

orig 0101 07(1) April 17, 2024 1st Read May 15, 2024 2nd Read & Adoption Reg Approval minutes 7/17/24

OSBA Model Sample Policy

Code: GCDA/GDDA
Adopted:

Criminal Records Checks and Fingerprinting *

{Required policy. Requirement/Authority for policy comes from OAR 581-021-0510 - 021-0512 and ORS 326.603 - 326.607.}

In a continuing effort to ensure the safety and welfare of students and staff, the district shall require certain individuals to submit to a criminal records check and fingerprinting as required by law. This includes employees, contractors, volunteers and others.

Requirements for Employees ~~{not Licensed, Certified or Registered by the Teachers Standards Practices Commission (TSPC)}~~

All newly hired employees² not identified under Oregon Revised Statutes (ORS) 342.223³ are required to submit to a criminal records check and fingerprinting as required by law. A newly hired employee is not subject to fingerprinting if the district has evidence on file that the person successfully completed a state and national criminal records check for a previous employer that was a school district⁴ or private school, and has not resided outside the state between the two periods of employment⁵.

An individual shall be subject to the collection of fingerprint information, only after the offer of employment from the district. Fees associated with criminal records checks and fingerprinting for individuals applying for employment with the district and not requiring licensure shall be paid by the ~~[district.]~~ individual. An individual may request the fee be withheld from the amount otherwise due the individual. The district will withhold this amount only upon request of the subject individual.]

The district ~~[may⁶]~~ ~~[shall not]~~ begin the employment of an individual ~~[on a probationary basis pending]~~ ~~[before]~~ the return and disposition of the required criminal records checks.

When the criminal records check indicates an individual has been convicted of any crimes⁷ prohibiting employment, the individual will not be employed, or if employed will be terminated. When the criminal records check indicates an individual has knowingly made a false statement as to the conviction of any

¹ {If the district wants to include the larger section on TSPC-licensed employees (see p. 2), keep this bracketed language. If the district does not want to include the larger section on TSPC-licensed individuals, omit this bracketed language.}

² Any individual hired within the last three months. This does not include an employee hired within the last three months if the district has evidence on file that meets the definition in Oregon Administrative Rule (OAR) 581-021-0510(11)(b).

³ ORS 342.223 includes teachers, administrators, personnel specialist, school nurses, persons participating in supervised clinical practice experience, practicum or internship as a teacher, administrator or personnel specialist. See statute for details.

⁴ As is defined in OAR 581-021-0510(9); includes school districts, the Oregon School for the Deaf, and educational program under the Youth Corrections Education Program, public charter schools and ESDs.

⁵ {Additional exception applies through July 1, 2024. See ORS 326.603(4)(b).}

⁶ Decisions regarding which employees may begin before the return of the required criminal records checks must be made in a nondiscriminatory manner.

⁷ See OAR 581-021-0511(8).

? crime, the individual [may] [will not] be employed by the district, or if employed by the district [may] [will] be terminated. An individual who fails to disclose the presence of convictions that would not otherwise prohibit employment or contract with the district as provided by law (may) [will not] be employed by the district. Employment termination shall remove the individual from any district policies, collective bargaining provisions regarding dismissal procedures and appeals and the provisions of Accountability for Schools for the 21st Century Law.

[Requirements for individuals in positions requiring licensure, certification or registration with Teacher Standards and Practices Commission (TSPC) are outlined in ORS 342.223.]

~~OR~~

[Requirements for TSPC Licensed, Certified or Registered Individuals]

1. Any individual who is applying for a license as a teacher, administrator or personnel specialist is subject to a criminal records check and fingerprinting, unless the individual has submitted to such a check through the Teacher Standards and Practices Commission (TSPC) within the previous three years, or has remained continuously licensed by or registered with TSPC for a different license or registration for which the individual has already submitted to a criminal records check and fingerprinting.
2. Any individual who is applying for an initial certificate under ORS 342.475 as a school nurse shall submit to a criminal records check and fingerprinting with TSPC.
3. Any individual who is applying for a registration as a public charter school teacher or administrator with TSPC shall submit to a criminal records check and fingerprinting with TSPC.
4. Any individual applying for reinstatement of an Oregon license or registration as a teacher, administrator or personnel specialist, or a certificate as a school nurse with the TSPC, whose license, registration or certificate has lapsed for at least three years, shall submit to a criminal records check and fingerprinting with TSPC.
5. Any individual registering with the TSPC for student teaching, practicum or internship as a teacher, administrator or personnel specialist, if the individual does not hold a current license issued by TSPC and has not submitted to a criminal records check by TSPC within the previous three years for student teaching, practicum or internship as a teacher, administrator or personnel specialist, shall be required to submit to a criminal records check and fingerprinting with TSPC.]

Requirements for Contractors^{8}

All individuals employed as or by a contractor and considered by the district to have direct, unsupervised contact with students⁹ or unsupervised access to children are required to submit to a criminal records check and a fingerprint-based criminal records check.

⁸ {The district should include language regarding background checks in any contract that includes direct, unsupervised contact with students whenever applicable.}

⁹ "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. (OAR 581-021-0510)

The superintendent [or designee] will identify contractors who are subject to such requirements.

A contractor or an employee of a contractor required to submit to a criminal records check and fingerprinting in accordance with law and Board policy will be terminated from contract status, or withdrawal of offer of contract will be made by the district upon:

1. Refusal to consent to a criminal records check and fingerprinting; or
2. Notification¹⁰ from the Superintendent of Public Instruction that the individual has a conviction of any 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.

A subject individual [may] [will] be terminated from contract status upon notification from the Superintendent of Public Instruction that the individual has knowingly made a false statement as to the conviction of any crime.

Requirements for Volunteers

{¹¹} The district shall require a fingerprint-based criminal records check for volunteers allowed direct, unsupervised contact with students, in the following positions:

1. Head coach;
2. Assistant coach;
3. Overnight chaperone;
4. Volunteers transporting students, other than their own, in a private vehicle off district property for a district-sponsored activity;
5. List of other positions subject to this fingerprinting, if any.

The service of a volunteer into a position identified by the district as requiring a fingerprint-based criminal records check [may] [will not] begin [on a probationary basis pending] [before] the return and disposition of a state and national criminal records check based on fingerprints.]

{¹²} Volunteers allowed by the district into a position designated by the district to have direct, unsupervised contact with students shall submit to an in-state criminal records check.

¹⁰ Prior to making a determination that results in this notification and opportunity for a hearing, the Superintendent of Public Instruction may cause an investigation pursuant to OAR 581-021-0511; involved parties shall cooperate with the investigation pursuant to law.

¹¹ {If the district requires fingerprinting for certain volunteer positions, the district is required to list those volunteer positions in board policy. The bracketed language is only possible examples; modify to identify the positions in the district which require such fingerprinting.}

¹² {If the district allows volunteer service and the volunteers have direct, unsupervised contact with students, this policy language is required, and districts are required to conduct criminal records checks on these volunteers.}

[The service of a volunteer allowed to have direct, ^{yes} unsupervised contact with students ~~(may)~~ (will not), begin [on a probationary basis pending] ~~[before]~~ the return and disposition of a criminal records check.]

~~[A volunteer that is not likely to have direct, unsupervised contact with students, as determined by the district, [will] [will not] be required to submit to an in-state criminal records check.]~~

[A volunteer who knowingly made a false statement on a district volunteer application form or has a conviction of 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 (may) ~~[will]~~ result in immediate termination from the ability to volunteer in the district.] ^{yes}

~~[Fees associated with a required fingerprinting for volunteers shall be paid by the [individual] [district].] Fees associated with required non-fingerprinting criminal records checks for volunteers shall be paid by the [individual] [district].~~

[A volunteer who refuses to submit, when required, to a criminal records check or a fingerprint-based criminal records check in accordance with law and Board policy will be denied such ability to volunteer in the district.] ^{yes}

Requirements for Others

Any community college faculty member providing instruction at the site of an early childhood education program, at a school site as part of an early childhood program or at a grade K through 12 school site during the regular school day is required to submit to a criminal records check and a fingerprint-based criminal records check.

Any individual who is an employee of a public charter school and not identified under ORS 342.223 is required to submit to a criminal records check and a fingerprint-based criminal records check.

Notification

The district will provide written notice about the requirements of fingerprinting and criminal records checks through means such as staff handbooks, employment applications, contracts or [volunteer] ^{yes} forms.

The district will provide the following notification to individuals subject to criminal records checks and fingerprinting:

1. Such criminal records checks and fingerprinting are required by law or Board policy;
2. All employment or contract offers ^{yes} [or the ability to volunteer] are contingent upon the results of such checks;
3. A refusal to consent to a required criminal records check and fingerprinting shall result in immediate termination from employment ~~[.]~~ ~~[or]~~ contract status [or the ability to volunteer in the district];
4. A determination by the Oregon Department of Education (ODE) which affects an individual's eligibility to be employed, or contracted with, by the district may be appealed to the Superintendent of Public Instruction under ORS 183.413 – 183.470;

5. An individual determined to have knowingly made a false statement as to the conviction of any crime on district employment applications, contracts[, ~~or~~] ODE forms [(written or electronic)] [may] ~~will~~ result in immediate termination from employment or contract status;
6. An individual determined to have been convicted of any crime that would prohibit employment or contract will be immediately terminated from employment or contract status[;] [.]
7. [A volunteer candidate who knowingly made a false statement or has a conviction 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 [may] ~~will~~ result in immediate termination from the ability to volunteer in the district.] [The district [may] ~~will~~ remove the volunteer from the position allowing direct, unsupervised contact with students.]

Processing and Reporting Procedures

Immediately following an offer and acceptance of employment or contract, an individual subject to criminal records checks and fingerprinting shall complete the appropriate forms authorizing such checks and report to an authorized fingerprinter as directed by the district. The district shall send such authorization, any collection of fingerprint information, and the request to ODE pursuant to law.

Fingerprints may be collected by one of the following:

1. Employing district staff;
2. Contracted agent of employing district;
3. Local or state law enforcement agency; or
4. Statewide vendor identified by the Oregon Department of Administrative Services.

To ensure the integrity of the fingerprinting collection and prevent any compromise of the process, the district will provide the name of the individual to be fingerprinted to the authorized fingerprinter.

The authorized fingerprinter will obtain the necessary identification and fingerprinting and notify ODE of the results. ODE will then review and notify the district of said results as well as the identity of any individual it believes has knowingly made a false statement as to conviction of a crime or has a conviction of a crime prohibiting employment[, ~~or~~] contract[~~or~~ volunteering].

A copy of the fingerprinting results will be kept by the district. The district's use of criminal history must be relevant to the specific requirements of the position, services or employment.

END OF POLICY

Legal Reference(s):

ORS 181A.180
ORS 181A.230
ORS 326.603
ORS 326.607
ORS 332.107

ORS 336.631
ORS 342.143
ORS 342.223
OAR 414-061-0010 – 061-0030
OAR 581-021-0510 – 021-0512

OAR 581-022-2430
OAR 584-050-0012
OAR 584-050-0100

Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, et. seq. (2018).