**FINGERPRINTING REQUIREMENTS FOR CONSTRUCTION CONTRACTORS**

Education Code Section 45125.2 deals with fingerprinting construction contractors on school construction, rehabilitation, and repair projects.[[1]](#footnote-1) The requirements depend upon the potential nature and extent of worker contact with pupils and considers three levels of contact:

1. Limited contact;
2. More than limited contact, using one or more of the specified mitigation methods;
3. More than limited contact where the specified steps for mitigation are inapplicable or inappropriate.

Where the employees of a contractor will have limited contact with pupils, the statutes require no action. However, while Section 45125.2 does not say so directly, it would appear that where the District determines there will only be limited contact, the District would still be required to take “appropriate steps” to protect the safety of pupils coming in contact with employees of the contractor, as is required when the District determines that contractors other than construction contractors will have only limited contact with pupils. (See Education Code Section 45125.1.)

Where the employees of a contractor will have more than limited contact with pupils, the District and contractor are required to either adopt one or more of the specified methods to ensure pupil safety. While the statute is unclear, it appears that districts can require compliance with Section 45125.1 (certification that all employees are clear) where the specified methods would not be sufficient to ensure pupil safety.

The three approved mitigation methods are:

1. Erection of a physical barrier to limit contact with pupils;
2. Continual supervision and monitoring of contractor employees by a contractor employee cleared by the California Department of Justice (“DOJ”);
3. Continual surveillance of contractor employees by a District monitor.

We believe a District has the discretion to permit and choose among the three methods. The contractor is not required to comply with Section 45125.1 if one or more of these mitigation methods is adopted. If the District determines none of the specified mitigation methods is appropriate or sufficient, the contractor must comply with Section 45125.1. Under Section 45125.1(g), the contractor must certify to the District that the employer and employees have been fingerprinted and have not committed any of the designated felonies.

A frequently asked question is whether one District can rely on a recent DOJ clearance obtained for a contractor’s monitor/supervisor/employees at another district. In our view, prior compliance information is both inappropriate and unavailable for subsequent use. The District is entitled to a certification from the contractor that its employee(s) have not been convicted of the designated felonies. The Education Code provisions do not permit a sharing of information and several concerns, including privacy rights of the employee, indicate no sharing is appropriate. The DOJ takes the position that such sharing is not possible. The DOJ takes the position that a contractor may not share results of the DOJ’s review with a new District unless a job-specific authorization signed by the District is on file with the DOJ.

There is a “Frequently Asked Questions” publication on the Attorney General’s· website addressing this issue, together with information concerning its Live Scan program, which also indicates criminal offender information is only accessible to the employer or authority charged with determining suitability for employment of an applicant and shall not be reproduced for secondary dissemination to any other employing or licensing agency.

Schools Legal Service’s approved construction documents are consistent with the foregoing, and their use is highly recommended. Included within that package, and attached, is a consolidated form which the contractor must sign, under penalty of perjury, certifying to the District the required information on fingerprinting of the contractor’s employees or applicable mitigation measures.

**16-FINGERPRINTING CERTIFICATION BY CONTRACTORS**

      (referred to as “Owner”)

      *(Project Identification)*

 I,      , am an

 *[type or print name]*

|  |  |  |
| --- | --- | --- |
| *[check one]* | [ ]  | Owner of the company named below |
|  | [ ]  | Partner of the partnership named below |
|  | [ ]  | President or CEO of the corporation named below |
|  | [ ]  | Principal of the joint venture named below |
|  | [ ]  | Other *[specify]*  |

The contracting entity named below is a contractor on the referenced project and as such hereby certifies:

|  |  |  |
| --- | --- | --- |
| *[check one**or more]* | [ ]  | *[For compliance with Education Code Section 45125.2(a)(1)]*That a physical barrier will be erected at the workplace to limit employee contact with Owner’s pupils. |
|  | [ ]  | *[For compliance with Education Code Section 45125.2(a)(2)]*That the contracting entity named below will provide continual supervision and monitoring of the employees of the entity and its subcontractors through its employee      . It has been ascertained by the Department of Justice that the named employee has not been convicted of a violent or serious felony. Contractor has requested subsequent arrest information from the Department of Justice concerning such employee and will immediately notify District and remove the employee from the Project if subsequent arrest information indicates the employee has been convicted of a serious or violent felony. |
|  | [ ]  | *[For compliance with Education Code Section 45125.2(a)(3)]* That the contracting entity named below has contracted with Owner for reimbursement of Owner expense incurred in providing surveillance by school personnel of the employees of the entity and its subcontractors on the Project. |
|  | [ ]  | *[For compliance with Education Code Section 45125.1(g). Note: We believe this section may still be applicable to construction contractors where 45125.2(a) is insufficient to ensure pupil safety, e.g., where workers will be simultaneously working at various locations on a school site.]*That neither myself nor any employees of the contracting entity named below or its subcontractors on the Project who are required by law to submit or have their fingerprints submitted to the Department of Justice, and who may come in contact with pupils, have been convicted of a felony defined in Education Code Section 45122.1. |
|  | [ ]  | *[For compliance where there is limited contact or less with pupils]* That the contracting entity named below is exempt from fingerprinting requirements as the Owner has determined the employees of the entity and its subcontractors will have no more than limited contact with Owner’s pupils during the Project. |

*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_* *[name of contracting entity]*

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

*DATE**:       SIGNATURE*

1. These rules do not apply to Community College Districts. Please contact Schools Legal Service for information. [↑](#footnote-ref-1)