**DRAFT CREATED BY BD**

**581-021-0511 Fingerprinting of Subject Individuals in Positions Not Requiring Licensure as Teachers, Administrators, Personnel Specialists, School Nurses**

(1) School districts shall adopt and implement local board policy related to fingerprint collection and processing which shall:

(a) Specify that subject individuals as defined by this rule are subject to fingerprinting and criminal records checks required by law;

(b) Specify which contractors will be considered to have unsupervised access to children and are subject to fingerprinting and criminal records checks required by law;

(c) Specify the format used to notify subject individuals that fingerprinting and criminal record checks are required by law and that any action resulting from those checks may be appealed as a contested case;

(d) Provide a clear statement that the district will terminate the employee, if it receives notification by the Superintendent of Public Instruction that the person has a conviction for any of the crimes prohibiting employment that are identified under section (8) of this rule;

(e) Provide a clear statement that the district may terminate the employee, if it receives notification by the Superintendent of Public Instruction that the person has knowingly made a false statement as to the conviction of any crime;

(f) Specify that subject individuals may begin to carry out terms of a contract or employment on a probationary basis pending the return of state and national criminal records checks;

(g) Identify that employment shall be offered prior to collecting fingerprint information and that fees may be collected from the subject individual. The subject individual may request that the amount of the fee be withheld from the amount otherwise due the individual, and the school district shall withhold the amount only upon the request of the subject individual; and

(h) Identify a procedure that ensures the integrity of fingerprint collection and will prevent any possible compromise of the process.

(2) Fingerprints may be collected by one of the following:

(a) Employing school district staff;

(b) Contracted agent of employing school district;

(c) Local or state law enforcement agency.

(3) Immediately following offer and acceptance of employment or contract, school districts shall send fingerprint information for each subject individual to the Oregon Department of Education for purposes of a criminal records check.

(4) Criminal records check requests shall be submitted electronically through the statewide vendor identified by DAS. Exemptions from this requirement may be granted by the Oregon Department of Education on an individual basis. Reasons for exemption include, but are not limited to, geographic location and ability of vendor to meet needs. School districts exempted from the electronic process shall submit fingerprint information on forms provided by the Oregon Department of Education.

(5) The Oregon Department of Education shall request criminal records information from the Oregon State Police in the manner prescribed by law. A fee per criminal records check request shall be established by the department, reviewed annually, and commensurate to cost changes to Oregon State Police or Federal Bureau of Investigation fee schedules and other costs associated with acquiring and furnishing criminal offender information. The fee shall be:

(a) Deducted from the SSF payment for school districts that receive SSF payments; or

(b) Invoiced to school districts that do not receive SSF payments.

(6) Upon receipt of criminal records information, the Oregon Department of Education shall review the criminal records of a subject individual. The State Superintendent of Public Instruction shall:

(a) Issue a statement of criminal history status and related impact on employment or contract qualification; and

(b) Notify the school district if the subject individual has knowingly made a false statement as to conviction of a crime.

(7) Subject individuals who refuse to consent to the criminal records check or refuse to be fingerprinted shall be terminated from employment or contract status by the district.

(8) Subject individuals who have a conviction for any of the crimes listed in ORS 342.143, or the substantial equivalent of any of those crimes if the conviction occurred in another jurisdiction or in Oregon under a different statutory name or number, shall be refused continued employment or have employment terminated upon notification from the Superintendent of Public Instruction.

(9) A school district may terminate the employment of any subject individual who knowingly makes a false statement as to the conviction of a crime upon notification of the false statement by the Superintendent of Public Instruction.

(10) Evaluations of crimes shall be based on Oregon laws in effect at the time of conviction, regardless of the jurisdiction in which the conviction occurred.

(11) Prior to making a determination that results in a notice and opportunity for hearing, the Superintendent of Public Instruction may cause an investigation to be undertaken. Subject individuals and districts shall cooperate with the investigation and may be required to furnish oral or written statements by affidavit or under oath. If the Superintendent of Public Instruction determines through investigation that a violation of this rule has not occurred, a written decision explaining the basis for the decision will be provided to the subject individual.

(12) Subject individuals may appeal a determination that prevents their employment or eligibility to contract with a school district as a contested case under ORS 183.413 to 183.470 to the Superintendent of Public Instruction.

(13) The Oregon Department of Education shall not provide copies of criminal records to anyone except as provided by law. The subject individual may inspect his or her personal criminal records under the supervision of properly certified LEDS personnel at the Oregon Department of Education.

(14) The Oregon Department of Education shall maintain a record of all properly submitted fingerprint information. The record shall include at least the following:

(a) Fingerprint sequence number;

(b) District submitting the fingerprints;

(c) Date the Department form is received;

(d) Date fingerprint information is sent to Oregon State Police; and

(e) Date denial or final approval sent to district.

Statutory/Other Authority: ORS 326.051

Statutes/Other Implemented: ORS 326.603

**581-021-0512 Non-employment criminal background checks for school districts**

(1) School districts that have volunteers that have direct unsupervised contact with students shall have a policy requiring those volunteers to undergo a criminal records check.

(2) State criminal records check based on name and DOB:

(a) A school district may submit a request to the Oregon Department of Education for an in-state criminal records check in LEDS based on name and DOB on any volunteer.

(b) State criminal records check requests made under this section shall:

(A) Use forms provided by the Oregon Department of Education;

(B) Include an authorization from the volunteer for the Oregon Department of Education to perform a criminal records check; and

(C) Include payment of the processing fee of $5 per person to be checked.

(3) State and national criminal records check based on fingerprints:

(a) A school district may submit a request to the Oregon Department of Education for a fingerprint-based criminal records check for volunteers identified in local board policy as requiring a fingerprint-based criminal records check.

(b) Requests for fingerprint-based criminal records checks shall be submitted electronically through the statewide vendor identified by DAS. Exemptions from this requirement may be granted by the Oregon Department of Education on an individual basis. Reasons for exemption include, but are not limited to, geographic location and ability of vendor to meet needs. School districts exempted from the electronic process shall submit fingerprint information on forms provided by the Oregon Department of Education;

(c) A fee shall be established by the department, reviewed annually, and commensurate to cost changes to Oregon State Police or Federal Bureau of Investigation fee schedules and other costs associated with acquiring and furnishing criminal offender information. The fee shall be:

(A) Deducted from the SSF payment for school districts that receive SSF payments; or

(B) Invoiced to school districts that do not receive SSF payments.

(d) A fingerprint-based criminal records check conducted in accordance with this section will be a state and national check through the Oregon State Police and the FBI.

(4) The Oregon Department of Education shall review the criminal records when a request is made under section (2) or (3) of this rule, make a fitness determination, and notify the school district of that determination.

(a) A volunteer does not meet the fitness standards of this rule if the individual has:

(A) A conviction for any of the crimes listed in ORS 342.143, or the substantial equivalent of any of those crimes if the conviction occurred in another jurisdiction or in Oregon under a different statutory name or number; or

(B) Knowingly made a false statement.

(b) The Oregon Department of Education shall not provide copies of criminal records to anyone except as provided by law.

(5) Volunteers may appeal a fitness determination resulting from a fingerprint-based criminal records check under section (3) of this rule as a contested case under ORS 183.413 to 183.470 to the Superintendent of Public Instruction.

(6) Notwithstanding the fitness determination made by the Oregon Department of Education pursuant to this rule, a school district may allow a volunteer that has undergone a criminal records check to have direct, unsupervised contact with school children.

Statutory/Other Authority: ORS 326.051

Statutes/Other Implemented: ORS 326.607

**581-045-0586 Fingerprinting of Subject Individuals Employed by Private Schools in Positions Not Requiring Licensure as Teachers, Administrators, Personnel Specialists, School Nurses**

(1) A private school may request that the Oregon Department of Education conduct a criminal records check of a subject individual by submitting fingerprint information for that individual to the Department.

(2) Criminal records check requests shall be submitted electronically through the statewide vendor identified by DAS. Exemptions from this requirement may be granted by the Oregon Department of Education on an individual basis. Reasons for exemption include, but are not limited to, geographic location and ability of vendor to meet needs. Private schools exempted from the electronic process shall submit fingerprints on forms provided by the Oregon Department of Education.

(3) The Department shall request criminal records information from the Oregon State Police in the manner prescribed by law. A fee per criminal records check request shall be established by the department, reviewed annually, and commensurate to cost changes to Oregon State Police or Federal Bureau of Investigation fee schedules and other costs associated with acquiring and furnishing criminal offender information. The fee shall be invoiced to the private school.

(4)(a) Upon receipt of criminal records information, the Oregon Department of Education shall review the criminal records of a subject individual. The Superintendent of Public Instruction shall:

(A) Issue a statement of criminal history status; and

(B) Notify the private school if the subject individual has knowingly made a false statement as to conviction of a crime.

(b) A private school may choose to employ or contract with a person who has knowingly made a false statement as to conviction of a crime.

(5) The Superintendent of Public Instruction shall notify the private school if the subject individual has a conviction for any of the crimes listed in ORS 342.143, or the substantial equivalent of any of those crimes if the conviction occurred in another jurisdiction or in Oregon under a different statutory name or number. A private school may choose to employ or contract with a person who has a conviction for a crime listed in ORS 342.143 or the substantial equivalent.

(6) The Oregon Department of Education shall not provide copies of criminal records to anyone except as provided by law. The subject individual may inspect his or her personal criminal records under the supervision of properly certified LEDS personnel at the Department.

(7) The Oregon Department of Education shall maintain a record of all properly submitted fingerprint information. The record shall include at least the following:

(a) Card Fingerprint sequence number;

(b) Name of private school submitting the fingerprints;

(c) Date the Department form is received;

(d) Date fingerprint information is sent to Oregon State Police;

(e) Date private school was notified of criminal history results.

Statutory/Other Authority: ORS 326.051 & ORS 326.603

Statutes/Other Implemented: ORS 326.603

**581-045-0587 Non-employment criminal records checks for private schools**

(1) Private schools that have volunteers that have direct unsupervised contact with students may have a policy requiring those volunteers to undergo a criminal records check.

(2) State criminal records check based on name and DOB:

(a) A private school may submit a request to the Oregon Department of Education for an in-state criminal records check in LEDS based on name and DOB on any volunteer.

(b) State criminal records check requests made under this section shall:

(A) Use forms provided by the Oregon Department of Education;

(B) Include an authorization from the volunteer for the Oregon Department of Education to perform a criminal records check; and

(C) Include payment of the processing fee of $5 per person to be checked.

(3) State and national criminal records check based on fingerprints:

(a) A private school may submit a request to the Oregon Department of Education for a fingerprint-based criminal records check for volunteers identified in local policy as requiring a fingerprint-based criminal records check.

(b) Requests for fingerprint-based criminal records checks shall be submitted electronically through the statewide vendor identified by DAS. Exemptions from this requirement may be granted by the Oregon Department of Education on an individual basis. Reasons for exemption include, but are not limited to, geographic location and ability of vendor to meet needs. Private schools exempted from the electronic process shall submit fingerprints on forms provided by the Oregon Department of Education;

(c) A fee shall be established by the department, reviewed annually, and commensurate to cost changes to Oregon State Police or Federal Bureau of Investigation fee schedules and other costs associated with acquiring and furnishing criminal offender information. The fee shall be invoiced to the private school;

(d) A fingerprint-based criminal records check conducted in accordance with this section will be a state and national check through the Oregon State Police and the FBI.

(4) The Oregon Department of Education shall review the criminal records when a request is made under section (2) or (3) of this rule, make a fitness determination and notify the private school of that determination.

(a) A volunteer does not meet the fitness standards of this rule if the individual has:

(A) A conviction for any of the crimes listed in ORS 342.143, or the substantial equivalent of any of those crimes if the conviction occurred in another jurisdiction or in Oregon under a different statutory name or number; or

(B) Knowingly made a false statement.

(b) The Oregon Department of Education shall not provide copies of criminal records to anyone except as provided by law.

(5) Volunteers may appeal a fitness determination resulting from a fingerprint-based criminal records check under section (3) of this rule as a contested case under ORS 183.413 to 183.470 to the Superintendent of Public Instruction.

(6) Notwithstanding the fitness determination made by the Oregon Department of Education pursuant to this rule, a private school may allow a volunteer that has undergone a criminal records check to have direct, unsupervised contact with school children.

Statutory/Other Authority: ORS 326.051

Statutes/Other Implemented: ORS 326.607