

CVUSD

Administrative Regulation

AR 4212.5

Personnel

Criminal Record Check

Note: Education Code 45125 requires that all classified employees, including substitute and temporary employees, submit to a fingerprint check. Pursuant to Education Code 45122.1, the district is prohibited from hiring any individual if the check reveals that he/she has been convicted of a violent or serious felony, unless the individual has obtained a certificate of rehabilitation and pardon.

Note: The Department of Justice (DOJ) has instituted an electronic system for the submission of fingerprints (Live Scan) that replaces the process of manually recording an individual's fingerprint on cards. However, provisions of the Education Code have not yet been amended to reflect this technology and sections of the law still use the terminology "fingerprint identification cards." Where applicable, we have replaced the term "fingerprint identification card" with "fingerprint identification data" in order to include both the Live Scan and manual fingerprinting processes.

Applicants for Employment

Each person to be employed in a classified position, including temporary, substitute and part-time positions, shall be required to submit fingerprint identification data. However, secondary school students attending a district school who are to be employed in a temporary or part-time position shall not be required to submit fingerprint identification data. (Education Code 45125)

Note: AB 2623 (Ch. 623, Statutes of 2000) added Penal Code 11105.75, operative July 1, 2002, which authorizes the DOJ, when the arrest record does not include fingerprints, to notify a district if it is determined that an applicant has a criminal history record.

The Superintendent or designee shall ensure that each person to be employed submits fingerprints, either electronically through the Live Scan system or on fingerprint identification card, for processing by the Department of Justice. If the district is using the Live Scan system, the Superintendent or designee shall also provide the applicant with a Live Scan request form and a list of nearby Live Scan locations.

***Note: Pursuant to Education Code 45125.01, a district may enter into an agreement with other school districts within the county, or within contiguous counties, to share the criminal record information of applicants or temporary/substitute employees in those multiple school districts. Either a district or the County Superintendent of Schools may be designated to act on behalf of the participating districts. The designated agency will send the fingerprint data to DOJ for processing, receive and review the criminal history from the DOJ, and maintain common lists of persons eligible for employment. See AR 4112.62/4212.62/4312.62 - Maintenance of

Criminal Offender Records.***

Note: The fingerprint check conducted by the DOJ reveals only a person's convictions within the State of California. In order to obtain information about out-of-state convictions, a fingerprint check must be conducted by the Federal Bureau of Investigation (FBI). Pursuant to Education Code 45125, the district must request an FBI check of the applicant's fingerprints under the following conditions.

The Superintendent or designee shall request the Department of Justice to forward one copy of the applicant's fingerprint identification data to the Federal Bureau of Investigation for the purpose of obtaining any record of previous convictions if the applicant: (Education Code 45125)

1. Has not resided in the State of California for at least one year immediately preceding the application for employment
2. Has resided for more than one year, but less than seven years, in the State of California and the Department of Justice has ascertained that the person was convicted of a sex offense where the victim was a minor or a drug offense where an element of the offense is either the distribution to or the use of a controlled substance by a minor

The Governing Board shall not employ an applicant until the Department of Justice completes its check of the state criminal history files. (Education Code 45125)

(cf. 4212 - Appointment and Conditions of Employment)

The Superintendent or designee shall ensure that no person is hired who has been convicted of a violent or serious felony as listed in Penal Code 667.5(c) or 1192.7(c), unless that person has obtained a certificate of rehabilitation and a pardon. (Education Code 45122.1)

The Superintendent or designee may hire a classified employee without waiting for the disposition of the employee's criminal history files upon a determination that an emergency or exceptional situation exists and that a delay in filling the position would endanger student health or safety. (Education Code 45125)

(cf. 4112.6/4212.6/4312.6 - Personnel Files)

(cf. 4112.62/4212.62/4312.62 - Maintenance of Criminal Offender Records)

Subsequent Arrest Notification

Note: Pursuant to Education Code 44830.1, the district is required to sign up for "subsequent arrest notification" from the DOJ. With this service, the DOJ will notify the district of the subsequent arrest of any person whose fingerprints are maintained on file at the DOJ.

The Superintendent or designee shall request subsequent arrest notification from the Department of Justice as provided under Penal Code 11105.2. (Education Code 45125)

Current Employees

Upon notification by telephone from the Department of Justice that a current temporary, substitute or probationary classified employee has been convicted of a violent or serious felony, the Superintendent or designee shall immediately place that employee on leave without pay, unless the employee has received a certificate of rehabilitation and a pardon. (Education Code 45122.1)

Upon receipt of written notification of the fact of conviction from the Department of Justice, the Superintendent or designee shall terminate the temporary, substitute or probationary employee without regard to any other procedure for termination specified in the Education Code or district procedures, unless that employee has received a certificate of rehabilitation and a pardon. (Education Code 45122.1)

(cf. 4218 - Dismissal/Suspension/Disciplinary Action)

If the employee challenges the Department of Justice record and the Department of Justice withdraws in writing its notification, the Superintendent or designee shall immediately reinstate the employee with full restoration of salary and benefits. (Education Code 45122.1)

Legal Reference:

EDUCATION CODE

44332.6 Criminal record check, county board of education
44346.1 Applicants for credential, conviction of a violent or serious felony
44830.1 Certificated employees, conviction of a violent or serious felony
44830.2 Certificated employees; Interagency agreements
45122.1 Classified employees, conviction of a violent or serious felony
45125 Use of personal identification cards to ascertain conviction of crime
45125.01 Classified employees; interagency agreements
45125.1 Fingerprint for contractors
45125.5 Automated records check
45126 Duty of Department of Justice to furnish information

GOVERNMENT CODE

6200-6203 Crimes related to public records

PENAL CODE

502 Unauthorized access to computers
667.5 Violent felonies
1192.7 Serious felonies
11075-11081 Criminal record dissemination
11105-11105.75 Criminal identification
11140-11144 Furnishing of state criminal history information
13300-13305 Local summary criminal history information
CODE OF REGULATIONS, TITLE 11
703 Release of criminal offender record information

708 Destruction of criminal offender record information

Management Resources:

WEB SITES

Department of Justice/Attorney General's Office: <http://www.caag.state.ca.us/app>

CSBA: <http://www.csba.org>

CSBA: (10/98 6/99) 7/02

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