PG-1.501: CRIIMINAL HISTORY CHECKS FOR CONTRACTED SERVICES

Sec. 1. DEFINITIONS

"Continuing duties related to contracted services" are work duties that are performed pursuant to a contract to provide services to Academy of Accelerated Learning, Inc. (AAL) on a regular, repeated basis rather than infrequently or one-time only.

A "covered contract employee" is an individual who:

1. Is employed or offered employment by a service contractor or a subcontractor of a service contractor, is an individual independent contractor of AAL, or is an individual subcontractor of a service contractor;
2. Has or will have continuing duties related to the contracted services;
3. Has or will have direct contact with students; and
4. Is not a student of (or enrolled in) AAL.

"Direct contact with students" is the contact that results from activities that provide substantial opportunity for verbal or physical interaction with students that is not supervised by a certified educator or other professional AAL employee. Contact with students that results from services that do not provide substantial opportunity for unsupervised interaction with a student or students, 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.

"Public works contractor" means an entity that contracts directly with or subcontracts with an entity that contracts with AAL to provide services to AAL.

A "contracting entity" is an entity that contracts directly with AAL to provide services to AAL. However, when conducting an investigation or intervention regarding an alleged crime or act of child abuse on a school campus, a law enforcement agency or the Department of Family and Protective Services is not a contracting entity, and the investigator or intervener is not a covered contract employee.

A "subcontracting entity" is an entity that contracts with another entity that is not AAL to provide services to AAL or shared services arrangement.

A "qualified school contractor" is an entity that:

1. Contracts or subcontracts to provide services to AAL; and

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2. Is determined eligible by the Department of Public Safety ("DPS") to obtain criminal history record information under the National Child Protection Act of 1993, 34 U.S.C. 40101 *et seq*., for an employee, applicant for employment, or volunteer of the qualified school contractor.

Tex. Educ. Code § 22.0834; *19 Tex. Admin. Code § Tex. Admin. Code § 153.1101(2)-(3), (7), (10)*.

Sec. 2. NATIONAL CRIMINAL HISTORY RECORD INFORMATION ("NCHRI") REVIEW

Sec. 2.1. Contractors with Continuing Duties and Direct Contact with Students

The requirements of this policy apply to a person who is not an applicant for or holder of a certificate under Subchapter B, Chapter 21, Texas Education Code and who is offered employment by an entity or a subcontractor of an entity that contracts with AAL to provide services if:

1. The employee or applicant or will have has continuing duties related to the contracted services; and
2. The employee or applicant has or will have direct contact with students.

If a contracting or subcontracting entity determines that these criteria do not apply to an employee, the entity shall make a reasonable effort to ensure that the conditions or precautions that resulted in that determination continue to exist throughout the time that the contracted services are provided.

Tex. Educ. Code § 22.0834(a), (l).

Sec. 2.2. Exception: Public Works Contractors

The requirements of this policy do not apply to an employee or applicant of a public works contractor if:

1. The public work does not involve the construction, alteration, or repair of an instructional facility as defined by Texas Education Code Section 46.001;
2. For public work that involves construction of a new instructional facility, the person's duties related to the contracted services will be completed not later than the seventh day before the first date the facility will be used for instructional purposes; or
3. For a public work that involves an existing instructional facility:
    a. The public work area contains sanitary facilities and is separated from all areas used by students by a secure barrier fence that is not less than six feet in height; and
    b. The contracting entity adopts a policy prohibiting employees, including subcontracting entity employees, from interacting with students or entering areas

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used by students, informs employees of the policy, and enforces the policy at the public work area.

Tex. Educ. Code § 22.0834(a-1).

Sec. 2.3. Qualified School Contractors

If the contracting entity is a qualified school contractor, a person must submit to a NCHRI review by the qualified school contractor before being employed or serving in a capacity described in this policy. *Tex. Educ. Code § 22.0834(b)*.

A qualified school contractor acting as a contracting entity shall require that any of its subcontracting entities obtain all criminal history record information ("CHRI") that relates to an employee if the subcontracting entity is also a qualified school contractor. *Tex. Educ. Code § 22.0832(d-1)*.

AAL or a qualified school contractor may obtain from any law enforcement or criminal justice agency all CHRI that relates to a person. *Tex. Educ. Code § 22.0834(h)*.

A qualified school contractor shall certify to AAL that the entity has received all CHRI relating to a person who is employed by or under a current offer of employment by the qualified school contractor. *Tex. Educ. Code § 22.0834(q)*.

A qualified school contractor shall require that any of its subcontracting entities that are not qualified school contractors comply with the requirements of "Other Contractors," below. *Tex. Educ. Code § 22.0834(d-2)*.

Sec. 2.4. Other Contractors

If the contracting entity or subcontracting entity is not a qualified school contractor, a person must submit to a NCHRI review by AAL. *Tex. Educ. Code § 22.0834(b-1)*.

The requirements for qualified school contractors and subcontracting entities described above do not apply to a qualified school contractor if AAL obtains the CHRI of a person through the criminal history clearinghouse. *Tex. Educ. Code § 22.0834(e)*.

Sec. 2.5. DPS Criminal History Clearinghouse

Before or immediately after employing or securing the services of a person, the qualified school contractor or AAL shall send or ensure that the person sends to DPS information that is required by DPS for obtaining NCHRI, which may include fingerprints and photographs. DPS shall obtain

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the person's NCHRI and report the results through the criminal history clearinghouse as provided by Texas Government Code Section 411.0845. *Tex. Educ. Code § 22.0834(c)*.

A qualified school contractor or AAL shall obtain all CHRI that relates to a person through the criminal history clearinghouse. *Tex. Educ. Code § 22.0834(d)*.

Sec. 2.6. Disqualifying Conviction

AAL, a qualified school contractor, a contracting entity, or a subcontracting entity may not permit a person to provide services at a school if the employee has been convicted of a felony or misdemeanor offense that would prevent a person from being employed under Texas Education Code Section 22A.057(a). *Tex. Educ. Code § 22.0834(o)*.

Additionally, AAL may not allow a person who is an employee of or applicant for employment by a qualified school contractor or an entity that contracts with AAL to serve at the school if AAL obtains information showing a disqualifying conviction through a CHRI review concerning the employee or applicant. AAL must ensure that an entity that it contracts with for services has obtained all required CHRI. *Tex. Educ. Code § 22A.157(c)*.

Sec. 2.7. Emergencies

In the event of an emergency due to a health or safety concern, a reasonably unforeseen situation, or other exigent circumstances, the AAL employee who is in charge of the facility shall be authorized to determine whether an employee of a contracting or subcontracting entity who does not have the required CHRI review or who has a disqualifying conviction will be permitted to enter a AAL facility. If allowed to enter the facility, the employee of the contracting or subcontracting entity shall be accompanied by a AAL employee at all times. *Tex. Educ. Code § 22.0834(f)*.

Sec. 3. CONTRACTORS PROVIDING TRANSPORTATION SERVICES

Sec. 3.1. Access to CHRI in General

Except as provided in Section 3.2 below, if AAL contracts with a person for transportation services, AAL shall obtain from any law enforcement or criminal justice agency all CHRI relating to a person employed by the person as a bus driver or a person the person intends to employ as a bus driver.

Except as otherwise provided in this Section, a person or management company that contracts with AAL to provide transportation services shall submit to AAL the name and other identification data required to obtain criminal history record information of each person described by this section.

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If AAL obtains information that such a person has been convicted of a felony or a misdemeanor involving moral turpitude, AAL shall inform the chief personnel officer of the person or management company with whom AAL has contracted, and the person or management company may not employ that person to drive a bus on which students are transported without the permission of the Board.

Tex. Educ. Code § 22.084(a)–(b); *19 Tex. Admin. Code § 100.1153(d)*.

Sec. 3.2. Commercial Transportation Company

If AAL contracts with a commercial transportation company for transportation services, the company may obtain from any law enforcement or criminal justice agency all CHRI that relates to a person employed by the company as a bus driver, bus monitor, or bus aide, or a person the company intends to employ in one of those positions. If the company obtains criminal history record information indicating that a person it employs or intends to employ has been convicted of a felony or a misdemeanor involving moral turpitude, the company may not, without the permission of the Board, employ that person to drive or serve as a bus monitor or bus aide on a bus on which students are transported. If the commercial transportation company obtains the CHRI, AAL is not required to do the same. *Tex. Educ. Code § 22.084(c)-(d)*; *19 Tex. Admin. Code § 100.1153(d)*.

Sec. 4. ADDITIONAL AUTHORITY TO ACCESS TO CHRI

AAL or an entity that contacts to provide services to AAL is entitled to obtain CHRI that AAL or entity is required or authorized to obtain under Subchapter C, Chapter 22, Texas Education Code that relates to a person who is:

1. An applicant for employment by AAL;
2. An employee of or an applicant for employment with a public or commercial transportation company that contracts with AAL to provide transportation services if the employee drives or the applicant will drive a bus in which students are transported or is employed or is seeking employment as a bus monitor or bus aide on a bus in which students are transported;
3. An employee of or applicant for employment by an entity that contracts to provide services to AAL as provided by Texas Education Code Section 22.0834;
4. Aan employee of or applicant for employment by a subcontractor of an entity that contracts to provide services to AAL as provided by Texas Education Code Section 22.0834; or
5. A tutor who provides services on behalf of a service provider that offers accelerated or supplemental instruction under Section 28.0211, Texas Education Code.

Tex. Gov't Code § 411.097(a).

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Sec. 5. PERMISSIVE CRIMINAL HISTORY CHECKS

AAL may obtain from any law enforcement or criminal justice agency, including DPS, all CHRI that relates to an employee of or an applicant for employment by a management company or other person that contracts with AAL to provide management services or other services, if:

1. The employee has or will have continuing duties related to the contracted services; and
2. The duties are or will be performed on school property or at another location where students are regularly present.

19 Tex. Admin. Code § 100.1153(e)(3).

Sec. 6. DISCLOSURE PROHIBITED

Information collected about a person to comply with this policy, including the person's name, address, phone number, social security number, driver's license number, other identification number, and fingerprint records:

1. May not be released except:
    a. To comply with Subchapter C, Chapter 22, Texas Education Code;
    b. In compliance with 19 Texas Administrative Code Section 100.1153(h);
    c. By court order; or
    d. With the consent of the person who is the subject of the information;
2. Is not subject to disclosure as provided by the Texas Public Information Act, Chapter 552, Texas Government Code; and
3. Shall be destroyed by the requestor or any subsequent holder of the information not later than the first anniversary of the date the information is received.

Tex. Educ. Code § 22.08391; 19 Tex. Admin. Code § 100.1153(h).

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