

CONTRACTED SERVICES
CRIMINAL HISTORY

CJA
(LEGAL)

**Contractor's
Notification of
Felony Conviction**

A person or business entity that enters into a contract with a district must give advance notice to the district if the person or an owner or operator of the business entity has been convicted of a felony. A district may terminate a contract with a person or business entity if the district determines that the person or business entity failed to give such notice or misrepresented the conduct resulting in the conviction. The district must compensate the person or business entity for services performed before the termination of the contract.
Education Code 44.034

**National Criminal
History Record
Information (NCHRI)
Reviews**

Definitions

"Contracting entity" means an entity that contracts directly with a district to provide services to the district.

"Public works contractor" means an entity that contracts directly or subcontracts with an entity that contracts with a district, to provide services to the district.

"Qualified school contractor" means an entity that:

1. Contracts or subcontracts to provide services to a district; and
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. Section 40101 et seq.) for an employee, applicant for employment, or volunteer of the qualified school contractor.

"Subcontracting entity" means an entity that contracts with another entity that is not a district to provide services to a district.

Education Code 22.0834(p); Gov't Code 411.12505(a)

"Continuing duties related to contracted services" are work duties that are performed pursuant to a contract to provide services to a district on a regular, repeated basis rather than infrequently or one-time only. *19 TAC 153.1101(2)*

"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 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. *19 TAC 153.1101(7)*

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Contractors with
Continuing Duties
and Direct Contact
with Students

These requirements apply to a person who is not an applicant for or holder of a certificate under Education Code Chapter 21, Subchapter B (Certified Educators), and who is offered employment by an entity or a subcontractor of an entity that contracts with a district if:

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

Education Code 22.0834(a)

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. *Education Code 22.0834(l)*

Exception — Public
Works Contractors

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

Education Code 22.0834(a-1)

Qualified School
Contractors

If the contracting entity is a qualified school contractor [see Definitions, above], a person must submit to a NCHRI review by the qualified school contractor before being employed or serving in a capacity described above.

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<i>Subcontracting Entities</i>	<p>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.</p> <p>A qualified school contractor shall require that any of its subcontracting entities that are not qualified school contractors comply with the requirements at Other Contractors, below.</p> <p><i>Education Code 22.0834(b), (d-1), (d-2)</i></p>
Other Contractors	<p>If the contracting entity or subcontracting entity is not a qualified school contractor, a person must submit to a NCHRI review by the district. <i>Education Code 22.0834(b-1)</i></p> <p>The requirements for qualified school contractors and subcontracting entities, above, do not apply to a qualified school contractor if a district obtains the CHRI of a person through the criminal history clearinghouse. <i>Education Code 22.0834(e)</i></p>
DPS Criminal History Clearinghouse	<p>Before or immediately after employing or securing the services of a person, the qualified school contractor or district 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 obtains the person's NCHRI and reports the results through the criminal history clearinghouse as provided by Government Code 411.0845.</p> <p>A qualified school contractor or a district shall obtain all CHRI that relates to a person through the criminal history clearinghouse.</p> <p><i>Education Code 22.0834(c), (d)</i></p>
Emergency	<p>In the event of an emergency, a district may allow a person to whom these requirements apply to enter district property if the person is accompanied by a district employee. A district may adopt rules regarding an emergency situation under this provision. <i>Education Code 22.0834(f)</i></p>
Criminal History Record Information	<p>A district or qualified school contractor may obtain from any law enforcement or criminal justice agency all CHRI that relates to a person. <i>Education Code 22.0834(h)</i></p>
Certification to District	<p>A qualified school contractor shall certify to the district or shared services arrangement 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. <i>Education Code 22.0834(q)</i></p>

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Disqualifying
Conviction

A district, qualified school contractor, contracting entity, or 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 Education Code 22.085(a). *Education Code 22.0834(o)*

District
Responsibility to
Ensure Compliance

A district 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 the district to serve at the district if the district obtains information showing a disqualifying conviction through a CHRI review concerning the employee or applicant. A district must ensure that an entity that the district contracts with for services has obtained all required CHRI. *Education Code 22.085(c)*

Note: See DBAA for definitions and provisions regarding confidentiality, unauthorized disclosure, destruction, consumer credit reports, records retention, and criminal history record checks of employees.

**Contractors
Providing
Transportation
Services**

Except as provided below at Commercial Transportation Company, a district that contracts with a person for transportation services shall obtain from any law enforcement or criminal justice agency all CHRI that relates to a person employed by the person as a bus driver or a person the person intends to employ as a bus driver. A person who contracts with a district to provide transportation services shall submit to the district the name and other identification data required to obtain the CHRI of such persons. If a district obtains information that such a person has been convicted of a felony or a misdemeanor involving moral turpitude, the district shall inform the chief personnel officer of the person with whom the district has contracted, and the person may not employ that person to drive a bus on which students are transported without the permission of the board of the district. *Education Code 22.084(a)-(b)*

Commercial
Transportation
Company

A commercial transportation company that contracts with a district to provide transportation services 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 these positions. If the company obtains information that a person employed or to be employed has been convicted of a felony or a misdemeanor involving moral turpitude, the company may not employ that person to drive or to serve as a bus monitor or bus aide on a bus on which students are transported without the permission of the board of the district. If a commercial transportation company obtains CHRI, a district is not required to do the same. *Education Code 22.084(c)-(d)*

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**Authority to Obtain
CHRI**

A district or an entity that contracts to provide services to a district is entitled to obtain CHRI that the district or entity is required or authorized to obtain under Education Code Chapter 22, Subchapter C, that relates to a person who is:

1. An employee of or an applicant for employment with a public or commercial transportation company that contracts with the district 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;
2. An employee of or applicant for employment by an entity that contracts to provide services to a district or shared services arrangement as provided by Education Code 22.0834, above;
3. An employee of or applicant for employment by a subcontractor of an entity that contracts to provide services to a district or shared services arrangement as provided by Education Code 22.0834, above; or
4. A tutor who provides services on behalf of a service provider that offers accelerated or supplemental instruction under Education Code 28.0211.

Gov't Code 411.097(a)