

## Technical Assistance Paper

### Technical Assistance Paper Related to Fingerprinting/Background Screening Requirements of Supplemental Educational Services (SES) Providers

#### Background

The 2005 Legislature passed the Jessica Lunsford Act, creating Section 1012.465, Florida Statutes (Background screening requirements for certain noninstructional school district employees and contractors.--), requiring school districts to conduct state and national background screenings of non-instructional personnel and contractors, such as providers of supplemental educational services (SES) and their employees who have access to school grounds when students are present, have direct contact with students, or have access to or control of school funds. A state and national background screening is a fingerprint-based criminal history records check of individuals for the consideration of disqualifying offenses. State legislation applies to those persons employed by or contracted with any Florida public school district, which include traditional public schools, university lab schools, charter schools, and alternative schools.

#### Implementation

Each school district must ensure that all state-approved SES providers and their employees have undergone a fingerprint-based criminal history screening and are cleared of offenses that the district considers "crimes of moral turpitude."

Florida law provides school districts with the authority to determine whether the costs associated with the background screenings are to be borne by the school district, the SES provider (as contractor), or the individuals (owners, agency heads, representatives, employees, or subcontracted personnel). Additionally, each school district must determine the state and national background screening process and the fees that may vary from school district to school district. The cost for each screening ranges from \$61 and above.

The Florida Department of Law Enforcement (FDLE) implemented an automated database called the Florida Shared School Results System (FSSR), in which school districts may share criminal history information with other school districts. Records in this system became available to school districts on September 21, 2005. School districts may use this system or share information with other school districts. However, many school districts may require SES providers to undergo a state and national fingerprint-based background screening specifically for their school district.

#### REFER QUESTIONS TO:

Mary Jo Butler  
[maryjo.butler@fldoe.org](mailto:maryjo.butler@fldoe.org)  
(850) 245-0479



John L. Winn, Commissioner

TECHNICAL ASSISTANCE PAPERS (TAPs) are produced periodically by the Bureau of Public School Options to present discussion of current topics. The TAPs may be used for inservice sessions, technical assistance visits, parent organization meetings, or interdisciplinary discussion groups. Topics are identified by state steering committees, district personnel, and individuals, or from program compliance monitoring.

BUREAU OF PUBLIC SCHOOL OPTIONS  
325 WEST GAINES STREET, ROOM 314  
TALLAHASSEE, FL 32399-0400

(FAC), defines moral turpitude as, "...a crime that is evidenced by an act of baseness, vileness, or depravity in the private and social duties, which, according to the accepted standards of the time a man owes to his or her fellow man or to society in general, and the doing of the act itself and not its prohibition by statute fixes the moral turpitude." Policies for the screening and approval of the individual, based upon the results, vary from school district to school district.

## **Definitions**

**Contracted or Subcontracted Personnel:** Section 1012.465(1), Florida Statutes, defines contractual personnel as any vendor, individual, or entity under contract with the district school board. Subcontractors are also considered contractors with the school district, for the purposes of state and national background screenings. State-approved providers who contract with school districts to provide SES are considered contractors.

**State and National Fingerprint-Based Criminal History Background Check:** A level 2 background check, as referred to in Section 1012.465, Florida Statutes, means a national and state fingerprint-based criminal history check of a contractor/subcontractor, such as an SES provider and its employees, to determine if a person has a criminal history. Criminal history background checks are conducted through statewide criminal and juvenile records maintained by the FDLE and federal criminal records maintained by the Federal Bureau of Investigation (FBI). A school district may also require a local criminal records check through local law enforcement agencies. A search for criminal records is with the following databases:

- Florida Computerized Criminal History Central Repository for Florida criminal and juvenile records
- Florida Crime Information Center for warrants and domestic violence injunctions
- the FBI's national fingerprint and criminal history database for federal records
- criminal records from other states
- criminal records checks through local law enforcement agencies

**Supplemental Educational Services:** Under the No Child Left Behind (NCLB) Act, federal funding allows children of low-income families to receive extra academic help and individual instruction so that they can succeed in school. SES is an option for students who are participating in the Free or Reduced Price Lunch program and attend a Title I public school that has not met adequate yearly progress (AYP) for at least three consecutive years. State-approved tutors provide SES to students generally through large group instruction, small group instruction, individual instruction, and/or on-line instruction. SES may take place on the school campus, at an off-school campus site, in the student's home, or through the use of a computer.

**Supplemental Educational Services Provider:** A provider of supplemental educational services is a non-profit or for-profit entity that has a demonstrated record of effectiveness, a program that is of high quality, research based, and specifically designed to increase academic achievement of students, and is financially sound. The Florida Department of Education is required to evaluate and update annually the list of providers who are approved for tutoring students in the state.

## Questions and Answers

**1. What is the state and national criminal history background check for SES providers?**

A state and national criminal history background check includes fingerprinting an individual and submitting the prints to the FDLE to compare those records against the statewide criminal and juvenile records maintained by the FDLE and federal criminal records maintained by the FBI. It may also include a local criminal records check through local law enforcement agencies.

**2. Are SES providers required to submit to a fingerprint and criminal history background check?**

Yes. An SES provider that is contracted or subcontracted with a school district, and the individuals who are employed by the contracted or subcontracted SES provider, who meet at least one of the criteria specified in Section 1012.465, Florida Statutes, must submit to a fingerprint and criminal history background check.

**3. Are contracted on-line or distance learning SES providers and tutors who have electronic access to students required to submit to a fingerprint and criminal history background check?**

The law does not define what constitutes direct access with students who use distance learning and on-line computer instruction provided by state-approved SES tutors. However, state law does grant authority to each school district to determine whether on-line or distance learning SES providers and their employees must submit to a state and national background screening.

**4. Can an SES provider have a national (FBI) check only and not a state (FDLE) check?**

No. Persons or organizations must go through their state repository (FDLE) in order to obtain the FBI information.

**5. May school districts condition the award of contractual services to an SES provider that all employees have undergone a state and national fingerprint-based background screening?**

School board contracts may impose that the award of contractual services is contingent upon all employees who meet at least one of the criteria specified in Section 1012.465 Florida Statutes, passing a state and national fingerprint-based background screening to the standards of that school district.

**6. Who makes the decision for approval of individuals who have been screened?**

The employing or contracting school district makes the final determination of approving or denying SES providers and employees that contract with the school district on the basis of the screening results. The results of the criminal history check may not be released to the employer or the contractor but only to the individual (or the individual's attorney) that has been fingerprinted and screened.

**7. Is there a time limit for considering a crime involving moral turpitude and/or whether the offense took place outside of Florida?**

Not at this time. The crime distinguishes the disqualifier and not when or where the criminal act or conviction occurred.

**8. Will any statewide standard be implemented to define acts of moral turpitude applicable in all school districts?**

Not at this time. The employing school district must determine whether the information revealed in the background check renders an individual fit to serve in that school district. However, school districts may consult and agree on disqualifying offenses.

**9. Can an SES provider or one of its employees who failed to pass a criminal history background screening challenge the accuracy of the results?**

Yes. Individuals are entitled to request a copy of relevant information if they dispute the accuracy of the results. Those who wish to dispute the results of a criminal history record should contact FDLE Quality Control Section for Florida records and the FBI for out-of-state records.

**10. Who is responsible for allowing and monitoring the access of a contracted SES provider and its employees to school grounds when students are present, when they have direct contact with students, and/or when they have access to or control of school funds?**

School districts are held responsible for ensuring that only properly screened and approved individuals are allowed access on school grounds when students are present, have direct contact with students, and/or have access or control over school funds. Each school district must implement processes that are effective for each school's unique situation. School districts may establish methods such as issuance of photo ID badges, sign-in logs, check-in points, or biometric technology to verify a positive match to the identification presented. Additionally, school districts that have contracted with SES providers who provide instruction through the use of a computer or at an off-school site location should closely monitor the contracted personnel and subcontracted personnel with access to students.

**11. Is there a presumption against negligent hiring when an employer conducts a background investigation of a prospective employee?**

Yes. Pursuant to Section 768.096, Florida Statutes (Employer presumption against negligent hiring.--), in the case of an intentional tort, an employer is presumed not to have been negligent in hiring an employee if before hiring the employee, the employer conducted a criminal background investigation of the prospective employee, and the information did not reveal any information that reasonably demonstrated unsuitability of the prospective employee for the work to be performed or for general employment. The statute specifically provides that if an employer requests and obtains from FDLE a state criminal history check, as reported and reflected in the Florida Crime Information Center System, the employer has satisfied the criminal background investigation requirement for the presumption.

## **12. Can agencies share the results of a criminal history background check with other agencies that require similar checks?**

State and national criminal history information may be shared between school districts only. Sharing criminal history information is not allowed when it has been obtained for different purposes, even if the results received are the same. For example, criminal history information received by the Department of Financial Services for licensing insurance agents may not be shared with the Department of Agriculture and Consumer Affairs for licensing of security guards. Non-governmental entities are not authorized to receive state and national criminal history information under statutory licensing and employment provisions.

### **Appendix**

#### **1012.465 Background screening requirements for certain noninstructional school district employees and contractors.--**

(1) Noninstructional school district employees or contractual personnel who are permitted access on school grounds when students are present, who have direct contact with students or who have access to or control of school funds must meet level 2 screening requirements as described in Section 1012.32. Contractual personnel shall include any vendor, individual, or entity under contract with the school board.

(2) Every five years following employment or entry into a contract in a capacity described in subsection (1), each person who is so employed or under contract with the school district must meet level 2 screening requirements as described in Section 1012.32, at which time the school district shall request the Department of Law Enforcement to forward the fingerprints to the Federal Bureau of Investigation for the level 2 screening. If, for any reason following employment or entry into a contract in a capacity described in subsection (1), the fingerprints of a person who is so employed or under contract with the school district are not retained by the Department of Law Enforcement under Section 1012.32(3)(a) and (b), the person must file a complete set of fingerprints with the school district school superintendent of the employing or contracting school district. Upon submission of fingerprints for this purpose, the school district shall request the Department of Law Enforcement to forward the fingerprints to the Federal Bureau of Investigation for the level 2 screening, and the fingerprints shall be retained by the Department of Law Enforcement under Section 1012.32(3)(a) and (b). The cost of the state and federal criminal history check required by level 2 screening may be borne by the school district school board, the contractor, or the person fingerprinted. Under penalty of perjury, each person who is employed or under contract in a capacity described in subsection (1) must agree to inform his or her employer or the party with whom he or she is under contract within 48 hours if convicted of any disqualifying offense while he or she is employed or under contract in that capacity.

(3) If it is found that a person who is employed or under contract in a capacity described in subsection (1) does not meet the level 2 requirements, the person shall be immediately suspended from working in that capacity and shall remain suspended until final resolution of any appeals.

### **1012.32 Qualifications of personnel.--**

(1) To be eligible for appointment in any position in any district school system, a person shall be of good moral character; shall have attained the age of 18 years, if he or she is to be employed in an instructional capacity; and shall, when required by law, hold a certificate or license issued under rules of the State Board of Education or the Department of Children and Family Services, except when employed pursuant to s. [1012.55](#) or under the emergency provisions of s. [1012.24](#). Previous residence in this state shall not be required in any school of the state as a prerequisite for any person holding a valid Florida certificate or license to serve in an instructional capacity.

(2)(a) Instructional and noninstructional personnel who are hired or contracted to fill positions requiring direct contact with students in any district school system or university lab school shall, upon employment or engagement to provide services, undergo background screening as required under s. [1012.465](#) or s. [1012.56](#), whichever is applicable.

(b) Instructional and noninstructional personnel who are hired or contracted to fill positions in any charter school and members of the governing board of any charter school, in compliance with s. [1002.33](#)(12)(g), shall, upon employment, engagement of services, or appointment, undergo background screening as required under s. [1012.465](#) or s. [1012.56](#), whichever is applicable, by filing with the district school board for the school district in which the charter school is located a complete set of fingerprints taken by an authorized law enforcement agency or an employee of the school or school district who is trained to take fingerprints.

(c) Instructional and noninstructional personnel who are hired or contracted to fill positions requiring direct contact with students in an alternative school that operates under contract with a district school system shall, upon employment or engagement to provide services, undergo background screening as required under s. [1012.465](#) or s. [1012.56](#), whichever is applicable, by filing with the district school board for the school district to which the alternative school is under contract a complete set of fingerprints taken by an authorized law enforcement agency or an employee of the school or school district who is trained to take fingerprints.

(d) Student teachers, persons participating in a field experience pursuant to s. [1004.04](#)(6) or s. [1004.85](#), and persons participating in a short-term experience as a teacher assistant pursuant to s. [1004.04](#)(10) in any district school system, lab school, or charter school shall, upon engagement to provide services, undergo background screening as required under s. [1012.56](#).

Fingerprints shall be submitted to the Department of Law Enforcement for state processing and to the Federal Bureau of Investigation for federal processing. Persons subject to this subsection found through fingerprint processing to have been convicted of a crime involving moral turpitude shall not be employed, engaged to provide services, or serve in any position requiring direct contact with students. Probationary persons subject to this subsection terminated because of their criminal record have the right to appeal such decisions. The cost of the background screening may be borne by the district school board, the charter school, the employee, the contractor, or a person subject to this subsection.

(3)(a) Beginning July 1, 2004, all fingerprints submitted to the Department of Law Enforcement as required by subsection (2) shall be retained by the Department of Law Enforcement in a manner provided by rule and entered in the statewide automated fingerprint identification system authorized by s. [943.05](#)(2)(b). Such fingerprints shall thereafter be available for all

purposes and uses authorized for arrest fingerprint cards entered in the statewide automated fingerprint identification system pursuant to s. [943.051](#).

(b) Beginning December 15, 2004, the Department of Law Enforcement shall search all arrest fingerprint cards received under s. [943.051](#) against the fingerprints retained in the statewide automated fingerprint identification system under paragraph (a). Any arrest record that is identified with the retained fingerprints of a person subject to the background screening under this section shall be reported to the employing or contracting school district or the school district with which the person is affiliated. Each school district is required to participate in this search process by payment of an annual fee to the Department of Law Enforcement and by informing the Department of Law Enforcement of any change in the affiliation, employment, or contractual status or place of affiliation, employment, or contracting of its instructional and noninstructional personnel whose fingerprints are retained under paragraph (a). The Department of Law Enforcement shall adopt a rule setting the amount of the annual fee to be imposed upon each school district for performing these searches and establishing the procedures for the retention of instructional and noninstructional personnel fingerprints and the dissemination of search results. The fee may be borne by the district school board, the contractor, or the person fingerprinted.

(c) Personnel whose fingerprints are not retained by the Department of Law Enforcement under paragraphs (a) and (b) are required to be refingerprinted and must meet level 2 screening requirements as described in this section upon reemployment or reengagement to provide services in order to comply with the requirements of this subsection.