

OFFICE OF THE SOLANO COUNTY SUPERINTENDENT OF SCHOOLS

Series 4000 – PERSONNEL

Policy 4112.5

Criminal Record Check

Applicants for Employment – Pre-Employment Record Check

The County Superintendent or designee shall require each person to be employed by the Solano County Office of Education (SCOE), including temporary, substitute, and part-time positions, to submit his/her fingerprints electronically through the Live Scan system so that a criminal record check may be conducted by the Department of Justice (DOJ). However, secondary school students attending a SCOE program who are to be employed in a temporary or part-time position shall not be required to submit fingerprint identification data. SCOE shall offer the Live Scan services or provide the applicant with a Live Scan request form and a list of nearby Live Scan locations.

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 [E.C.] section 44011, or a sex offense as defined in E.C. §44010. However, the Superintendent or designee shall not deny or terminate employment if: (E.C. §44830.1, 44836, 45122.1, 45123)

1. The conviction for a violent or serious felony, controlled substance offense, or sex offense 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. A person convicted of a violent or serious felony has obtained a certificate of rehabilitation and a pardon. (Education Code §45125.1, Penal Code 4852.01)
3. A person who has been convicted of a serious felony, that is not also a violent felony, proves to the sentencing court that s/he has been rehabilitated for purposes of school employment for at least one year.
4. A person who has been convicted of a controlled substance offense is applying for, or is employed in, a certificated position and has a credential issued by the Commission on Teacher Credentialing.
5. A person who has been convicted of a controlled substance offense is applying for, or is employed in, a classified position and has been determined by the Superintendent or designee, from the evidence presented, to have been rehabilitated for at least five years.

A certificated employee may be hired by SCOE 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. (E.C. §44830.1, 44836)

Temporary Certificate of Clearance

Before issuing a temporary certificate of clearance to a person whose credential, certificate, or permit is being processed by the Commission on Teacher Credentialing (CTC), the Superintendent or designee shall obtain a criminal record summary from the Department of Justice. The Superintendent or designee shall not issue a temporary certificate of clearance 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. (E.C. §44332.5)

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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 (FBI) whenever the applicant meets one of the following conditions: (E.C. §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 his/her fingerprints to the DOJ is not subsequently employed by SCOE. (Penal Code 11105.2)

The Superintendent or designee may issue a temporary certificate of clearance without obtaining a criminal record summary to an employee currently and continuously employed by a district within the county who is serving under a valid credential and has applied for a renewal of that credential or for an additional credential.

The Superintendent or designee may issue a temporary certificate of clearance to a person who has been convicted of a serious felony that is not also a violent felony, if that person has obtained a certificate of rehabilitation and a pardon or upon a determination that an emergency or exceptional situation exists in which a delay in filling the position would endanger student health or safety. (Education Code §45125.1, Penal Code 4852.01)

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. (E.C. §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 his/her 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. (E.C. §44830.1, 45122.1)

When SCOE receives written electronic notification by the DOJ of the fact of conviction, the employment of the temporary, substitute, or probationary employee serving before March 15 of his/her second probationary year shall be terminated automatically unless that 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 that 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 SCOE.

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)

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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 SCOE 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.

The custodian of records shall sign and return to the DOJ the Employee Statement Form acknowledging his/her 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. (E.C. §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. (E.C. 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 (E.C. 44830.2, 45125.01)

Subject to an interagency agreement with other school districts, SCOE shall submit and receive CORI on behalf of all participating educational agencies.

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

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, SCOE 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 SCOE's main office for 30 days following the receipt of the notice.

SCOE shall not release a copy of that information to any participating district or any other person. In addition, SCOE shall retain or dispose of the information in the manner specified in law and in its administrative policies after all participating districts have had an opportunity to inspect it in accordance with law.

SCOE shall maintain a record of all persons to whom the information has been shown and shall make this record available to the DOJ.

Legal Reference:

EDUCATION CODE

44010 Sex offense - definition

44011 Controlled substance offense – definition

44332 Temporary certificate

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Legal Reference: (Continued)

EDUCATION CODE (Continued)

- 44332.5 Registering certificates by certain districts
- 44332.6 Criminal record check, county board of education
- 44346.1 Applicants for credential, conviction of a violent or serious felony
- 44830.1 Certificated employees, conviction of a violent or serious felony
- 44830.2 Certificated employees; interagency agreement
- 44836 Conviction of a sex offense
- 44932 Grounds for dismissal of permanent certificated employees
- 45122.1 Classified employees, conviction of a violent or serious felony
- 45123 Dismissal; sex offense or controlled substance offense
- 45125 Use of personal identification cards to ascertain conviction of crime
- 45125.01 Classified employees; interagency agreements
- 45125.1 Fingerprint for contractors
- 45125.5 Automated records check
- 45126 Duty of Department of Justice to furnish information
- 49024 Activity Supervisor Clearance Certificate

GOVERNMENT CODE

- 6200-6203 Crimes related to public records

PENAL CODE

- 502 Unauthorized access to computers
- 667.5 Violent felonies
- 1192.7 Serious felonies
- 1203.4 Dismissal of conviction
- 11075-11081 Criminal record dissemination
- 11102.2 Maintenance of criminal offender records; custodian of records
- 11105-11105.75 Criminal identification, including:
 - 11105.2 Subsequent arrest notification
 - 11105.3 Record of conviction involving sex crimes, drug crimes, or crimes of violence
- 11140-11144 Furnishing of state criminal history information
- 13300-13305 Local summary criminal history information

CODE OF REGULATIONS, TITLE 11

- 701-708 Criminal offender record information
- 720-724 Incomplete criminal history information
- 994-994.15 Certification of individuals who take fingerprint impressions

COURT DECISIONS

- Central Valley Chapter of the 7th Step Foundation Inc. v. Evelle J. Younger, (1989) 214 Cal. App. 3d 145

Policy Cross-Reference:

- 4112 Appointment and Conditions of Employment
- 4112.2 Certification
- 4112.6 Personnel Files
- 4112.62 Maintenance of Criminal Offender Records
- 4112.9 Employee Notifications
- 4118 Dismissal/Suspension/Disciplinary Action
- 4119.23 Unauthorized Release of Confidential Privileged Information