



LAW UPDATE SCHOOL BUSINESS

PHONE: (661) 636-4830 • FAX: (661) 636-4843
E-mail: sls@kern.org • www.schoolslegalservice.org

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AB 130 – FINGERPRINTING VENDOR’S EMPLOYEES

In July 2021, Assembly Bill 130 repealed and replaced Education Code section 45125.1 expanding requirements for fingerprinting and criminal background checks for employees of contracting entities. The new requirements became effective January 1, 2022. These changes do not pertain to district employees or employees of construction contractors. The old version of Education Code section 45125.1 listed specific employees who were required to be fingerprinted. The new version states that “any entity that has a contract with a local education agency shall ensure that *any employee* who interacts with pupils, outside of the immediate supervision of the pupil’s parent, guardian or a school employee, has a valid criminal records summary.” The law no longer has an exception for non-construction employees of contracting entities who have *limited contact* with pupils. Also notable is the change from “contact” with pupils to “interaction” with pupils. There is no indication why this change was made, but it appears to include online virtual interaction with pupils. There is still an exception for emergency or exceptional situations. This is limited to situations where the health or safety of pupils is endangered or when repairs are needed to make the school facility safe and habitable.

The background check is more extensive and thorough than in the past. The new law requires fingerprints be sent to the Department of Justice (DOJ) for background checks. A copy of the fingerprints is to be sent to the Federal Bureau of Investigation for verification of previous arrests or convictions, whereas the old law required fingerprints to be submitted to the DOJ only.

Additionally, the contracting entity is required to “immediately provide any subsequent arrest and conviction information it receives to any local education agency (LEA) that it is contracting with.” This means the contracting entity’s obligation is not limited to providing information about whether its employees have a criminal history at the time of the background check, but it is also required to notify the LEA of any arrests or convictions that occur after the initial background check.

What has not changed is that the contracting entity shall not permit an employee to interact with pupils until the DOJ has ascertained that the employee has not been convicted of a

felony. Also, the entity shall certify in writing to the school district that neither the employer nor any of its employees who will interact with pupils have been convicted of a felony. However, none of this is necessary if the contracting entity's employees are under the immediate supervision of the pupil's parent, guardian, or school employee while they interact with pupils.

The new requirements do not have much effect on employees of entities that have contracts with the LEA for **construction, reconstruction, rehabilitation, or repair** of a school facility pursuant to Education Code section 45125.2. The law still has an exemption for construction employees who will have limited contact with pupils. Contracting entities for construction, reconstruction, rehabilitation or repairs can use one of the following methods to avoid fingerprinting all of its employees: (1) build a physical barrier to limit contact with pupils, (2) designate a fingerprinted employee, who has not been convicted of certain felonies, to continually supervise and monitor the other employees, or (3) have surveillance of the employees by school personnel. If the entity does not utilize one of these methods, it must follow the new procedures discussed above.¹

Please contact our office if you have follow-up questions.

- Kristina Funderburk

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¹ Education Code section 45125.1