

THE FLORIDA DEPARTMENT OF EDUCATION

Technical Assistance Paper

JESSICA LUNSFORD ACT

Background

The Jessica Lunsford Act was passed by the 2005 Florida Legislature and signed into law by Governor Bush following the assault and murder of Jessica Lunsford in Homosassa Springs, Florida. This crime was allegedly committed by an individual who had at one time worked as a subcontracted mason at Jessica Lunsford's school. The Act focused primarily on increasing the measures used to monitor sexual offenders or predators. However, part of the Act specifically related to individuals with access to school district campuses. This Technical Assistance Paper (TAP) is to provide assistance to districts and contractual personnel to implement s. 1012.465, Florida Statutes, as amended by the 2005 Legislature.

Section 1012.465, Florida Statutes, now states (amendments underlined):

- (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 s. 1012.32, F.S. Contractual personnel shall include any vendor, individual, or entity under contract with the school board.

The statute, as amended, applies to three categories of either noninstructional or contractual personnel, all of whom must meet Level 2 background screening requirements, including those:

1. Who are permitted access on school grounds when students are present,
2. Who have direct contact with students, or
3. Who have access to or control of school funds.

The statute applies to such persons employed or contracted with any Florida public school district in any Florida public school, including:

- Traditional Public Schools
- Charter Schools
- Alternative Schools

District Responsibilities

1. Background Screening:

School districts must conduct the fingerprinting/background screening of noninstructional or contractual personnel at a location designated by the district using the code (ORI - Originating Agency Identifier) issued to the district by the Florida Department of Law Enforcement (FDLE), and determine whether the individual has been convicted of a crime of moral turpitude.

2. Costs:

According to the Lunsford Act, the costs associated with the background screenings may be borne by the district, the contractor, or the individual. Each district must establish payment procedures. The costs associated with the initial screenings themselves may vary from district to district (approximately \$60 to \$90). In addition, for each record, districts will be charged by FDLE for:

- Annual Retention Fee: \$6.00 (Note: Districts will not be charged the retention fees until the full system is operational.)
- Fifth Year National Background Check fee: \$24.00 + \$6.00 = \$30.00

Districts may use their unrestricted operating funds to cover the cost of background screenings.

Schools will be invoiced by the Florida Department of Law Enforcement for these services.

3. Verification of Personnel on School Campuses:

For affected persons, each district must establish policies and procedures to ensure that only individuals who have undergone a background screening and have been approved to come on campus are allowed access on school grounds when students are present, or to have direct contact with students, or to have access or control over school funds.

In addition, each district must establish communication policies and procedures to ensure that all pertinent parties are notified when an individual terminates service with the district.

4. Sharing of Records:

Districts may share background screening results with other public school districts and are encouraged to do so to reduce the time and fiscal impact on certain service providers who may be providing contractual services in multiple districts.

Such persons may include:

- Vendors, including soda/milk/snack vendors under contract with the district
- Sports officials
- Construction contractors and subcontractors
- Senior ring, photography, or yearbook vendors

Should districts choose to share records, it is recommended that the cooperating districts execute a Memorandum of Understanding which clearly spells out the role to be played by each district. Additionally, districts are required to keep a record of each time results are shared. The record must include:

- 1) The name of each individual whose records are being shared
- 2) The date of the transmission of the record
- 3) The type of transmission (Fax, USPS, secured electronic...)
- 4) The recipient of the transmission
- 5) Notification to the individual that the record was shared and to which entity

Any employee provided access to criminal history records should be cautioned as to the confidentiality of the information contained within the record, and should not discuss such information outside of those also legally allowed access to such record.

5. Maintenance of Records:

After receiving the initial background check results from the FDLE, the original submitting district will thereafter be electronically notified by FDLE, in writing, of any new arrests. The original submitting district should forward the arrest information to any districts with which they have shared the criminal record. In addition, s. 1012.32(3), F.S., requires each school district to inform the FDLE of any change in the affiliation, employment, or contractual status of an individual previously fingerprinted.

The prints of an individual who terminates service with a district and is later re-engaged to provide additional services must be re-submitted to the FDLE. Those individuals who provide services on a periodic basis pursuant to an on-going contract and who do not effectively break service should continue to have their arrest record results transmitted to the district by the FDLE.

The requirements applicable to those entities receiving fingerprint background check results are set forth in Rule 11C-6.010, promulgated by the FDLE pursuant to authority in s. 1012.32(3), F.S.

Disqualification of Individuals

Section 1012.465, F.S., as amended, states that those required to be screened must meet Level 2 screening requirements “as described in s. 1012.32, F.S.”

Some districts have questioned whether they may simply adopt the crimes enumerated in s. 435.04, F.S., the general Level 2 screening statute, as the disqualifiers. Such an interpretation would be incorrect, as s. 435.01, F.S., states:

“Whenever a background screening for employment or a background security check is required by law for employment, *unless otherwise provided by law*, the provisions of this chapter shall apply.” (Emphasis added.) In the case of background screenings for employment at schools, the law, (s. 1012.465, F.S.) *otherwise provides* that districts must apply the standards found in s. 1012.32, F.S. Thus districts must look to the language in s. 1012.32, F.S., to determine the scope of disqualifying offenses, using the “crimes of moral turpitude” standard, just as schools have been previously doing for their own employees. Rule 6B-4.009(6), used by many school districts for their own employees, defines moral turpitude as:

“Moral turpitude is 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.”

Any of the offenses listed in s. 435.04, F.S., may certainly be a disqualifier for employment at a district. However, each district must make its own case-by-case determination of whether an act or acts revealed in a background check disqualifies an individual from employment at the district. *See*, Palm Beach County Sch. Brd. v. Ray Ano, DOAH Case No. 03-2497, (Amended Recommended Order, July 1, 2004). In effect, the law now holds all contractual employees to the same standards as the district’s own employees with regard to background screening.

Questions and Answers

1. What is a Level 2 background check?

A Level 2 background check includes fingerprinting the individual and submitting the prints to the Florida Department of Law Enforcement (FDLE) to compare those records against the statewide criminal and juvenile records maintained by the FDLE and federal criminal records maintained through the Federal Bureau of Investigation. It may also include a local criminal records check through local law enforcement agencies.

2. Can the results of the background screening be shared among public school districts?

Yes, since an individual or agency independently authorized to view the background check information may receive such information from another similarly authorized if shared for the same purpose. See 28 CFR §20.21.

3. Are districts required to print individuals such as sports officials, musical event judges/conductors, charter bus drivers, or supplemental service providers?

Yes, if the individual (or the association for whom the individual acts as an agent) is contracted with the district to provide services, they must undergo a background screening. If there is no contract with the district and the individual is instead serving in a volunteer capacity, the individual is not required to undergo background screening, but must have his/her name searched against the sexual offender/predator database. Districts may wish to assist contracted vendors who serve multiple counties with the implementation of a mechanism to share the prints among the districts that utilize the same services.

4. Does the Lunsford Act apply to school volunteers who serve as mentors or chaperones?

No, since the Lunsford Act does not apply to volunteers, the background check requirement would not apply to such persons, unless they had contracted with the district for some other reason unrelated to their duties as a volunteer. However, districts are advised that they have the discretion to establish standards applicable to volunteers, and must search volunteers against the sexual offender/predator database. See s. 943.04351, F.S.

5. Can a district print an individual under the age of 18?

Yes. Section 1012.465, F.S., does not contain an age limitation for the background check requirement.

6. Does the Lunsford Act require all contractors and their subcontractors, including any of their employees working at a public school, to be screened?

Yes. Contractual personnel are described as any vendor, individual, or entity under contract with the school board. Subcontractors are considered to also be a contractor with the district for purposes of the Act. Thus, any employee of an entity under contract with a district would need to be screened. For example: If “ACME Construction Company” is a subcontractor to “ABC Construction,” the prime contractor, and both have personnel on-site at a public school, any employee of either company who goes on-site at a public school while students are present needs to first be fingerprinted.

7. Are contractors who are building a new classroom on an existing campus, separated by a fence and held to a “no fraternization” rule, required to be screened?

Yes. The statute specifically states “contractual personnel who are permitted access on school grounds when students are present.” There are no stipulations to mitigate the requirement.

8. Are school districts required to do the actual printing of contractual vendors?

Yes. The school district ORI must be utilized; however, it is up to the district to determine what live scan device(s) to use. Pursuant to s. 1012.465(2), F.S., the person must file a complete electronic set of fingerprints with the district school superintendent of the employee or contracting school district.

9. Are persons serving as a School Advisory Council (SAC) member required to be screened?

No. If the SAC member is a parent volunteer, no printing is required. However, districts are required to search volunteers against the sexual offender/predator database. See s. 943.04351, F.S. Additionally, if the person is also contracted with or employed by the school, a background screening would be required for school-based activities conducted pursuant to the contract.

10. Will there be a statewide database available to assist school districts with vendor printing so vendors will not be required to be printed in multiple districts?

Not at this time. Since each district reviews the records to make its own determination of whether an act constitutes a “crime of moral turpitude,” unless there is a decision among districts to agree on whether a specific act should disqualify an individual, no statewide database would work. However, nothing bars multiple districts, or all districts, from working together to agree on standards and to share records of individuals working in multiple districts to avoid duplication of efforts.

11. What funding sources may be available to the districts to assist with implementation of the Act?

The Act states that the cost of background screening may be borne by the district school board, the contractor, or the person being fingerprinted; however, no specific funds were allocated to pay for such costs. Districts may use their unrestricted operating funds to cover the cost of background screenings.

12. Does a contractor/vendor or employee who fails to pass a Level 2 background check have a right to a hearing to challenge the accuracy of the screening results?

Yes. Federal regulations provide that such persons may be entitled to request an opportunity to obtain a copy of the relevant information for the purposes of challenge and correction if he or she disputes its accuracy. The regulations also provide that the state should provide procedures for an administrative appeal should the state criminal justice agency refuse to correct challenged information to the satisfaction of the individual to whom the information relates. See 28 CFR §20.21(g). Those wanting to dispute the accuracy of the results of a criminal history record should call the FDLE Quality Control Section at 850-410-7898, if the concern is with the Florida record. If the concern is with the out-of-state record, the call should go to the FBI at 304-625-2000.

13. May districts condition the award of contractual services on the prospective vendor warranting that all employees coming onto school premises have been fingerprinted?

Yes. Contracts should state that failure to do so will constitute a material breach and subject the offending contractor to liquidated damages.

14. How should the districts monitor who has been printed and who should be allowed on campus or not?

The key for any monitoring program is to ensure that, once printed, when an individual returns to the district to work, the district can ensure that the person returning today is the same person they printed last week. Districts should 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. Ultimately, the responsibility to ensure that campuses are accessed by properly screened and approved individuals remains with each district, and each district must implement processes that are effective based on each school's unique situation.

15. Who makes the decision after the print has been taken as to whether or not the vendor/subcontractor is allowed on campus (i.e., is possessed of "good moral character")?

The employing or contracting district makes the decision to allow the individual to be "cleared" or not. The results of the criminal history check may not be released to the employer or the contractor. (See Question 17 for further information.)

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

No. It is the employing district that must determine whether the information revealed in the background check renders an individual fit to serve in that district. Pursuant to efforts to increase cooperation, districts may consult and agree on disqualifying offenses.

17. What are the specific responsibilities of the school district once the prints have been taken?

Background screening records conducted pursuant to s. 1012.465 or s. 1012.32, F.S., may contain confidential information. The district may only share the background screening results and the details of the record with the individual (or his/her attorney in fact) that is being screened or with other public school districts. For example, John Smith is subcontracted through Company A. John Smith may

review the results; however, other employees, including supervisory employees of Company A, may not.

18. How are emergency situations handled? For example, in a state of emergency such as a hurricane, how would a district print and screen all of those workers?

For repair and maintenance matters, districts may wish to use the services of individuals who have been screened and previously determined to be cleared. Many times, those providing services in times of natural disaster or state of emergency are volunteers; in such cases there is no requirement for background screening. Additionally, those called to assist with natural disaster emergency services are often from FEMA and/or the National Guard, and are not contracted to provide services, but rather to assess the damage, assist with recovery, and maintain problems associated with looting and vandalism. These individuals (FEMA/National Guard) would not be required to undergo background screening.

19. Are the employees of Federal Express, UPS/Postal Service, or utility type providers required to be screened prior to coming onto a public school campus?

No, since these individuals are not typically contracted with districts. However, in the event a district executes a contract with a provider, for example to lock in a certain rate for services, then such delivery personnel would need to be screened.

20. Are employees of food service vendors for items such as milk, sodas, and snacks required to be screened if coming onto public school campuses?

Yes, if the individual is employed or contracted with a district, the requirement to be background screened is applicable. Districts may choose to allow vendors to access school grounds during hours when no students are present, which would negate the background screening requirement.

21. Are persons who may be employed with a company that contracts with a district, but who come onto school grounds for unrelated purposes such as to volunteer or mentor, required by the Lunsford Act to undergo a Level 2 background screening?

No. The act applies to “contractual personnel,” i.e., those coming onto a campus for purposes specifically associated with the contract.

22. Should districts background screen individual recruiters for universities, the military/ROTC, or college sports whose employers do not have a contract with the district?

No, if a district has verified that no contractual relationship exists. If there is no contract with the district, the individual is not required to undergo background

screening, but should be treated as a volunteer and have their name searched against the sexual offender/predator database.

23. Should districts background screen vendors for high school rings, caps, and gowns?

Yes, if there is a contractual relationship, the individuals should be background screened. Organizations that provide such services generally have contractual relationships to provide the services and would, therefore, be required to undergo background screening.

24. Must affected persons, who may have been previously fingerprinted for other reasons in the past, again be fingerprinted prior to coming onto school grounds when children are present?

Yes. The Act requires that the Level 2 background checks be of the current records maintained in the FDLE/FBI databases for an individual, thus necessitating a new background screening prior to going to work for the first time on a public school campus.

25. Are vendors who provide goods or services to a district pursuant to a purchase order issued against a State Term Contract between the vendor and the state of Florida subject to a Level 2 background check?

No. Under the terms of the State Term Contract (Contract), the parties to the Contract are the vendor and the Department of Management Services. The terms also provide that the vendor and the district have no remedies as to one another and that the school board, as a customer under the Contract, does not become a party to the Contract. Thus, such vendors who are not under contract with the school board are not subject to the Act.