

1 **EDUCATION BACKGROUND CHECK AMENDMENTS**

2 2016 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Stephen G. Handy**

5 Senate Sponsor: Ann Millner

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies provisions regarding criminal background checks for individuals
10 associated with education entities.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ amends definitions; and
- 14 ▶ amends certain provisions to comply with federal law.

15 **Money Appropriated in this Bill:**

16 None

17 **Other Special Clauses:**

18 None

19 **Utah Code Sections Affected:**

20 AMENDS:

21 **53A-1a-705**, as last amended by Laws of Utah 2015, Chapter 389

22 **53A-15-1502**, as enacted by Laws of Utah 2015, Chapter 389

23 **53A-15-1503**, as enacted by Laws of Utah 2015, Chapter 389

24 **53A-15-1504**, as enacted by Laws of Utah 2015, Chapter 389

26 *Be it enacted by the Legislature of the state of Utah:*

27 Section 1. Section **53A-1a-705** is amended to read:

28 **53A-1a-705. Eligible private schools.**

29 (1) To be eligible to enroll a scholarship student, a private school shall:

30 (a) have a physical location in Utah where the scholarship students attend classes and
31 have direct contact with the school's teachers;

32 (b) (i) (A) obtain an audit and report from a licensed independent certified public
33 accountant that conforms with the following requirements:

34 (I) the audit shall be performed in accordance with generally accepted auditing
35 standards;

36 (II) the financial statements shall be presented in accordance with generally accepted
37 accounting principles; and

38 (III) the audited financial statements shall be as of a period within the last 12 months;

39 or

40 (B) contract with a licensed independent certified public accountant to perform an
41 agreed upon procedure as follows:

42 (I) the agreed upon procedure shall be to determine that the private school has adequate
43 working capital to maintain operations for the first full year; and

44 (II) working capital shall be calculated by subtracting current liabilities from current
45 assets; and

46 (ii) submit the audit report or report of the agreed upon procedure to the board when
47 the private school applies to accept scholarship students;

48 (c) comply with the antidiscrimination provisions of 42 U.S.C. Sec. 2000d;

49 (d) meet state and local health and safety laws and codes;

50 (e) disclose to the parent of each prospective student, before the student is enrolled, the
51 special education services that will be provided to the student, including the cost of those
52 services;

53 (f) (i) administer an annual assessment of each scholarship student's academic
54 progress;

55 (ii) report the results of the assessment to the student's parent; and

56 (iii) make the results available to the assessment team evaluating the student pursuant
57 to Subsection [53A-1a-704\(6\)](#);

- 58 (g) employ or contract with teachers who:
59 (i) hold baccalaureate or higher degrees;
60 (ii) have at least three years of teaching experience in public or private schools; or
61 (iii) have the necessary special skills, knowledge, or expertise that qualifies them to
62 provide instruction:
63 (A) in the subjects taught; and
64 (B) to the special needs students taught;
65 (h) require the following individuals to submit to a nationwide, fingerprint-based
66 criminal background check and ongoing monitoring, in accordance with Section 53A-15-1503,
67 as a condition for employment or appointment, as authorized by the Adam Walsh Child
68 Protection and Safety Act of 2006, Pub. L. No. 109-248:
69 (i) an employee who does not hold a current Utah educator license issued by the board
70 under Title 53A, Chapter 6, Educator Licensing and Professional Practices Act;
71 (ii) a contract employee; and
72 (iii) a volunteer who is given significant unsupervised access to a student in connection
73 with the volunteer's assignment; and
74 (i) provide to parents the relevant credentials of the teachers who will be teaching their
75 students.
76 (2) A private school is not eligible to enroll scholarship students if:
77 (a) the audit report submitted under Subsection (1)(b) contains a going concern
78 explanatory paragraph; or
79 (b) the report of the agreed upon procedure submitted under Subsection (1)(b) shows
80 that the private school does not have adequate working capital to maintain operations for the
81 first full year, as determined under Subsection (1)(b).
82 (3) A home school is not eligible to enroll scholarship students.
83 (4) Residential treatment facilities licensed by the state are not eligible to enroll
84 scholarship students.
85 (5) A private school intending to enroll scholarship students shall submit an application

86 to the board by May 1 of the school year preceding the school year in which it intends to enroll
87 scholarship students.

88 (6) The board shall:

89 (a) approve a private school's application to enroll scholarship students, if the private
90 school meets the eligibility requirements of this section; and

91 (b) make available to the public a list of the eligible private schools.

92 (7) An approved eligible private school that changes ownership shall submit a new
93 application to the board and demonstrate that it continues to meet the eligibility requirements
94 of this section.

95 Section 2. Section **53A-15-1502** is amended to read:

96 **53A-15-1502. Definitions.**

97 As used in this part:

98 (1) "Authorized entity" means an LEA, qualifying private school, or the State Board of
99 Education that is authorized to request a background check and ongoing monitoring under this
100 part.

101 (2) "Bureau" means the Bureau of Criminal Identification within the Department of
102 Public Safety created in Section [53-10-201](#).

103 (3) "Contract employee" means an employee of a staffing service or other entity who
104 works at a public or private school under a contract [~~between the staffing service and the public~~
105 ~~or private school~~].

106 (4) "FBI" means the Federal Bureau of Investigation.

107 [~~(4)~~] (5) "Local education agency" or "LEA" means a school district, charter school,
108 or the Utah Schools for the Deaf and the Blind.

109 [~~(5)~~] (6) (a) "License applicant" means an applicant for a license issued by the State
110 Board of Education under Title 53A, Chapter 6, Educator Licensing and Professional Practices
111 Act.

112 (b) "License applicant" includes an applicant for reinstatement of an expired, lapsed,
113 suspended, or revoked license.

114 [~~(6)~~] (7) "Non-licensed employee" means an employee of an LEA or qualifying private
115 school that does not hold a current Utah educator license issued by the State Board of
116 Education under Title 53A, Chapter 6, Educator Licensing and Professional Practices Act.

117 [~~(7)~~] (8) "Personal identifying information" means:

- 118 (a) current name, former names, nicknames, and aliases;
- 119 (b) date of birth;
- 120 (c) address;
- 121 (d) telephone number;
- 122 (e) driver license number or other government-issued identification number;
- 123 (f) social security number; and
- 124 (g) fingerprints.

125 [~~(8)~~] (9) "Qualifying private school" means a private school that:

126 (a) enrolls students under Title 53A, Chapter 1a, Part 7, Carson Smith Scholarships for
127 Students with Special Needs Act~~[-];~~ and

128 (b) is authorized to conduct fingerprint-based background checks of national crime
129 information databases under the Adam Walsh Child Protection and Safety Act of 2006, Pub. L.
130 No. 109-248.

131 [~~(9)~~] (10) "Rap back system" means a system that enables authorized entities to receive
132 ongoing status notifications of any criminal history reported on individuals whose fingerprints
133 are registered in the system.

134 [~~(10)~~] (11) "WIN Database" means the Western Identification Network Database that
135 consists of eight western states sharing one electronic fingerprint database.

136 Section 3. Section **53A-15-1503** is amended to read:

137 **53A-15-1503. Background checks for non-licensed employees, contract**
138 **employees, volunteers, and charter school governing board members.**

139 (1) An LEA or qualifying private school shall:

140 (a) require the following individuals to submit to a nationwide criminal background
141 check and ongoing monitoring as a condition for employment or appointment:

- 142 (i) a non-licensed employee;
- 143 (ii) a contract employee;
- 144 (iii) a volunteer who will be given significant unsupervised access to a student in
145 connection with the volunteer's assignment; and
- 146 (iv) a charter school governing board member;
- 147 (b) collect the following from an individual required to submit to a background check
148 under Subsection (1)(a):
- 149 (i) personal identifying information;
- 150 (ii) subject to Subsection (2), a fee described in Subsection 53-10-108(15); and
- 151 (iii) consent, on a form specified by the LEA or qualifying private school, for:
- 152 (A) an initial fingerprint-based background check by the FBI and the bureau upon
153 submission of the application; and
- 154 (B) retention of personal identifying information for ongoing monitoring through
155 registration with the systems described in Section 53A-15-1505;
- 156 (c) submit the individual's personal identifying information~~[, including fingerprints,]~~ to
157 the bureau for:
- 158 (i) an initial fingerprint-based background check by the FBI and the bureau; and
- 159 (ii) ongoing monitoring through registration with the systems described in Section
160 53A-15-1505 if the results of the initial background check do not contain disqualifying
161 criminal history information as determined by the LEA or qualifying private school in
162 accordance with Section 53A-15-1506; and
- 163 (d) identify the appropriate privacy risk mitigation strategy that will be used to ensure
164 that the LEA or qualifying private school only receives notifications for individuals with whom
165 the LEA or qualifying private school maintains an authorizing relationship.
- 166 (2) An LEA or qualifying private school may not require an individual to pay the fee
167 described in Subsection (1)(b)(ii) unless the individual:
- 168 (a) has passed an initial review; and
- 169 (b) is one of a pool of no more than five candidates for the position.

170 (3) By September 1, 2018, an LEA or qualifying private school shall:
171 (a) collect the information described in Subsection (1)(b) from individuals:
172 (i) who were employed or appointed prior to July 1, 2015; and
173 (ii) with whom the LEA or qualifying private school currently maintains an authorizing
174 relationship; and

175 (b) submit the information to the bureau for ongoing monitoring through registration
176 with the systems described in Section 53A-15-1505.

177 (4) An LEA or qualifying private school that receives criminal history information
178 about a licensed educator under Subsection 53A-15-1504(5) shall assess the employment status
179 of the licensed educator as provided in Section 53A-15-1506.

180 (5) An LEA or qualifying private school may establish a policy to exempt an individual
181 described in Subsections (1)(a)(i) through (iv) from ongoing monitoring under Subsection (1) if
182 the individual is being temporarily employed or appointed.

183 Section 4. Section 53A-15-1504 is amended to read:

184 **53A-15-1504. Background checks for licensed educators.**

185 The State Board of Education shall:

186 (1) require a license applicant to submit to a nationwide criminal background check
187 and ongoing monitoring as a condition for licensing;

188 (2) collect the following from an applicant:

189 (a) personal identifying information;

190 (b) a fee described in Subsection 53-10-108(15); and

191 (c) consent, on a form specified by the State Board of Education, for:

192 (i) an initial fingerprint-based background check by the FBI and bureau upon
193 submission of the application;

194 (ii) retention of personal identifying information for ongoing monitoring through
195 registration with the systems described in Section 53A-15-1505; and

196 (iii) disclosure of any criminal history information to the individual's employing LEA
197 or qualifying private school;

198 (3) submit an applicant's personal identifying information~~[, including fingerprints,]~~ to
199 the bureau for:

200 (a) an initial fingerprint-based background check by the FBI and bureau; and

201 (b) ongoing monitoring through registration with the systems described in Section
202 [53A-15-1505](#) if the results of the initial background check do not contain disqualifying
203 criminal history information as determined by the State Board of Education in accordance with
204 Section [53A-15-1506](#);

205 (4) identify the appropriate privacy risk mitigation strategy that will be used to ensure
206 that the board only receives notifications for individuals with whom the State Board of
207 Education maintains an authorizing relationship;

208 (5) notify the employing LEA or qualifying private school upon receipt of any criminal
209 history information reported on a licensed educator employed by the LEA or qualifying private
210 school; and

211 (6) (a) collect the information described in Subsection (2) from individuals who were
212 licensed prior to July 1, 2015, by the individual's next license renewal date; and

213 (b) submit the information to the bureau for ongoing monitoring through registration
214 with the systems described in Section [53A-15-1505](#).