

State of Arkansas
89th General Assembly
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A Bill

SENATE BILL 457

By: Senator Elliott
By: Representative Lenderman

For An Act To Be Entitled

AN ACT TO AMEND ARKANSAS LAWS GOVERNING BACKGROUND CHECKS FOR EDUCATORS, FISCAL OFFICERS, NONLICENSED SCHOOL DISTRICT STAFF, AND STUDENT TEACHERS; AND FOR OTHER PURPOSES.

Subtitle

TO AMEND ARKANSAS LAWS GOVERNING BACKGROUND CHECKS FOR EDUCATORS, FISCAL OFFICERS, NONLICENSED SCHOOL DISTRICT STAFF, AND STUDENT TEACHERS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 6-17-410 is amended to read as follows:

6-17-410. Teacher licensure -- ~~First-time applicant~~ Application, renewal application, revocation, suspension, and probation.

(a)(1)(A)(i) ~~Each first-time~~ An applicant for a license issued by the State Board of Education and ~~each an~~ applicant for ~~his or her first~~ license renewal ~~on or after July 1, 1997~~, shall be required to apply to the Identification Bureau of the Department of Arkansas State Police for a statewide and nationwide criminal records check, to be conducted by the Department of Arkansas State Police and the Federal Bureau of Investigation.

(ii) The check shall conform to the applicable federal standards and shall include the taking of fingerprints.

(iii) The Identification Bureau of the Department of Arkansas State Police may maintain these fingerprints in the automated



fingerprint identification system.

(iv) The Federal Bureau of Investigation shall promptly destroy the fingerprint card of the applicant.

(B) The applicant shall sign a release of information to the Department of Education and shall be responsible for the payment of any fee associated with the criminal records check.

~~(C)(i) The Department of Education shall be responsible for the payment of any fee associated with the criminal records check at the time of license renewal for employees of Arkansas public school districts, employees of other public education institutions located in Arkansas, and employees of the Department of Education.~~

~~(ii) Funding for the fees shall come from the Public School Fund.~~

(2) Upon completion of the criminal records check, the Identification Bureau of the Department of Arkansas State Police shall forward all releasable information obtained concerning the applicant to the Department of Education.

(3)(A) ~~Each first-time~~ An applicant for a license issued by the State Board of Education and ~~each~~ an applicant for ~~his or her first~~ license renewal ~~on or after July 1, 1997,~~ shall be required to request through the Department of Education a Child Maltreatment Central Registry check to be conducted by the Department of Human Services.

(B) The applicant shall sign a release of information to the Department of Education and is responsible for the payment of any fee associated with the Child Maltreatment Central Registry check.

(C) The Department of Human Services shall forward all releasable information concerning the applicant to the Department of Education upon completion of the Child Maltreatment Central Registry check.

(b)(1) The state board may issue a six-month nonrenewable letter of provisional eligibility for licensure ~~to a first-time applicant~~ pending the results of the criminal records check and the Child Maltreatment Central Registry check. However, the Commissioner of Education may extend the period of provisional eligibility to the end of that contract year if:

(A) The applicant is employed by a ~~local~~ school district or open-enrollment public charter school; and

(B) The results of the criminal records check or the Child

Maltreatment Central Registry check are delayed.

(2) Upon receipt of information from the Identification Bureau of the Department of Arkansas State Police that the person holding a letter of provisional eligibility for licensure has pleaded guilty or nolo contendere to or has been found guilty of any offense listed in subsection (c) of this section, the state board shall immediately revoke the provisional eligibility.

(3) If the Department of Education receives information from the Department of Human Services that the person holding a letter of provisional eligibility for teacher licensure has a true report in the Child Maltreatment Central Registry, the State Board of Education shall immediately revoke the provisional eligibility of the teacher licensure applicant.

(c) The state board shall not issue a first-time license nor renew an existing license and shall revoke any existing license not up for renewal of any person who has a true report in the Child Maltreatment Central Registry or has pled guilty or nolo contendere to or has been found guilty of any of the following offenses by any court in the State of Arkansas or of any similar offense by a court in another state or of any similar offense by a federal court:

- (1) Capital murder as prohibited in § 5-10-101;
- (2) Murder in the first degree as prohibited in § 5-10-102 and murder in the second degree as prohibited in § 5-10-103;
- (3) Manslaughter as prohibited in § 5-10-104;
- (4) Battery in the first degree as prohibited in § 5-13-201 and battery in the second degree as prohibited in § 5-13-202;
- (5) Aggravated assault as prohibited in § 5-13-204;
- (6) Terroristic threatening in the first degree as prohibited in § 5-13-301;
- (7) Kidnapping as prohibited in § 5-11-102;
- (8) Rape as prohibited in § 5-14-103;
- (9) Sexual assault in the first degree, second degree, third degree, and fourth degree as prohibited in §§ 5-14-124 -- 5-14-127;
- (10) Incest as prohibited in § 5-26-202;
- (11) Engaging children in sexually explicit conduct for use in visual or print media, transportation of minors for prohibited sexual conduct, employing or consenting to the use of a child in a sexual

performance, or producing, directing, or promoting a sexual performance by a child as prohibited in §§ 5-27-303, 5-27-305, 5-27-402, and 5-27-403;

(12) Distribution to minors as prohibited in § 5-64-406;

(13) Any felony in violation of the Uniform Controlled Substances Act, § 5-64-101 et seq.;

(14) Sexual indecency with a child as prohibited in § 5-14-110;

(15) Endangering the welfare of a minor in the first degree as prohibited in § 5-27-205;

(16) Pandering or possessing visual or print medium depicting sexually explicit conduct involving a child as prohibited by § 5-27-304;

(17) False imprisonment in the first degree as prohibited in § 5-11-103;

(18) Permanent detention or restraint as prohibited in § 5-11-106;

(19) Permitting abuse of a child as prohibited in § 5-27-221(a);

(20) Negligent homicide as prohibited by § 5-10-105(a);

(21) Assault in the first degree as prohibited by § 5-13-205;

(22) Coercion as prohibited by § 5-13-208;

(23) Public sexual indecency as prohibited by § 5-14-111;

(24) Indecent exposure as prohibited by § 5-14-112;

(25) Endangering the welfare of a minor in the second degree as prohibited by § 5-27-206;

(26) Criminal attempt, criminal solicitation, or criminal conspiracy as prohibited in §§ 5-3-201, 5-3-202, 5-3-301, and 5-3-401, to commit any of the offenses listed in this subsection;

(27) Computer child pornography as prohibited in § 5-27-603;

(28) Computer exploitation of a child in the first degree as prohibited in § 5-27-605;

(29) Felony theft as prohibited in §§ 5-36-103 -- 5-36-106 and 5-36-202;

(30) Robbery as prohibited by §§ 5-12-102 and 5-12-103;

(31) Breaking or entering as prohibited by § 5-39-202;

(32) Burglary as prohibited by § 5-39-201 and aggravated residential burglary as prohibited by § 5-39-204;

(33) Forgery as prohibited by § 5-37-201; ~~and~~

(34) Video voyeurism as prohibited by § 5-16-101;

- (35) Domestic battering in the first degree as prohibited by § 5-26-303;
- (36) Domestic battering in the second degree as prohibited by § 5-26-304;
- (37) Felony violation of an order of protection as prohibited by § 5-53-134;
- (38) Prostitution as prohibited by § 5-70-102;
- (39) Sexual solicitation as prohibited by § 5-70-103;
- (40) Promoting prostitution in the first degree as prohibited by § 5-70-104;
- (41) Promoting prostitution in the second degree as prohibited by § 5-70-105;
- (42) Stalking as prohibited by § 5-71-229;
- (43) Failure to notify by a mandated reporter in the first degree as prohibited by § 12-18-201; and
- (44) Any felony not listed in this subsection (c) and involving physical or sexual injury, mistreatment, or abuse against another.

(d)(1) For the purposes of this subsection (d):

- (A) "Cause" means any of the following:
 - (i) Holding a license obtained by fraudulent means;
 - (ii) Revocation of a license in another state;
 - (iii) Intentionally compromising the validity or security of any student test or testing program administered by or required by the state board or the Department of Education;
 - (iv) Having the completed examination test score of any testing program required by the state board for teacher licensure declared invalid by the testing program company and so reported to the Department of Education by the testing company;
 - (v) Having an expunged or a pardoned conviction for any sexual or physical abuse offense committed against a child or any offense in subsection (c) of this section;
 - (vi) Failing to establish or maintain the necessary requirements and standards set forth in Arkansas law or state board rules and regulations for teacher licensure;
 - (vii) Knowingly submitting or providing false or misleading information or knowingly failing to submit or provide information

requested or required by law to the Department of Education, the state board, or the Division of Legislative Audit;

(viii) Knowingly falsifying or directing another to falsify any grade given to a student, whether the grade was given for an individual assignment or examination or at the conclusion of a regular grading period; or

(ix) Having a true report in the Child Maltreatment Central Registry; and

(B) "Child" means a person under twenty-one (21) years of age or enrolled in the public schools of the State of Arkansas.

(2) For cause as stated in this subsection (d), the state board is authorized to:

(A) Revoke a license permanently;

(B) Suspend a license for a terminable period of time or indefinitely; or

(C) Place a person on probationary status for a terminable period of time with the license to be revoked or suspended if the probationary period is not successfully completed.

(e)(1) Before taking an action under subsections (c) or (d) of this section, the state board shall provide a written notice of the reason for the action and shall afford the person against whom the action is being considered the opportunity to request a hearing.

(2) A written request for a hearing must be received by the state board no more than thirty (30) days after the notice of the denial, nonrenewal, or revocation of the license is received by the person who is the subject of the proposed action.

(3) Upon written notice that a revocation, suspension, or probation is being sought by the state board for a cause set forth, a person may:

(A) Decline to answer the notice, in which case the state board shall hold a hearing ~~shall be held before the state board~~ to establish by a preponderance of the evidence that cause for the proposed action exists;

(B)(i) Contest the complaint and request a hearing in writing, in which case the person shall be given an evidentiary hearing before the state board if one is requested.

(ii) If the person requesting the hearing fails to

appear at the hearing, the hearing shall proceed in the manner described in subdivision (e)(3)(A) of this section;

(C) Admit the allegations of fact and request a hearing before the state board in mitigation of any penalty that may be assessed; or

(D) Stipulate or reach a negotiated agreement, which must be approved by the state board.

(f)(1) The revocation provisions of subsection (c) of this section may be waived, or a license may be suspended or placed on probation by the state board upon request by:

(A) The board of directors of a ~~local~~ school district or open-enrollment public charter school;

(B) An affected applicant for licensure; ~~or~~

(C) The person holding a license subject to revocation; or

(D) An unlicensed individual admitted to a teacher preparation program approved by the department.

(2) Circumstances for which a waiver may be granted shall include without limitation the following:

(A) The age at which the crime or incident was committed;

(B) The circumstances surrounding the crime or incident;

(C) The length of time since the crime or incident;

(D) Subsequent work history;

(E) Employment references;

(F) Character references; and

(G) Other evidence demonstrating that the applicant does not pose a threat to the health or safety of school children or school personnel.

(3)(A) An unlicensed individual who is disqualified from licensure by subsection (c) of this section may apply for a waiver prior to applying for licensure by submitting to the department:

(i) Written request for a hearing;

(ii) Proof of acceptance or enrollment in a teacher preparation program approved by the department; and

(iii) Written recommendation from the teacher preparation program.

(B) If the state board approves a waiver after a hearing, the individual may obtain a license only upon:

(i) Successful completion of the teacher preparation program; and

(ii) Fulfillment of all other requirements for licensure.

(C) A waiver granted under subdivision (f)(3)(A) of this section shall also operate as a waiver under § 6-17-414 for an unlicensed individual to work for a school district as a student teacher.

(g)(1) The superintendent of each school district or open-enrollment public charter school shall report to the state board the name of any person holding a license issued by the state board and currently employed or employed during the two (2) previous school years by the ~~local~~ school district or open-enrollment public charter school who:

(A) Has pleaded guilty or nolo contendere to or has been found guilty of a felony or any misdemeanor listed in subsection (c) of this section;

(B) Holds a license obtained by fraudulent means;

(C) Has had a similar license revoked in another state;

(D) Has intentionally compromised the validity or security of any student test or testing program administered or required by the Department of Education;

(E) Has knowingly submitted falsified information or failed to submit information requested or required by law to the Department of Education, the state board, or the division;

(F) Has failed to establish or maintain the necessary requirements and standards set forth in Arkansas law or Department of Education rules for teacher licensure; or

(G) Has a true report in the Child Maltreatment Central Registry.

(2) Failure of a superintendent to report information as required by this subsection may result in sanctions imposed by the state board.

(h)(1) Any information received by the Department of Education from the Identification Bureau of the Department of Arkansas State Police or the Department of Human Services pursuant to subsection (a) of this section shall not be available for examination except by the affected applicant for licensure or his or her duly authorized representative, and no record, file,

or document shall be removed from the custody of the Department of Education.

(2) Any information made available to the affected applicant for licensure or the person whose license is subject to revocation shall be information pertaining to that applicant only.

(3) Rights of privilege and confidentiality established under this section shall not extend to any document created for purposes other than this background check.

(i) The state board shall adopt the necessary rules to fully implement the provisions of this section.

SECTION 2. Arkansas Code § 6-17-411 is amended to read as follows:

6-17-411. Criminal records check as a condition for initial employment of licensed personnel.

(a)(1)(A) Except as provided in subdivision (a)(1)(B) of this section, the board of directors of ~~a local school district~~ an educational entity shall require as a condition for initial employment by the ~~school district~~ educational entity that any person holding a license issued by the State Board of Education and making application for employment authorize release to the Department of Education the results of:

(i) Statewide and nationwide criminal records checks by the Identification Bureau of the Department of Arkansas State Police, which conform to the applicable federal standards and include the taking of the applicant's fingerprints; and

(ii) The Child Maltreatment Central Registry check by the Department of Human Services.

(B)(i) The board of directors of a ~~local~~ school district created by consolidation, annexation, or detachment may waive the requirements under subdivision (a)(1)(A) of this section for personnel who were employed by the affected district immediately prior to the annexation, consolidation, or detachment and who had a complete criminal background check conducted as a condition of the person's most recent employment with the affected district as required under this section.

(ii) As used in subdivision (a)(1)(B)(i) of this section, "affected district" means a school district that loses territory or students as a result of annexation, consolidation, or detachment.

(2) Unless the employing ~~school district's~~ educational entity's

board of directors has taken action to pay for the cost of criminal background checks or the Child Maltreatment Central Registry checks required by this section, the employment applicant shall be responsible for the payment of any fee associated with the criminal records check and the Child Maltreatment Central Registry check.

(3) At the conclusion of the criminal records check required by this section, the Identification Bureau of the Department of Arkansas State Police may maintain the fingerprints in the automated fingerprint identification system.

(4)(A) Any information received by the Department of Education from the Identification Bureau of the Department of Arkansas State Police or the Department of Human Services pursuant to this section shall not be available for examination except by the affected applicant for employment or his or her duly authorized representative, and no record, file, or document shall be removed from the custody of the Department of Education.

(B) Any information made available to the affected applicant for employment shall be information pertaining to that applicant only.

(C) Rights of privilege and confidentiality established under this section shall not extend to any document created for purposes other than this background check.

(5) The Department of Education shall promptly inform the board of directors of the ~~local school district~~ educational entity whether or not the affected applicant is eligible for employment as provided by subsection (b) of this section.

(b)(1)(A) No person holding a license from the state board shall be eligible for employment by a ~~local school district~~ an educational entity if the results of the criminal records check released to the Department of Education by the applicant reveal that the applicant has pleaded guilty or nolo contendere to or has been found guilty of any offense that will or may result in license revocation by the state board under § 6-17-410, unless the state board waives revocation.

(B) No person holding a license issued by the state board shall be eligible for employment by a ~~local school district~~ an educational entity if the results of the Child Maltreatment Central Registry check released to the Department of Education reveal that the applicant has a true

report in the Child Maltreatment Central Registry, unless the state board waives revocation under § 6-17-410.

(2) However, the board of directors of ~~a local school district~~ an educational entity is authorized to offer provisional employment to the affected applicant pending receipt of eligibility information from the Department of Education.

(c) As used in this section, "educational entity" means a school district, open-enrollment public charter school, education service cooperative, or the Department of Education.

SECTION 3. Arkansas Code § 6-17-414 is amended to read as follows:

6-17-414. Criminal records check as a condition for initial employment of nonlicensed personnel.

(a)(1)(A)(i) Except as provided in subdivision (a)(1)(C) of this section, the board of directors of ~~a local school district or an~~ educational entity ~~education service cooperative~~ shall require as a condition for initial employment or noncontinuous reemployment in a nonlicensed staff position any person making application to apply to the Identification Bureau of the Department of Arkansas State Police for statewide and nationwide criminal records checks, the latter to be conducted by the Federal Bureau of Investigation.

(ii) The checks shall conform to the applicable federal standards and shall include the taking of fingerprints.

(iii) The Identification Bureau of the Department of Arkansas State Police may maintain these fingerprints in the automated fingerprint identification system.

(iv) The Federal Bureau of Investigation shall promptly destroy the fingerprint card of the applicant.

~~(v) As used in this section, "nonlicensed staff position" includes parental monitors on school buses as permitted under § 6-19-127.~~

(B) The person shall sign a release of information to the Department of Education. Unless the employing ~~school district~~ educational entity's board of directors has taken action to pay for the cost of criminal background checks required by this section, the employment applicant shall be responsible for the payment of any fee associated with the criminal records

checks.

(C)(i) The board of directors of a ~~local~~ school district created by consolidation, annexation, or detachment may waive the requirements under subdivisions (a)(1)(A) and (B) of this section for personnel who were employed by the affected district immediately prior to the annexation, consolidation, or detachment and who had complete criminal background checks conducted as a condition of the person's most recent employment with the affected district as required under this section.

(ii) As used in subdivision (a)(1)(C)(i) of this section, "affected district" means a school district that loses territory or students as a result of annexation, consolidation, or detachment.

(2) Upon completion of the criminal records check, the Identification Bureau of the Department of Arkansas State Police shall forward all releasable information obtained concerning the person to the Department of Education, which shall promptly inform the board of directors of the ~~local school district or education service cooperative~~ educational entity whether or not the applicant is eligible for employment as provided by subsection (b) of this section.

(3)(A) ~~A school district~~ The board of directors of an educational entity shall require as a condition for initial employment or noncontinuous reemployment of all nonlicensed personnel a Child Maltreatment Central Registry check by the Department of Human Services.

(B) The applicant shall sign a release of information to the Department of Education and shall be responsible for the payment of any fee associated with the Child Maltreatment Central Registry check.

(C) The Department of Human Services shall forward all releasable information concerning the applicant to the Department of Education upon completion of the Child Maltreatment Central Registry check.

(b) No person, including without limitation nonlicensed persons who provide services as a substitute teacher, shall be eligible for employment, whether initial employment, reemployment, or continued employment, by a ~~local school district or education service cooperative~~ an educational entity in a nonlicensed staff position if that person has a true report in the Child Maltreatment Central Registry or has pled guilty or nolo contendere to or has been found guilty of any of the following offenses by any court in the State

of Arkansas or of any similar offense by a court in another state or of any similar offense by a federal court:

- (1) Capital murder as prohibited in § 5-10-101;
- (2) Murder in the first degree as prohibited in § 5-10-102 and murder in the second degree as prohibited in § 5-10-103;
- (3) Manslaughter as prohibited in § 5-10-104;
- (4) Battery in the first degree as prohibited in § 5-13-201 and battery in the second degree as prohibited in § 5-13-202;
- (5) Aggravated assault as prohibited in § 5-13-204;
- (6) Terroristic threatening in the first degree as prohibited in § 5-13-301;
- (7) Kidnapping as prohibited in § 5-11-102;
- (8) Rape as prohibited in § 5-14-103;
- (9) Sexual assault in the first degree, second degree, third degree, and fourth degree, as prohibited in §§ 5-14-124 – 5-14-127;
- (10) Incest as prohibited in § 5-26-202;
- (11) Engaging children in sexually explicit conduct for use in visual or print media, transportation of minors for prohibited sexual conduct, employing or consenting to the use of a child in a sexual performance, or producing, directing, or promoting a sexual performance by a child as prohibited in §§ 5-27-303, 5-27-305, 5-27-402, and 5-27-403;
- (12) Distribution to minors as prohibited in § 5-64-406;
- (13) Any felony in violation of the Uniform Controlled Substances Act, § 5-64-101 et seq.;
- (14) Criminal attempt, criminal solicitation, or criminal conspiracy as prohibited in §§ 5-3-201, 5-3-202, 5-3-301, and 5-3-401, to commit any of the offenses listed in this subsection (b);
- (15) Sexual indecency with a child as prohibited in § 5-14-110;
- (16) Endangering the welfare of a minor in the first degree as prohibited in § 5-27-205;
- (17) Pandering or possessing visual or print medium depicting sexually explicit conduct involving a child as prohibited by § 5-27-304;
- (18) False imprisonment in the first degree as prohibited in § 5-11-103;
- (19) Permanent detention or restraint as prohibited in § 5-11-106;

- (20) Permitting abuse of a child as prohibited in § 5-27-221(a);
- (21) Negligent homicide as prohibited by § 5-10-105(a);
- (22) Assault in the first degree as prohibited by § 5-13-205;
- (23) Coercion as prohibited by § 5-13-208;
- (24) Public sexual indecency as prohibited by § 5-14-111;
- (25) Indecent exposure as prohibited by § 5-14-112;
- (26) Endangering the welfare of a minor in the second degree as prohibited by § 5-27-206;
- (27) Computer child pornography as prohibited in § 5-27-603;
- (28) Computer exploitation of a child in the first degree as prohibited in § 5-27-605;
- (29) Felony theft as prohibited in §§ 5-36-103 -- 5-36-106 and 5-36-203;
- (30) Robbery as prohibited by §§ 5-12-102 and 5-12-103;
- (31) Breaking or entering as prohibited by § 5-39-202;
- (32) Burglary as prohibited by § 5-39-201 and aggravated residential burglary as prohibited by § 5-39-204;
- (33) Forgery as prohibited by § 5-37-201; ~~and~~
- (34) Video voyeurism as prohibited by § 5-16-101;
- (35) Domestic battering in the first degree as prohibited by § 5-26-303;
- (36) Domestic battering in the second degree as prohibited by § 5-26-304;
- (37) Felony violation of an order of protection as prohibited by § 5-53-134;
- (38) Prostitution as prohibited by § 5-70-102;
- (39) Sexual solicitation as prohibited by § 5-70-103;
- (40) Promoting prostitution in the first degree as prohibited by § 5-70-104;
- (41) Promoting prostitution in the second degree as prohibited by § 5-70-105;
- (42) Stalking as prohibited by § 5-71-229;
- (43) Failure to notify by a mandated reporter in the first degree as prohibited by § 12-18-201; and
- (44) Any felony not listed in this subsection (b) and involving physical or sexual injury, mistreatment, or abuse against another.

(c) However, the board of directors of ~~a local school district or education service cooperative~~ an educational entity is authorized to offer provisional employment to an applicant pending receipt of eligibility information from the Department of Education.

(d)(1) Any information received by the Department of Education from the Identification Bureau of the Department of Arkansas State Police or the Department of Human Services pursuant to this section shall not be available for examination except by the affected applicant for employment or his or her duly authorized representative, and no record, file, or document shall be removed from the custody of the Department of Education.

(2) Any information made available to the affected applicant for employment shall be information pertaining to that applicant only.

(3) Rights of privilege and confidentiality established under this section shall not extend to any document created for purposes other than this background check.

(e) The State Board of Education shall determine that an applicant for employment with ~~a school district~~ an educational entity in a nonlicensed staff position is ineligible for employment if the applicant:

(1) Is required to pass an examination as a requirement of his or her position and the applicant's completed examination test score was declared invalid because of the applicant's improper conduct;

(2) Has an expunged or a pardoned conviction for any sexual or physical abuse offense committed against a child or any offense listed in subsection (b) of this section;

(3) Knowingly submits or provides false or misleading information or knowingly fails to submit or provide information requested or required by law to the Department of Education, the state board, or the Division of Legislative Audit;

(4) Knowingly falsifies or directs another to falsify any grade given to a student, whether the grade was given for an individual assignment or examination or at the conclusion of a regular grading period; or

(5) Has a true report in the Child Maltreatment Central Registry.

(f)(1) The superintendent or director of ~~each school district~~ an educational entity shall report to the state board the name of any person currently employed by the ~~local school district~~ educational entity who:

(A) Has pleaded guilty or nolo contendere to or has been found guilty of a felony or any misdemeanor listed in subsection (b) of this section;

(B) Has intentionally compromised the validity or security of any student test or testing program administered or required by the Department of Education;

(C) Has knowingly submitted falsified information or failed to submit information requested or required by law to the Department of Education, the state board, or the division; or

(D) Has a true report in the Child Maltreatment Central Registry.

(2) The failure of a superintendent or director to report information as required by this subsection (f) may result in sanctions imposed by the state board.

(g)(1)(A) If an applicant for employment with ~~a school district~~ an educational entity has been determined ineligible for employment because the applicant has a true report in the Child Maltreatment Central Registry, the ~~local school~~ board of directors of an educational entity shall provide a written notice to the applicant and shall afford the applicant the opportunity to request a waiver.

(B) If an applicant for employment with an educational entity has been determined ineligible for employment because the applicant has pled guilty or nolo contendere to, has been found guilty of, or has an expunged or a pardoned conviction for a sexual or physical abuse offense committed against a child or an offense listed in subsection (b) of this section, the board of directors of the educational entity shall provide a written notice to the applicant and shall afford the applicant the opportunity to request a waiver.

(2) The waiver shall be requested no more than thirty (30) days after receipt of the notice of the denial of employment.

(3) The waiver may be requested by:

(A) The hiring official;

(B) The affected applicant; or

(C) The person subject to dismissal.

(4) Circumstances for which a waiver may be granted shall include without limitation the following:

(A) The age at which the incident was committed;
 (B) The circumstances surrounding the incident;
 (C) The length of time since the incident;
 (D) Subsequent work history;
 (E) Employment references;
 (F) Character references; and
 (G) Other evidence demonstrating that the applicant does not pose a threat to the health or safety of school children or school personnel.

(5)(A) The board of directors of the educational entity may grant the waiver by adoption of a written resolution identifying the applicant by name and listing the specific facts and circumstances for which the waiver is being granted.

(B) After adopting a resolution granting a waiver, the board of directors of an educational entity shall immediately provide a copy of the resolution and waiver request to the Department of Education.

(C) The resolution and waiver request are public records subject to the provisions of the Freedom of Information Act of 1967, § 25-19-101 et seq.

(6) A waiver request may be discussed and acted upon by the board of directors of an educational entity only in an open public meeting and not in an executive session.

(h) As used in this section:

(1) "Educational entity" means a school district, open-enrollment public charter school, or education service cooperative; and

(2) "Nonlicensed staff position" includes parental monitors on school buses as permitted under § 6-19-127.

SECTION 4. Arkansas Code § 6-17-421 is amended to read as follows:
 6-17-421. Criminal records check for fraudulent acts.

(a) For purposes of this section:

(1) "Applicant" means an individual who is applying for initial employment as a fiscal officer of ~~a school district~~ an educational entity;

(2) "Educational entity" means:

(A) A school district;

(B) An open-enrollment public charter school; or

(C) An education service cooperative;

(3) "Fiscal officer" means any licensed or ~~classified~~ nonlicensed employee of a ~~school district or education service cooperative~~ an educational entity who has any right, duty, or responsibility to access funds of a ~~school district~~ an educational entity in excess of five thousand dollars (\$5,000), specifically including, ~~but not limited to,~~ without limitation superintendents, fiscal officers, and bookkeepers; and

~~(3)~~(4) "Fraudulent act" means an act:

(A) Performed willfully and with the specific intent to deceive or cheat for the purpose of either causing some financial loss to another or bringing about some financial gain to the actor; and

(B) For which the actor has pleaded guilty or nolo contendere to or has been found guilty by any court in this state, by a court in another state, or by a federal court.

(b)(1)(A) Upon making application for employment in a position as a fiscal officer of a ~~school district~~ an educational entity, the board of directors of a ~~school district~~ the educational entity shall require the employment applicant to authorize release to the Department of Education the results of statewide and nationwide criminal records checks by the Identification Bureau of the Arkansas State Police.

(B) Unless the employing ~~school district's~~ educational entity's board of directors has taken action to pay for the cost of criminal background checks required by this section, the employment applicant shall be responsible for the payment of any fee associated with the criminal records check.

(2)(A) The criminal background check shall conform to the applicable federal standards and include the taking of the employment applicant's or currently employed fiscal officer's fingerprints.

(B) At the conclusion of the criminal records check required by this section, the Identification Bureau of the Department of Arkansas State Police may maintain the fingerprints in the automated fingerprint identification system.

(3)(A) Any information received by the Department of Education from the Identification Bureau of the Department of Arkansas State Police or the Department of Human Services pursuant to this section shall not be available for examination except by the affected applicant for employment or

his or her duly authorized representative, and no record, file, or document shall be removed from the custody of the Department of Education.

(B) Any information made available to the affected employment applicant or fiscal officer shall be information pertaining to that applicant only.

(C) Rights of privilege and confidentiality established under this section shall not extend to any document created for purposes other than the background check.

(4) The Department of Education shall promptly inform the board of directors of the ~~local school district~~ educational entity whether or not the affected employment applicant is eligible for employment as provided in this subsection.

(c)(1) No person shall be eligible for employment as a fiscal officer by a ~~local school district~~ an educational entity if the results of the criminal records check released to the Department of Education by the applicant reveals that the applicant has pleaded guilty or nolo contendere to or has been found guilty of a fraudulent act but only after an opportunity for a hearing before the State Board of Education upon reasonable notice in writing.

(2) However, the board of directors of a ~~local school district~~ an educational entity is authorized to offer provisional employment to the affected applicant pending receipt of eligibility information from the Department of Education.

(d)(1) The superintendent or director of ~~each school district~~ an educational entity shall report to the state board the name of any fiscal officer who is currently employed or was employed during the two (2) previous school years by the ~~local school district~~ educational entity who has pleaded guilty or nolo contendere to or has been found guilty of a fraudulent act.

(2) A superintendent or director who knowingly fails to report information as required by this subsection may be subject to sanctions imposed by the state board.

(e) A prosecuting attorney who prosecutes a person who he or she knows is a ~~school~~ an educational entity employee in a case in which the ~~school~~ employee has pleaded guilty or nolo contendere to or has been found guilty of a fraudulent act shall report the name of the employee and the nature of the crime to the ~~school district~~ educational entity in which the person is

employed and to the state board.

(f) A An educational entity shall dismiss from employment a fiscal officer who pleads guilty or nolo contendere to or has been found guilty of a fraudulent act ~~shall be dismissed from employment with the school district~~ but only after the fiscal officer has an opportunity for a hearing before the state board upon reasonable notice in writing.

(g)(1) The state board shall be entitled to consider:

(A) The age of the fiscal officer at the time the criminal act occurred;

(B) The length of time since the conviction;

(C) Whether the fiscal officer has pleaded guilty or nolo contendere to or has been found guilty of any other criminal violation since the original conviction;

(D) Whether the original conviction was expunged or pardoned; and

(E) Any other relevant facts.

(2) The state board after conducting a hearing and issuing a decision in writing may determine not to prevent the employment or not to require the termination of employment of the fiscal officer as required in subsections (c) and (f) of this section.

SECTION 5. Arkansas Code § 6-17-422(h), concerning the duties of the Professional Licensure Standards Board, is amended to add an additional subdivision to read as follows:

(4)(A) Adopt rules requiring a student admitted to a teacher education program offered by an institution of higher education in the state to:

(i) Apply to the Identification Bureau of the Department of Arkansas State Police for a statewide and nationwide criminal records check, to be conducted by the Department of Arkansas State Police and the Federal Bureau of Investigation; and

(ii) Request through the Department of Education a Child Maltreatment Central Registry check to be conducted by the Department of Human Services.

(B) The criminal records check and Child Maltreatment Central Registry check shall conform to the requirements and procedures of §

6-17-410 and applicable federal standards.

(C) The rules shall not require an institution of higher education to bar a student from enrollment due to a disqualifying criminal conviction or a true report in the Child Maltreatment Central Registry.

APPROVED: 03/21/2013

