hired employee previously successfully completed Oregon and FBI criminal records check for a previous employer that was a school district and the employer has additional evidence that the employee has not resided outside the state between the two periods of employment;~~

~~(D) A person who is a community college faculty member providing instruction:~~

~~(i) At the site of an early childhood education program or at a school site as part of an early childhood program; or~~

~~(ii) At a kindergarten through grade 12 school site during the regular school day; and~~

~~(E) A person who is an employee of a public charter school and not requiring licensure under ORS 342.223.~~

~~(2) School districts shall adopt and implement local board policy related to fingerprint collection and processing which shall:~~

~~(a) Specify that subject individuals as defined by this rule are subject to fingerprinting and criminal record checks required by law;~~

~~(b) Specify which contractors will be considered to have unsupervised access to children and are subject to fingerprinting and criminal records checks required by law;~~

~~(c) Specify the format used to notify subject individuals that fingerprinting and criminal record checks are required by law and that any action resulting from those checks may be appealed as a contested case;~~

~~(d) Provide a clear statement that the district will terminate the employee, if it receives notification by the Superintendent of Public Instruction that the person has been convicted, of the crimes prohibiting employment that are listed in section (9) of this rule;~~

~~(e) Provide a clear statement that the district may terminate the employee, if it receives notification by the Superintendent of Public Instruction that the person has knowingly made a false statement as to the conviction of any crime;~~

~~(f) Specify that subject individuals may begin to carry out terms of a contract or employment on a probationary basis pending the return of criminal record checks by the FBI;~~

~~(g) Identify that employment shall be offered prior to collecting fingerprint cards for submission to the Department of Education and that fees may be collected from the applicant. The applicant may request that the amount of the fee be withheld from the amount otherwise due the individual, and the school district shall withhold the amount only upon the request of the subject individual; and~~

~~(h) Identify a procedure that ensures the integrity of fingerprint collection and will prevent any possible compromise of the process.~~

~~(3) Fingerprints may be collected by one of the following:~~

~~(a) Employing school district staff;~~

~~(b) Contracted agent of employing school district;~~

~~(c) Local or state law enforcement agency.~~

~~(4) School districts shall send to the Department of Education for purposes of a criminal records check any information, including fingerprints for each subject individual defined in this rule immediately following offer and acceptance of employment or contract.~~

~~(5) The Department of Education shall request criminal information from the Department of State Police in the manner prescribed by law and may charge the school district a fee not to exceed the actual cost of acquiring and furnishing the information.~~

~~(6) The Oregon Department of Education shall review the criminal records of subject individual upon the district's submission of the required FBI and state forms and the State Superintendent of Public Instruction or designee shall issue a statement of criminal history status and related impact on employment or contract qualification. The Superintendent of Public Instruction or designee shall also notify the school district if the subject individual has knowingly made a false statement as to conviction of a crime.~~

~~(7) The Oregon Department of Education shall not provide copies of criminal records to anyone except as provided by law. The subject individual may inspect his or her personal criminal records under the supervision of properly certified LEDS (Law Enforcement Data Systems) personnel at the Department of Education.~~

~~(8) Subject individuals who refuse to consent to the criminal records check or refuse to be fingerprinted shall be terminated from employment or contract status by the district.~~

~~(9) Subject individuals who have been convicted of any of the crimes listed in ORS 342.143, or the substantial equivalent of any of those crimes if the conviction occurred in another jurisdiction or in Oregon under a different statutory name or number, shall be refused continued employment or have employment terminated upon notification from the Superintendent of Public Instruction.~~

~~(10) Subject individuals who have been convicted of any of the crimes listed in ORS 161.405 or an attempt to commit any of the crimes listed in section (9) of this rule shall be refused continued employment or have employment terminated upon notification from the Superintendent of Public Instruction.~~

~~(11) A school district may terminate the employment of any subject individuals who knowingly makes a false statement as to the conviction of a crime upon notification of the false statement by the Superintendent of Public Instruction.~~

~~(12) Evaluations of crimes shall be based on Oregon laws in effect at the time of conviction, regardless of the jurisdiction in which the conviction occurred.~~

~~(13) Prior to making a determination that results in a notice and opportunity for hearing, the Superintendent of Public Instruction may cause an investigation to be undertaken. Subject individuals and districts shall cooperate with the investigation and may be required to furnish oral or written statements by affidavit or under oath. If the Superintendent of Public Instruction determines through investigation that a violation of this rule has not occurred, a written decision explaining the basis for the decision will be provided to the subject individual.~~

~~(14) Applicants may appeal a determination that prevents their employment or eligibility to contract with a school district as a contested case under ORS 183.413 to 183.470 to the Oregon Superintendent of Public Instruction.~~

~~(15) Only cards and forms approved by the Department of Education will be accepted. The Department of Education will return any incomplete or incorrectly completed fingerprint cards and associated forms without taking any other action.~~

~~(16) The Department of Education shall maintain a record of all properly submitted fingerprint cards. The record shall include at least the following:~~

- ~~(a) Card sequence number;~~
- ~~(b) District submitting the cards;~~
- ~~(c) Date cards and Department form received;~~
- ~~(d) Date completed card sent to Oregon State Police;~~
- ~~(e) Date denial or probationary approval sent to district;~~
- ~~(f) Date FBI card returned to Department; and~~
- ~~(g) Date denial or final approval sent to district.~~

Statutory/Other Authority: ORS 326.603

Statutes/Other Implemented: ORS 326.603

History:

ODE 8-2015, f. & cert. ef. 4-15-15

ODE 8-2014, f. & cert. ef. 2-19-14

ODE 5-2013, f. & cert. ef. 1-17-13

ODE 25-2012(Temp), f. 9-13-12, cert. ef. 9-17-12 thru 3-15-13

ODE 2-2012, f. 2-1-12, cert. ef. 2-3-12

ODE 18-2009, f. & cert. ef. 12-10-09

ODE 12-2009, f. & cert. ef. 12-10-09

ODE 25-2008, f. & cert. ef. 9-26-08

581-021-0501 (Repealed)

Non-employment fingerprint-based criminal history for school districts

~~(1) Definitions—As used in this rule, the following definitions apply:~~

~~(a) "DAS" means State of Oregon, Department of Administrative Services;~~

~~(b) "DOB" means date of birth;~~

~~(c) "Direct, unsupervised contact with students" means contact with students that provides opportunity and probability for communication or touch when not under direct supervision;~~

~~(d) "FBI" means the Federal Bureau of Investigations;~~

~~(e) "Knowingly made a false statement" means that a subject individual:~~

~~(A) Does not disclose the conviction of a felony;~~

~~(B) Does not disclose the conviction of a misdemeanor within the previous 20 years; or~~

~~(C) Provides any other false information to ODE as part of the background check process. (f) "LEDS" means the Law Enforcement Data System;~~

~~(g) "ODE" means the Oregon Department of Education;~~

~~(h) "OSP" means the Oregon State Police;~~

~~(i) "School District" means:~~

~~(A) A school district as defined in ORS 330.005;~~

~~(B) The Oregon School for the Deaf;~~

~~(C) An educational program under the Youth Corrections Education Program;~~

~~(D) A public charter school as defined in ORS 338.005; and~~

~~(E) An education service district.~~

~~(j) "Subject individual" means:~~

~~(A) A volunteer with a school district; or~~

~~(B) An applicant for employment for a school district.~~

~~(k) "SSF" means State School Fund.~~

~~(2) School districts that have volunteers that have direct unsupervised contact with students shall have a policy requiring those volunteers to undergo a background check.~~

~~(3) State criminal history check based on name and DOB:~~

~~(a) A school district may submit a request to ODE for an in-state background check based on name and DOB on any subject individual. Requests shall:~~

~~(A) Use forms provided by ODE;~~

~~(B) Include an authorization from the volunteer for ODE to perform a background check; and~~

~~(C) Include payment of the processing fee of \$5 per person to be checked.~~

~~(b) A name and DOB criminal history check conducted in accordance with this section will be an in-state check in LEDS per ODE's non-criminal justice agency agreement with OSP.~~

~~(4) State and Nationwide criminal history check based on fingerprints:~~

~~(a) A school district may submit a request to ODE for a fingerprint-based criminal history check for subject individuals identified in local board policy as requiring a fingerprintbased criminal history check.~~

~~(b) Requests shall be submitted electronically through the statewide vendor identified by DAS. Exemptions from this requirement may be granted by ODE on an individual basis. Reasons for exemption include, but are not limited to, geographic location and ability for vendor to meet needs.~~

~~(c) School districts exempted from the electronic process indicated in subsection (a) of this section shall submit fingerprints on forms provided by ODE;~~

~~(d) A fee of \$59 will be:~~

~~(A) Deducted from the SSF payment for school districts that receive SSF payments; or~~

~~(B) Invoiced to the school district for school districts that do not receive SSF payments.~~

~~(e) A fingerprint-based criminal history check conducted in accordance with this section will be a state and national check through OSP and FBI.~~

~~(5) ODE shall review the criminal history when a request is made under section (3) or (4) of this rule, make a fitness determination, and notify the school district of that determination.~~

~~(a) A subject individual does not meet the fitness standards of this rule if the individual has:~~

~~(A) Been convicted of a crime listed in ORS 342.143; or~~

~~(B) Knowingly made a false statement.~~

~~(b) ODE shall not provide copies of criminal records to anyone except as provided by law.~~

~~(6) Subject individuals may appeal a fitness determination resulting from a fingerprint-based criminal history under section (4) of this rule as a contested case under ORS 183.413 to 183.470 to the Oregon Superintendent of Public Instruction.~~

~~(7) Notwithstanding the fitness determination made by ODE pursuant to this rule, a school district may allow a volunteer that has undergone a background check to have direct, unsupervised contact with school children.~~

Statutory/Other Authority: ORS 326.051

Statutes/Other Implemented: ORS 326.607

History:

ODE 7-2019, adopt filed 01/22/2019, effective 01/22/2019

581-021-0503 (Repealed)

~~Non-employment fingerprint-based criminal history for private schools~~

~~(1) Definitions—As used in this rule, the following definitions apply:~~

~~(a) “DAS” means State of Oregon, Department of Administrative Services;~~

~~(b) “DOB” means date of birth;~~

~~(c) “Direct, unsupervised contact with students” means contact with students that provides opportunity and probability for communication or touch when not under direct supervision;~~

~~(d) “FBI” means the Federal Bureau of Investigations;~~

~~(e) “Knowingly made a false statement” means that a subject individual:~~

~~(A) Does not disclose the conviction of a felony;~~

~~(B) Does not disclose the conviction of a misdemeanor within the previous 20 years; or~~

~~(C) Provides any other false information to ODE as part of the background check process.~~

~~(f) “LEDS” means the Law Enforcement Data System;~~

~~(g) “ODE” means the Oregon Department of Education;~~

~~(h) “OSP” means the Oregon State Police~~

~~(i) “Private school” means a school that:~~

~~(A) Offers education in prekindergarten, kindergarten or grades 1 through 12, or any combination of those grade levels; and~~

~~(B) Provides instructional programs that are not limited solely to dancing, dram, music, religious or athletic instruction.~~

~~(j) “Subject individual” means:~~

~~(A) A volunteer with a private school; or~~

~~(B) An applicant for employment for a private school.~~

~~(2) Private schools that have volunteers that have direct unsupervised contact with students may have a policy requiring those volunteers to undergo a background check.~~

~~(3) State criminal history check based on name and DOB:~~

~~(a) A private school may submit a request to ODE for an in-state background check based on name and DOB on any subject individual. Requests shall:~~

~~(A) Use forms provided by ODE;~~

~~(B) Include an authorization from the volunteer for ODE to perform a background check; and~~

~~(C) Include payment of the processing fee of \$5 per person to be checked.~~

~~(b) A name and DOB criminal history check conducted in accordance with this section will be an in-state check in LEDS per ODE's non-criminal justice agency agreement with OSP.~~

~~(4) State and Nationwide criminal history check based on fingerprints:~~

~~(a) A private school may submit a request to ODE for a fingerprint-based criminal history check for subject individuals identified in local policy as requiring a fingerprint-based criminal history check.~~

~~(b) Requests shall be submitted electronically through the statewide vendor identified by DAS. Exemptions from this requirement may be granted by ODE on an individual basis. Reasons for exemption include, but are not limited to, geographic location and ability for vendor to meet needs.~~

~~(c) Private schools exempted from the electronic process indicated in subsection (a) of this section shall submit fingerprints on forms provided by ODE;~~

~~(d) A fee of \$59 will be invoiced to the private school;~~

~~(e) A fingerprint-based criminal history check conducted in accordance with this section will be a state and national check through OSP and FBI.~~

~~(5) ODE shall review the criminal history when a request is made under section (3) or (4) of this rule, make a fitness determination and notify the private school of that determination.~~

~~(a) A subject individual does not meet the fitness standards of this rule if the individual has:~~

~~(A) Been convicted of a crime listed in ORS 342.143; or~~

~~(B) Knowingly made a false statement.~~

~~(b) ODE shall not provide copies of criminal records to anyone except as provide by law.~~

~~(6) Subject individuals may appeal a fitness determination resulting from a fingerprint-based criminal history under section~~

~~(4) of this rule as a contested case under ORS 183.413 to 183.470 to the Oregon Superintendent of Public Instruction.~~

~~(7) Notwithstanding the fitness determination made by ODE pursuant to this rule, a private school may allow a volunteer that has undergone a background check to have direct, unsupervised contact with school children.~~

Statutory/Other Authority: ORS 326.607

Statutes/Other Implemented: ORS 326.607

History:

ODE 7-2019, adopt filed 01/22/2019, effective 01/22/2019

581-045-0584

Definitions

As used in OAR 581-045-0584 through 581-045-0587, the following definitions apply:

(1)(a) "Conviction" means:

(A) Any adjudication in any criminal court of law, in this state or in any other jurisdiction, finding the individual committed a crime. A crime is an offense for which a sentence of imprisonment is authorized.

(B) Any adjudication in a juvenile proceeding, in this state or in any other jurisdiction, determining that the individual committed an offense, which if done by an adult, would constitute a crime listed in ORS 342.143.

(C) Any conduct which resulted in mandatory registration reporting as a sex offender in this state or any other jurisdiction. A later court order or other action relieving the individual of the sex offender registration/reporting requirement does not affect the status of the conduct as a conviction for purposes of this rule.

(D) Any plea of guilty, no contest or nolo contendere in connection with a crime, in this state or in any other jurisdiction.

(b) Notwithstanding subsection (a), the following additional guidelines apply when determining whether a conviction exists:

(A) A conviction does not exist where a dismissal was later entered into the record in connection with a diversion or on any sort of deferred adjudication or delayed entry of judgment.

(B) A conviction does not exist where an Oregon court has expunged or otherwise removed a conviction from the record of an individual. A conviction does exist for purposes of this rule even if a crime was expunged or removed from the record of the individual under the laws of another jurisdiction if the crime would be ineligible under ORS 137.225 for expunction or removal from the record if the conviction had occurred in Oregon.

(C) A conviction does not exist where an individual was granted a full pardon by executive order of the Governor of this state. A conviction does exist for purposes of this rule even if a crime was pardoned by executive order in another jurisdiction, unless the Superintendent of Public Instruction determines that the pardon issued by the other jurisdiction is the equivalent of a full pardon by executive order in this state.

(D) Except as noted above, a conviction does not exist only where there was a judicial adjudication that the individual did not commit the offense in question, or when a conviction, adjudication or plea is overturned by an appellate court of record and no later conviction, adjudication or plea indicating the individual committed the offense in question is on the record.

(2) "DAS" means State of Oregon, Department of Administrative Services;

(3) "Direct, unsupervised contact with students" means contact with students that provides the person opportunity and probability for personal communication or touch when not under direct supervision;

(4) "DOB" means date of birth;

(5) "FBI" means the Federal Bureau of Investigations;

(6) "Knowingly made a false statement" means failure to disclose on the Oregon Department of Education fingerprint based criminal history verification form as part of the criminal background check process any of the following:

(a) A conviction of a felony;

(b) Any conviction of a misdemeanor within the previous 20 years;

(c) Any conviction of a misdemeanor that is listed in ORS 342.143 or its substantial equivalent in another jurisdiction.

(7) "LEDS" means the Law Enforcement Data System;

(8) "Private School" means a school that:

(a) Offers education in prekindergarten, kindergarten or grades 1 through 12, or any combination of those grade levels; and

(b) Provides instructional programs that are not limited solely to dancing, drama, music, religious or athletic instruction.

Statutory/Other Authority: ORS 326.051

Statutes/Other Implemented: ORS 326.603 & 326.607

581-045-0586

Fingerprinting of Subject Individuals Employed by Private Schools in Positions Not Requiring Licensure as Teachers, Administrators, Personnel Specialists, School Nurses

(1) Definitions of terms shall be as follows— As used in this rule, the following definitions apply:

(a) "Applicant" means a subject individual for whom fingerprint cards and other required information have been submitted to the Oregon Department of Education for a criminal history check and review;

~~(b) "Convictions of crimes prohibiting employment, contract or assignment by a contractor" means, notwithstanding any other statutes or Oregon administrative rule, conviction of a crime listed in ORS 342.143, or making a false statement as to the conviction of a crime;~~

~~(c) "Direct, unsupervised contact with students" means contact with students that provides the person opportunity and probability for personal communication or touch when not under direct supervision;~~

~~(d) "Fee" means the total charges assessed. Fees shall be paid to the Oregon Department of Education, with submission of fingerprint cards and associated form. The fee amount and distribution shall be as follows: A fee of \$59 per applicant will be invoiced to the private school;~~

~~(A) Oregon State Police (OSP) — \$28;~~

~~(B) Federal Bureau of Investigation (FBI) — \$16.50;~~

~~(C) Oregon Department of Education — \$14.50;~~

~~(D) TOTAL — \$59.~~

~~(ec)~~ "Information to be required" means all information requested by the Oregon Department of Education for processing the fingerprint application, including the following:

~~(A) One properly completed FBI fingerprint cards #USGPO 1990-262-201-2000fingerprint submission;~~
and

~~(B) A properly completed Oregon Department of Education form #581-2283-Mfingerprint based criminal history verification form.~~

~~(f) "Knowingly made a false statement" means that a subject individual has failed to disclose on the Department of Education form #581-2283-M as part of the criminal background check process any of the following:~~

~~(A) A felony;~~

~~(B) Any misdemeanor conviction less than twenty years from date of conviction;~~

~~(C) Any misdemeanor that is listed in ORS 342.143 or its substantial equivalent in another jurisdiction.~~

~~(gd)~~ "Newly hired" means a person employed for three months or less after application or request for a position without regard to that person's current or previous employer.

~~(h) "Private School" means a school that:~~

~~(A) Offers education in prekindergarten, kindergarten or grades 1 through 12, or any combination of those grade levels; and~~

~~(B) Provides instructional programs that are not limited solely to dancing, drama, music, religious or athletic instruction.~~

~~(ie)~~ "Subject individual" means:

~~(A) A person newly hired by a Pprivate Sschool in a position not requiring licensure under ORS 342.223;~~
and

~~(B) Any person hired as or by a contractor into a position having direct, unsupervised contact with students and not requiring licensure under ORS 342.223.~~

(2) A private school may request that the Oregon Department of Education conduct a criminal records check of a subject individual. Upon receipt of the information, the Department shall request criminal information from the Department of Oregon State Police in the manner prescribed by law and may charge the private school a fee not to exceed the actual cost of acquiring and furnishing the information.

(3) The Oregon Department of Education shall review the criminal records of a subject individual upon the private school's submission of the required FBI and state forms and the State Superintendent of Public Instruction or designee shall issue a statement of criminal history status. The Superintendent of Public Instruction or designee shall notify the private school if the subject individual has knowingly made a false

statement as to conviction of a crime. A private school may choose to employ or contract with a person who has knowingly made a false statement as to conviction of a crime.

(4) The Oregon Department of Education shall not provide copies of criminal records to anyone except as provided by law. The subject individual may inspect his or her personal criminal records under the supervision of properly certified LEADS (~~Law Enforcement Data Systems~~) personnel at the Oregon Department of Education.

(5) The Superintendent of Public Instruction or designee shall notify the private school if the subject individual has ~~been convicted of a conviction for~~ a crime listed in ORS 342.143, or the substantial equivalent of any of those crimes if the conviction occurred in another jurisdiction or in Oregon under a different statutory name or number. A private school may choose to employ or contract with a person who has ~~been convicted of a conviction for~~ a crime listed in ORS 342.143 or the substantial equivalent.

(6) ~~Only cards and forms approved by the Department of Education will be accepted. The Department of Education will return any incomplete or incorrectly completed fingerprint cards and associated forms without taking any other action. The Department of Education will return fingerprint cards and associated forms without appropriate fees without taking any other action. Requests shall be submitted electronically through the statewide vendor identified by DAS. Exemptions from this requirement may be granted by the Oregon Department of Education on an individual basis. Reasons for exemption include, but are not limited to, geographic location and ability for vendor to meet needs. Private schools exempted from the electronic process indicated here shall submit fingerprints on forms provided by the Oregon Department of Education.~~

(7) The Oregon Department of Education shall maintain a record of all properly submitted fingerprint ~~cards~~information. The record shall include at least the following:

- (a) ~~Card-Fingerprint~~ sequence number;
- (b) Name of ~~P~~private ~~S~~school submitting the ~~cards~~fingerprints;
- (c) Date ~~cards and the~~ Department form is received;
- ~~(d) Date incomplete card returned to the school (only if applicable);~~
- ~~(e)~~ Date ~~completed card-fingerprint information is~~ sent to Oregon State Police;
- ~~(f) Date private school was notified of state police record or lack of record;~~
- ~~(g) Date FBI card returned to Department;~~
- ~~(h)~~ Date private school was notified of ~~FBI record or lack of record~~criminal history results.

Statutory/Other Authority: ORS 326.051 & 326.603

Statutes/Other Implemented: ORS 326.603

History:

ODE 7-2015, f. & cert. ef. 4-15-15

ODE 11-2014, f. & cert. ef. 2-19-14

ODE 4-2013, f. & cert. ef. 1-17-13

ODE 28-2012(Temp), f. 9-13-12, cert. ef. 9-17-12 thru 3-15-13

ODE 7-2012, f. 2-1-12, cert. ef. 2-3-12

ODE 27-2009, f. & cert. ef. 12-10-09

Renumbered from 581-022-1732, ODE 25-2008, f. & cert. ef. 9-26-08

ODE 9-2006, f. & cert. ef. 2-21-06
Reverted to ODE 29-1999, f. 12-13-99, cert. ef. 12-14-99
ODE 13-2003(Temp), f. & cert. ef. 7-1-03 thru 12-15-03
ODE 29-1999, f. 12-13-99, cert. ef. 12-14-99
EB 16-1997, f. & cert. ef. 12-29-97

OAR 581-045-0587

Non-employment criminal background checks for private schools

(1) As used in this rule, "subject individual" means:

(a) A volunteer with a private school; or

(b) An applicant for employment for a private school.

(2) Private schools that have volunteers that have direct unsupervised contact with students may have a policy requiring those volunteers to undergo a background check.

(3) State criminal history check based on name and DOB:

(a) A private school may submit a request to the Oregon Department of Education for an in-state background check based on name and DOB on any subject individual. Requests shall:

(A) Use forms provided by the Oregon Department of Education;

(B) Include an authorization from the volunteer for the Oregon Department of Education to perform a background check; and

(C) Include payment of the processing fee of \$5 per person to be checked.

(b) A name and DOB criminal history check conducted in accordance with this section will be an in-state check in LEDS per the Oregon Department of Education's non-criminal justice agency agreement with the Oregon State Police.

(4) State and Nationwide criminal history check based on fingerprints:

(a) A private school may submit a request to the Oregon Department of Education for a fingerprint-based criminal history check for subject individuals identified in local policy as requiring a fingerprint-based criminal history check.

(b) Requests shall be submitted electronically through the statewide vendor identified by DAS. Exemptions from this requirement may be granted by the Oregon Department of Education on an individual basis. Reasons for exemption include, but are not limited to, geographic location and ability for vendor to meet needs.

(c) Private schools exempted from the electronic process indicated in subsection (a) of this section shall submit fingerprints on forms provided by the Oregon Department of Education;

(d) A fee of \$59 will be invoiced to the private school;

(e) A fingerprint-based criminal history check conducted in accordance with this section will be a state and national check through the Oregon State Police and the FBI.

(5) The Oregon Department of Education shall review the criminal history when a request is made under section (3) or (4) of this rule, make a fitness determination and notify the private school of that determination.

(a) A subject individual does not meet the fitness standards of this rule if the individual has:

(A) A conviction for a crime listed in ORS 342.143; or

(B) Knowingly made a false statement.

(b) The Oregon Department of Education shall not provide copies of criminal records to anyone except as provided by law.

(6) Subject individuals may appeal a fitness determination resulting from a fingerprint-based criminal history under section (4) of this rule as a contested case under ORS 183.413 to 183.470 to the Oregon Superintendent of Public Instruction.

(7) Notwithstanding the fitness determination made by the Oregon Department of Education pursuant to this rule, a private school may allow a volunteer that has undergone a background check to have direct, unsupervised contact with school children.

Statutory/Other Authority: ORS 326.051

Statutes/Other Implemented: ORS 326.607