

**Regulation 4312.5: Criminal Record Check**

Status: DRAFT

Original Adopted Date: Pending

The Superintendent or designee shall not hire or retain in employment, in a certificated or classified position, a person who has been convicted of a violent or serious felony as defined in Penal Code 667.5(c) or 1192.7(c), a controlled substance offense as defined in Education Code 44011, or a sex offense as defined in Education Code 44010. However, the Superintendent or designee shall not deny or terminate employment solely on the basis that the person has been: (Education Code 44830.1, 44836, 45122.1, 45123)

1. Convicted of a violent or serious felony, controlled substance offense, or sex offense, and the conviction is reversed and the person is acquitted of the offense in a new trial or the charges against the person are dismissed, unless the sex offense for which the conviction is dismissed pursuant to Penal Code 1203.4 involves a victim who was a minor
2. Convicted of a violent or serious felony and has obtained a certificate of rehabilitation or a pardon
3. Convicted of a serious felony, that is not also a violent felony, and has proven to the sentencing court that rehabilitation for purposes of school employment has been attained for at least one year
4. Convicted of a controlled substance offense and is applying for or is employed in a certificated position and has a credential issued by the Commission on Teacher Credentialing
5. Convicted of a controlled substance offense and is applying for or is employed in a classified position and has been determined by the Governing Board, from the evidence presented, to have been rehabilitated for at least five years

A certificated employee may be hired by the district without obtaining a criminal record summary if that employee is employed as a certificated employee in another California school district and became a permanent employee of another California school district as of October 1, 1997. (Education Code 44830.1, 44836)

The Superintendent or designee shall not issue a temporary certificate of clearance to a person whose application for a credential, certificate, or permit is being processed by the Commission on Teacher Credentialing if that person has been convicted of a violent or serious felony, unless the person is otherwise exempt pursuant to Education Code 44332.6 or 44830.1. (Education Code 44332.5, 44332.6)

**Pre-Employment Record Check**

The Superintendent or designee shall require each person to be employed by the district to submit fingerprints electronically through the Live Scan system so that a criminal record check may be conducted by the Department of Justice (DOJ). The Superintendent or designee shall provide the applicant with a Live Scan request form and a list of nearby Live Scan locations.

When a person is applying for a classified position, the Superintendent or designee shall request that the DOJ also obtain a criminal record check through the Federal Bureau of Investigation whenever the applicant meets one of the following conditions: (Education Code 45125)

1. The applicant has not resided in California for at least one year immediately preceding the application for employment.
2. The applicant has resided in California for more than one year, but less than seven years, and the DOJ 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 Superintendent or designee shall immediately notify the DOJ when an applicant who has submitted fingerprints to the DOJ is not subsequently employed by the district. (Penal Code 11105.2)

**Subsequent Arrest Notification**

The Superintendent or designee shall enter into a contract with the DOJ to receive notification of subsequent arrests resulting in conviction of any person whose fingerprints have been submitted to the DOJ. (Education Code 44830.1, 45125; Penal Code 11105.2)

Upon telephone or email notification by the DOJ that a current temporary employee, substitute employee, or probationary employee serving before March 15 of the employee's second probationary year has been convicted of a violent or serious felony, the Superintendent or designee shall immediately place that employee on leave without pay. (Education Code 44830.1, 45122.1)

When the district receives written electronic notification by the DOJ of the fact of conviction, the temporary employee, substitute employee, or probationary employee serving before March 15 of the employee's second probationary year shall be terminated automatically unless the employee challenges the DOJ record and the DOJ withdraws its notification in writing. Upon receipt of the written withdrawal of notification by the DOJ, the Superintendent or designee shall immediately reinstate the employee with full restoration of salary and benefits for the period of time from the suspension without pay to the reinstatement if the employee is still employed by the district. (Education Code 44830.1, 45122.1)

The Superintendent or designee shall immediately notify the DOJ whenever a person whose fingerprints are maintained by the DOJ is terminated. (Penal Code 11105.2)

#### Notification of Applicant/Employee

The Superintendent or designee shall expeditiously furnish a copy of any DOJ notification to the applicant or employee to whom it relates if the information is a basis for an adverse employment decision. The copy shall be delivered in person or to the last contact information provided by the applicant or employee. (Penal Code 11105, 11105.2)

#### Maintenance of Records

The Superintendent shall designate at least one custodian of records who shall be responsible for the security, storage, dissemination, and destruction of all Criminal Offender Record Information (CORI) furnished to the district and shall serve as the primary contact for the DOJ for any related issues. (Penal Code 11102.2)

An employee designated as custodian of records shall receive a criminal background check clearance from the DOJ prior to serving in that capacity. (Penal Code 11102.2)

The custodian of records shall sign and return to the DOJ the Employee Statement Form acknowledging an understanding of the laws prohibiting misuse of CORI. In addition, the custodian of records shall ensure that any individual with access to CORI has on file a signed Employee Statement Form.

To ensure its confidentiality, CORI shall be accessible only to the custodian of records and shall be kept in a locked file separate from other files. CORI shall be used only for the purpose for which it is requested and its contents shall not be disclosed or reproduced. (Education Code 44830.1, 45125)

Once a hiring determination is made, the applicant's CORI shall be destroyed to the extent that the identity of the individual can no longer be reasonably ascertained. (Education Code 44830.1, 45125; 11 CCR 708)

The Superintendent or designee shall immediately notify the DOJ whenever a designated custodian of records ceases to serve in that capacity. (Penal Code 11102.2)

#### Interagency Agreement

Subject to an interagency agreement with other school districts, the district shall submit and receive CORI on behalf of all participating districts. (Education Code 44830.2, 45125.01)

Upon receipt from the DOJ of a report of conviction of a serious or violent felony, the district shall communicate that fact to participating districts and shall remove the affected employee from the common list of persons eligible for employment. (Education Code 44830.2, 45125.01)

In addition, upon receipt from the DOJ of a criminal history record or report of subsequent arrest for any person on a common list of persons eligible for employment, the district shall give notice to the superintendent of any

participating district, or the person designated in writing by that superintendent, that the report is available for inspection on a confidential basis by the superintendent or the authorized designee. The report shall be made available at the district office for 30 days following the receipt of the notice. (Education Code 44830.2, 45125.01)

The district shall not release a copy of that information to any participating district or any other person. In addition, the district shall retain or dispose of the information in the manner specified in law and in this administrative regulation after all participating districts have had an opportunity to inspect it in accordance with law. (Education Code 44830.2, 45125.01)

The district shall maintain a record of all persons to whom the information has been shown and shall make this record available to the DOJ. (Education Code 44830.2, 45125.01)

**Policy Reference Disclaimer:** These references are not intended to be part of the policy itself, nor do they indicate the basis or authority for the board to enact this policy. Instead, they are provided as additional resources for those interested in the subject matter of the policy.

### State References

### Description

11 CCR 701-708	<a href="#">Criminal offender record information</a>
11 CCR 720-724	<a href="#">Incomplete criminal history information</a>
11 CCR 994-994.15	<a href="#">Certification of individuals who take fingerprint impressions</a>
Ed. Code 44010	<a href="#">Sex offense; definitions</a>
Ed. Code 44011	<a href="#">Controlled substance offense</a>
Ed. Code 44332-44332.6	<a href="#">Temporary certificate of clearance</a>
Ed. Code 44346.1	<a href="#">Applicants for credential; conviction of a violent or serious felony</a>
Ed. Code 44830.1	<a href="#">Criminal record summary; certificated employees</a>
Ed. Code 44830.2	<a href="#">Certificated employees; interagency agreement for sharing criminal record information</a>
Ed. Code 44836	<a href="#">Employment of certificated persons convicted of sex offense or controlled substance offense</a>
Ed. Code 44932	<a href="#">Grounds for dismissal of permanent employees</a>
Ed. Code 45122.1	<a href="#">Classified employees; conviction of a violent or serious felony</a>
Ed. Code 45125	<a href="#">Use of personal identification cards to ascertain conviction of crime</a>
Ed. Code 45125.01	<a href="#">Interagency agreements for criminal record information</a>
Ed. Code 45125.5	<a href="#">Automated records check</a>
Ed. Code 45126	<a href="#">Duty of Department of Justice to furnish information</a>
Ed. Code 49024	<a href="#">Activity Supervisor Clearance Certificate</a>
Gov. Code 12954	<a href="#">Employment discrimination; cannabis use</a>
H&S Code 11350	<a href="#">Offenses Involving Controlled Substances Formerly Classified as Narcotics</a>
H&S Code 11377	<a href="#">Offenses Involving Controlled Substances Formerly Classified as Restricted Dangerous Drugs</a>
Pen. Code 11075-11081	<a href="#">Criminal record dissemination</a>
Pen. Code 11102.2	<a href="#">Maintenance of criminal offender records; custodian of records</a>
Pen. Code 11105	<a href="#">Access to criminal history information</a>
Pen. Code 11105.2	<a href="#">Subsequent arrest notification</a>
Pen. Code 11105.3	<a href="#">Record of conviction involving sex crimes, drug crimes or crimes of violence</a>
Pen. Code 11140-11144	<a href="#">Furnishing of state criminal history information</a>
Pen. Code 1192.7	<a href="#">Plea bargaining limitation</a>
Pen. Code 1203.4	<a href="#">Dismissal of conviction</a>

Pen. Code 1203.425  
Pen. Code 13300-13305  
Pen. Code 667.5

[Conviction relief](#)  
[Local summary criminal history information](#)  
[Prior prison terms; enhancement of prison terms](#)

### Management Resources References

Court Decision  
Website  
Website  
Website

### Description

[Central Valley Chapter of the 7th Step Foundation Inc. v. Evelle J. Younger \(1989\) 214 Cal. App. 3d 145](#)  
[CSBA District and County Office of Education Legal Services](#)  
[Office of the Attorney General, Department of Justice, Background Checks](#)  
[CSBA](#)

### Cross References

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4219.23	<a href="#">Unauthorized Release Of Confidential/Privileged Information</a>
4312.6	<a href="#">Personnel Files</a>
4312.9	<a href="#">Employee Notifications</a>
4312.9-E(1)	<a href="#">Employee Notifications</a>
4319.23	<a href="#">Unauthorized Release Of Confidential/Privileged Information</a>
5148	<a href="#">Child Care And Development</a>
5148	<a href="#">Child Care And Development</a>
5148.3	<a href="#">Preschool/Early Childhood Education</a>
5148.3	<a href="#">Preschool/Early Childhood Education</a>
6145	<a href="#">Extracurricular And Cocurricular Activities</a>
6145	<a href="#">Extracurricular And Cocurricular Activities</a>
9011	<a href="#">Disclosure Of Confidential/Privileged Information</a>