

Chapter 153. School District Personnel

Subchapter DD. Criminal History Record Information Review

Statutory Authority: The provisions of this Subchapter DD issued under the Texas Education Code, §§22.0832, 22.0833, 22.0834, 22.0836, 22.0837, 22.085, and 12.1162, unless otherwise noted.

§153.1101. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

- (1) Clearinghouse--The criminal history clearinghouse established by the Texas Department of Public Safety (DPS) pursuant to the Texas Government Code, §411.0845.
- (2) Continuing duties related to contracted services--Work duties that are performed pursuant to a contract to provide services to a school entity on a regular, repeated basis rather than infrequently or one-time only.
- (3) Covered contract employee--An individual who:
 - (A) is employed or offered employment by a service contractor or a subcontractor of a service contractor, is an individual independent contractor of the school entity, or is an individual subcontractor of a service contractor;
 - (B) has or will have continuing duties related to the contracted services;
 - (C) has or will have direct contact with students; and
 - (D) is not a student of (or enrolled in) the school entity for which the services are performed.
- (4) Criminal history record information--In accordance with the Texas Government Code, §411.082(2), information collected about a person by the DPS, a law enforcement or a criminal justice agency, or a private entity governed by the Fair Credit Reporting Act (15 U.S.C. Section 1681 et seq.) that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.
- (5) Date of employment--For purposes of the Texas Education Code (TEC), §22.0834, the date of employment by an entity that contracts with a school entity shall be deemed to be:
 - (A) with respect to an individual independent contractor, the date of the contract or agreement to provide services to the school entity;
 - (B) with respect to a covered contract employee of a service contractor, the date the employee began providing services to the contractor for compensation; and
 - (C) with respect to an employee or independent contractor of a subcontractor of a service contractor, the later of the date the service contractor secures the services of the subcontractor and the date the subcontractor secures the services of the employee or independent contractor.
- (6) Date of securing services--For purposes of the TEC, §22.0834, the date of securing the services of a covered contract employee or a subcontractor by an entity that contracts with a school entity shall be deemed to be the date the employee or subcontractor accepts an offer from the service contractor for a specific job position or for the performance of a specific project that is to begin on a date that is certain or reasonably ascertainable.
- (7) Direct contact with students--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 district 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.

- (8) National criminal history record information--In accordance with the TEC, §22.081, criminal history record information obtained from both the DPS and the Federal Bureau of Investigation based on fingerprint identification information.
- (9) School entity--A Texas school district, an open-enrollment charter school, or a shared services arrangement.
- (10) Service contractor--An entity, including a government entity and an individual independent contractor, that contracts or agrees with a school entity by written agreement or verbal understanding to provide services through individuals who receive compensation. 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 service contractor, and the investigator or intervener is not a covered contract employee.
- (11) Substitute teacher--A teacher who is on call or on a list of approved substitutes to replace a regular teacher and has no regular or guaranteed hours. A substitute teacher may be certified or noncertified.

Source: The provisions of this §153.1101 adopted to be effective December 30, 2007, 32 TexReg 9626; amended to be effective November 20, 2008, 33 TexReg 9233.

§153.1103. Purpose; Required Assistance.

- (a) This subchapter provides rules for the implementation of the criminal history record information review of school entity employees required by the Texas Education Code, Chapter 22, Subchapter C, as amended by Senate Bill 9, 80th Texas Legislature, 2007.
- (b) All school entities, private schools, and regional education service centers shall assist the Texas Education Agency in the collection of criminal history record information to facilitate this review.

Source: The provisions of this §153.1103 adopted to be effective December 30, 2007, 32 TexReg 9626.

§153.1105. Criminal History Record Information Review of Persons for Whom a National Criminal History Record Information Review is Not Required.

- (a) A school district or an open-enrollment charter school shall obtain criminal history record information, as provided by the Texas Education Code (TEC), §22.083, on all employees who are not subject to a national criminal history record information review. Persons subject only to a criminal history record information review include, but are not limited to, noncertified administrative support personnel, school bus drivers, and custodial staff hired before January 1, 2008, and charter school employees not working in a position described in the TEC, §12.1059. As defined in §153.1101 of this title (relating to Definitions), the criminal history record information does not include fingerprint identification information.
- (b) A shared services arrangement:
 - (1) shall obtain criminal history record information on all employees whose duties are performed on school property or at another location where students are regularly present; and
 - (2) may obtain the same information on all other employees.
- (c) A regional education service center or a private school may obtain criminal history record information on:
 - (1) any of its employees or applicants for employment; and
 - (2) an employee or applicant for employment of a person or entity that contracts with the service center or private school if:

- (A) the employee or applicant has or will have continuing duties related to the contracted services; and
- (B) the employee or applicant has or will have direct contact with students.

Source: The provisions of this §153.1105 adopted to be effective December 30, 2007, 32 TexReg 9626.

§153.1107. Failure to Disclose Criminal Convictions.

An employee of a school entity, private school, or regional education service center may be discharged pursuant to the Texas Education Code, §22.085(d), if the employee fails to disclose information of the employee's conviction of a felony or a misdemeanor involving moral turpitude to the State Board for Educator Certification or to the school entity, private school, or regional education service center.

Source: The provisions of this §153.1107 adopted to be effective December 30, 2007, 32 TexReg 9626.

§153.1109. Noncertified Employees.

- (a) 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 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) In order that an applicant subject to national criminal history review may submit the required information, the school entity that intends to employ the applicant shall certify the pending employment to the Texas Education Agency (TEA). The TEA shall electronically provide the applicant or the school entity an authorization for submission of fingerprint, photograph, and identification information to the DPS in the form the DPS requires.
 - (2) 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, §22.0833.
- (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 TEA's portion of the fee to the TEA.
 - (2) A school entity may require an applicant for employment to pay all fees related to obtaining and reviewing the national criminal history record information required by this section.
- (d) Employment pending review.
 - (1) A school entity shall ensure that a person subject to the TEC, §22.0833, submits the required information before that person's employment begins.
 - (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, §22.0833, 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.
 - (4) After review of such response, if any, the TEA shall notify the employee or applicant by certified mail, return receipt requested, of its determination and shall notify the school entity by e-mail.
- (f) Other school entity obligations.
 - (1) A school entity shall discharge or refuse to hire an employee or applicant if the school entity obtains information through a criminal history record information review or by notification from the TEA pursuant to the TEC, §22.0833(g), that an employee or applicant for employment has been convicted of an offense covered by the TEC, §22.085.
 - (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 superintendent or chief operating officer of a school entity shall certify to the TEA that the school entity has complied with the TEC, §22.085.
 - (4) The school entity shall cooperate with the TEA and DPS and its contractors to facilitate the submission of the required information, including assisting in the distribution of notices and authorization forms, if requested to do so by the TEA.
- (g) Appeal of the TEA determination. An employee or applicant for employment may appeal the TEA determination that he or she is not eligible for employment pursuant to the TEC, §22.085, according to the procedures described in §153.1115 of this title (relating to Appeal of the TEA Determination), but the employee or applicant is not eligible for employment by a school entity unless the TEA determination is reversed by a final administrative order.

Source: The provisions of this §153.1109 adopted to be effective December 30, 2007, 32 TexReg 9626.

§153.1111. Substitute Teachers.

- (a) National criminal history record information review.
 - (1) This section applies to a person described in the Texas Education Code (TEC), §22.0836, that is, a person who is a substitute teacher for a school entity or who is an applicant for a substitute teaching position.

- (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.
 - (1) A school entity shall ensure that a person subject to the TEC, §22.0836, submits the required information before that person's employment begins.
 - (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, §22.0836, 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 substitute teacher by certified mail, return receipt requested, if, based on its criminal history record information review and/or its review of the substitute teacher's certification status, if any, the TEA proposes to make a determination that the substitute teacher is ineligible for such employment under the terms of the TEC, §22.0836 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 involved 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 substitute teacher 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 substitute teacher is eligible for employment as a substitute teacher under the terms of the TEC, §22.0836 and §22.085.

- (4) After review of such response, if any, the TEA shall notify the substitute teacher by certified mail, return receipt requested, of its determination and shall notify the substitute teacher's school entity by e-mail.
- (f) Other school entity obligations.
 - (1) A school entity shall discharge or refuse to hire an employee or applicant if the school entity obtains information through a criminal history record information review or by notification from the TEA pursuant to the TEC, §22.0836, that an employee or applicant for employment has been convicted of an offense covered by the TEC, §22.085, or that an employee or applicant is a certified educator whose certificate is currently revoked or suspended.
 - (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 superintendent or chief operating officer of a school entity shall certify to the TEA that the school entity has complied with the TEC, §22.085.
 - (4) The school entity shall cooperate with the TEA and the DPS and its contractors to facilitate the submission of the required information, including assisting in the distribution of notices and authorization forms, if requested to do so by the TEA.
- (g) Appeal of the TEA determination. A substitute teacher may appeal the TEA determination that he or she is not eligible for employment as a substitute teacher pursuant to the TEC, §22.0836 and §22.085, according to the procedures described in §153.1115 of this title (relating to Appeal of the TEA Determination), but the substitute teacher is not eligible for employment by a school entity as a substitute teacher unless the TEA determination is reversed by a final administrative order.

Statutory Authority: The provisions of this §153.1111 issued under the Texas Education Code, §22.0836.

Source: The provisions of this §153.1111 adopted to be effective December 30, 2007, 32 TexReg 9626; amended to be effective June 23, 2015, 40 TexReg 3818.

§153.1113. Charter School Educators.

- (a) National criminal history record information review.
 - (1) This section applies to a person described in the Texas Education Code (TEC), §22.0832, that is, a person who is an employee or an applicant for employment with an open-enrollment charter school in a position to which the TEC, §12.1059, applies.
 - (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), an open-enrollment charter school shall provide the TEA with the names, mailing addresses, and any other requested identifying information for all employees and applicants to whom the TEC, §12.1059, applies.
 - (2) The charter school 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, §22.0832.

- (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 contractors to facilitate the submission of the required information, including assisting in the distribution of notices and authorization forms, if requested to do so by the TEA.
 - (5) The failure of an open-enrollment charter school to comply with a final determination under this section or to provide the information required by this section may be deemed a material violation of the school's charter.
- (h) Appeal of the TEA determination. A charter school educator may appeal the TEA determination that he or she is not eligible for employment as a charter school educator pursuant to the TEC, §§12.1162(b) and/or 22.0832 and 22.085, according to the procedures in §153.1115 of this title (relating to Appeal of the TEA Determination), but the charter school educator is not eligible for employment in a position to which the TEC, §12.1059, applies unless the TEA determination is reversed by a final administrative order.

Statutory Authority: The provisions of this §153.1113 issued under the Texas Education Code, §22.0832.

Source: The provisions of this §153.1113 adopted to be effective December 30, 2007, 32 TexReg 9626; amended to be effective June 23, 2015, 40 TexReg 3818.

§153.1115. Appeal of the TEA Determination.

- (a) Petition.
 - (1) A person may appeal the Texas Education Agency (TEA) determination of ineligibility for employment under the provisions specified in this paragraph by filing a petition with the TEA within 30 days of the date of mailing that determination. The appeal may be based on:
 - (A) Texas Education Code (TEC), §12.1162(b);
 - (B) TEC, §22.0832;
 - (C) TEC, §22.0833;
 - (D) TEC, §22.0836;
 - (E) §153.1109 of this title (relating to Noncertified Employees);
 - (F) §153.1111 of this title (relating to Substitute Teachers); and
 - (G) §153.1113 of this title (relating to Charter School Educators).
 - (2) The petition shall state the factual and legal basis for the appeal of the TEA determination. The petition shall comply with the State Office of Administrative Hearings (SOAH) procedural rule in Title 1, Part 7, Chapter 155, §155.29 (relating to Pleadings) and the requirements of a petition appealing a State Board for Educator Certification (SBEC) administrative denial of an application for educator certification under §249.12 of this title (relating to Administrative Denial; Appeal) and §249.26 of this title (relating to Petition).
- (b) Contested case.
 - (1) Upon the receipt of a timely petition of appeal of a determination of ineligibility for employment, the TEA shall refer the appeal to the SOAH, where it will be considered a contested case subject to the same procedural rules, including the allocation of the burden of proof, that would apply to the appeal of an SBEC administrative denial of an application for educator certification.
 - (2) The commissioner of education or the commissioner's designee shall:
 - (A) review the administrative law judge's proposal for decision in such a contested case;
 - (B) enter a final administrative decision and order; and
 - (C) consider a motion for rehearing, if any.

Source: The provisions of this §153.1115 adopted to be effective December 30, 2007, 32 TexReg 9626.