

**Repealed 7/1/2015**

**53A-3-410 Criminal background checks on school personnel -- Notice -- Payment of costs -- Request for review.**

- (1) As used in this section:
  - (a) "Administrator" means an administrator at a school district, charter school, or private school that requests the Criminal Investigations and Technical Services Division of the Department of Public Safety to conduct a criminal background check on an applicant or employee.
  - (b) "Applicant" means a person under consideration for:
    - (i) an offer of employment at a school district, charter school, or private school; or
    - (ii) appointment as a volunteer for a school district, charter school, or private school who will be given significant unsupervised access to a student in connection with the volunteer's assignment.
  - (c) "Contract employee" means an employee of a staffing service who works at a public or private school under a contract between the staffing service and a school district, charter school, or private school.
  - (d) "Division" means the Criminal Investigations and Technical Services Division of the Department of Public Safety.
- (2) A school district superintendent, the superintendent's designee, or the chief administrative officer of a charter school:
  - (a) shall require an applicant to submit to a criminal background check as a condition for employment or appointment;
  - (b) shall require an employee to periodically submit to a criminal background check in accordance with rules of the State Board of Education or policies of the local school board or charter school governing board; and
  - (c) where reasonable cause exists, may require an existing employee or volunteer to submit to a criminal background check.
- (3) The chief administrative officer of a private school may require, and the chief administrative officer of a private school that enrolls scholarship students under Chapter 1a, Part 7, Carson Smith Scholarships for Students with Special Needs Act, shall require:
  - (a) an applicant to submit to a criminal background check as a condition for employment or appointment; and
  - (b) where reasonable cause exists, an existing employee or volunteer to submit to a criminal background check.
- (4) An applicant, volunteer, or employee shall receive written notice that a criminal background check has been requested.
- (5)
  - (a)
    - (i) Fingerprints of the applicant, volunteer, or employee shall be taken, and the Criminal Investigations and Technical Services Division of the Department of Public Safety, established in Section 53-10-103, shall release the applicant's, volunteer's, or employee's full criminal history record to the administrator requesting the information.
    - (ii) The division shall maintain a separate file of fingerprints submitted under Subsection (5)(a)
      - (i) and notify the administrator when a new entry is made against an employee or volunteer whose fingerprints are held in the file regarding:
        - (A) any matters involving an alleged sexual offense;
        - (B) any matters involving an alleged drug-related offense;
        - (C) any matters involving an alleged alcohol-related offense; or

- (D) any matters involving an alleged offense against the person under Title 76, Chapter 5, Offenses Against the Person.
- (iii) The cost of maintaining the separate file shall be paid by the school district, charter school, or private school from fees charged to those submitting fingerprints.
- (b) Information received by the division from entities other than agencies or political subdivisions of the state may not be released to a private school unless the release is permissible under applicable laws or regulations of the entity providing the information.
- (6) The superintendent, local school board, or their counterparts at a charter school or private school shall consider only those convictions, pleas in abeyance, or arrests which are job-related for the employee, applicant, or volunteer.
- (7)
  - (a) A school district, charter school, or private school may require an applicant to pay the costs of a background check as a condition for consideration for employment or appointment, if the applicant:
    - (i) has passed an initial review; and
    - (ii) is one of a pool of no more than five candidates for a position.
  - (b) A school district or charter school may require an employee to pay the cost of a periodic criminal background check required pursuant to rules of the State Board of Education or policies of the local school board or charter school governing board.
- (8) The Criminal Investigations and Technical Services Division shall, upon request, seek additional information from regional or national criminal data files in responding to inquiries under this section.
- (9)
  - (a) An applicant, volunteer, or employee shall have an opportunity to respond to any information received as a result of a criminal background check.
  - (b) A public agency shall resolve any request for review by an applicant, volunteer, or employee through administrative procedures established by the agency.
- (10)
  - (a) If a person is denied employment or is dismissed from employment because of information obtained through a criminal background check, the person shall receive written notice of the reasons for denial or dismissal and have an opportunity to respond to the reasons.
  - (b) A school district or charter school shall resolve any request for a review of a denial of or dismissal from employment through administrative procedures established by the school district or charter school.
- (11) Information obtained under this part is confidential and may only be disclosed as provided in this section.
- (12)
  - (a) A school district, charter school, or private school that enrolls scholarship students under Chapter 1a, Part 7, Carson Smith Scholarships for Students with Special Needs Act, may contract with a staffing service to provide a contract employee if:
    - (i) the school district, charter school, or private school requests the Criminal Investigations and Technical Services Division of the Department of Public Safety to conduct a criminal background check on the contract employee that is placed at the school district, charter school, or private school;
    - (ii) fingerprints of the contract employee are submitted to the division;
    - (iii) the division releases the contract employee's full criminal history record to the school district, charter school, or private school requesting the criminal background check; and

- (iv) the school district, charter school, or private school requesting the criminal background check determines whether the contract employee is suitable for employment based on the standard established in Subsection (6).
- (b) The division shall maintain a separate file of fingerprints submitted under Subsection (12)(a) and notify the administrator when a new entry is made against a contract employee whose fingerprints are held in the file regarding a matter listed in Subsection (5)(a)(ii).
- (c) A school district, charter school, or private school may require a contract employee to pay the costs of a criminal background check, including the costs of the division to maintain the file required under Subsection (12)(b).
- (d)
  - (i) A contract employee who applies for a license issued by the State Board of Education shall submit to a criminal background check as provided in Section 53A-6-401.
  - (ii) A contract employee who works at a public school and does not hold a license issued by the State Board of Education shall submit to a criminal background check every six years, or within a shorter period, if required by rules of the State Board of Education or policies of a local school board or charter school governing board.