PG-5.520: CRIIMINAL HISTORY CHECKS FOR CONTRACTED SERVICES

Sec. 1. DEFINITIONS

"Continuing duties related to contracted services" are work duties that are performed pursuant to a contract to provide services to **Midland Academy Charter** on a regular, repeated basis rather than infrequently or one-time only.

A "covered contract employee" is an individual who:

1. Is employed or offered employment by a service contractor or a subcontractor of a service contractor, is an individual independent contractor of **Midland Academy Charter**, or is an individual subcontractor of a service contractor;
2. Has or will have continuing duties related to the contracted services;
3. Has or will have direct contact with students; and
4. Is not a student of (or enrolled in) **Midland Academy Charter**.

"Direct contact with students" is the contact that results from activities that provide substantial opportunity for verbal or physical interaction with students that is not supervised by a certified educator or other professional **Midland Academy Charter** employee. Contact with students that results from services that do not provide substantial opportunity for unsupervised interaction with a student or students, such as addressing an assembly, officiating a sports contest, or judging an extracurricular event, is not, by itself, direct contact with students. However, direct contact with students does result from any activity that provides substantial opportunity for unsupervised contact with students, which might include, without limitation, the provision of coaching, tutoring, or other services to students.

A "contracting entity" is an entity that contracts directly with **Midland Academy Charter** to provide services to **Midland Academy Charter**. However, when conducting an investigation or intervention regarding an alleged crime or act of child abuse on a school campus, a law enforcement agency or the Department of Family and Protective Services is not a contracting entity, and the investigator or intervener is not a covered contract employee.

A "subcontracting entity" is an entity that contracts with another entity that is not **Midland Academy Charter** to provide services to **Midland Academy Charter** or shared services arrangement.

Education Code 22.0834(p); *19 TAC 153.1101(2)-(3), (7), (10).*

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For guidelines on criminal history checks for public works contractors, please refer to PG-5.14 (Criminal History Checks for Public Works Contractors.

Sec. 2. CONTRACTOR RESPONSIBILITIES

Sec. 2.1. Employed Before January 1, 2008

An entity that contracts with **Midland Academy Charter** to provide services and any subcontractor of the entity shall obtain from any law enforcement or criminal justice agency or a private entity that is a consumer reporting agency governed by the Fair Credit Reporting Act (15 U.S.C. Section 1681 et seq.), all criminal history record information that relates to an employee of the entity who is employed before January 1, 2008, and who is not subject to a national criminal history record information review under Education Code 22.0834(b) if:

1. The employee has continuing duties related to the contracted services; and
2. The employee has direct contact with students.

Sec. 2.2. Employment Offered on or After January 1, 2008

A person who, on or after January 1, 2008, is offered employment by an entity that contracts with **Midland Academy Charter** or any subcontractor of the entity must submit to a national criminal history record information review if:

1. The employee or applicant has or will have continuing duties related to the contracted services; and
2. The employee or applicant has or will have direct contact with students.

The person must submit to the review before being employed or serving in a capacity described above.

An entity contracting with **Midland Academy Charter** and any subcontractor of the entity shall obtain all criminal history record information that relates to a person described above through the criminal history clearinghouse as provided by Government Code 411.0845.

A contracting entity shall require that a subcontracting entity obtain all criminal history record information that relates to a person described above.

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Sec. 2.3. Certification to Midland Academy Charter

The entity and any subcontractor of the entity shall certify to **Midland Academy Charter** that it received all of the criminal history record information required above. The entity and any subcontractor of the entity shall also certify that it will take reasonable steps to ensure that the conditions or precautions that have resulted in a determination that any person is not a covered contract employee continue to exist throughout the time that the contracted services are provided.

A subcontracting entity must certify to **Midland Academy Charter** and the contracting entity that the subcontracting entity has obtained all criminal history record information that relates to an employee described above at "Contractor Responsibilities: Employment Offered on or After January 1, 2008" and has obtained similar written certifications from the subcontracting entity's subcontractors.

A contracting entity and any subcontractor of the entity shall provide **Midland Academy Charter**, at its request, the information necessary for **Midland Academy Charter** to obtain criminal history record information for all covered contract employees.

A contracting entity complies with the requirements of this section if the contracting entity obtains a written statement from each subcontracting entity certifying that the subcontracting entity has obtained the required criminal history record information for employees of the subcontracting entity and the subcontracting entity has obtained certification from each of the subcontracting entity's subcontractors.

Sec. 2.4. Disqualifying Conviction

A contracting or subcontracting entity may not permit a person described above at "Contractor Responsibilities: Employed Before January 1, 2008" to provide services at a school if the employee has been convicted of, or placed on deferred adjudication community supervision for, a felony or misdemeanor offense that would prevent a person from being employed under Education Code 22.085(a).

A contracting entity shall not permit a covered contract employee to provide services at **Midland Academy Charter** if the employee has been convicted of, or placed on deferred adjudication community supervision for, a felony or misdemeanor offense that would prevent a person from being employed under Education Code 22.085.

Sec. 3. MIDLAND ACADEMY CHARTER RESPONSIBILITIES

Sec. 3.1. Employed Before January 1, 2008

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Midland Academy Charter may obtain from any law enforcement or criminal justice agency all criminal history record information that relates to a person described above at "Contractor Responsibilities: Employed Before January 1, 2008."

Sec. 3.2. Employment Offered on or After January 1, 2008

Midland Academy Charter may obtain the criminal history record information of a person described above at "Contractor Responsibilities: Employment Offered on or After January 1, 2008" through the criminal history clearinghouse as provided by Government Code 411.0845.

Sec. 3.3. Certification from Contractor

Midland Academy Charter shall ensure that each of its service contractors certify that the service contractor has obtained all required criminal history record information for covered contract employees.

Sec. 3.4. Disqualifying Conviction

Midland Academy Charter may not allow a covered contract employee to serve at Midland Academy Charter if Midland Academy Charter obtains information through a criminal history record information review that the covered contract employee has been convicted of, or placed on deferred adjudication community supervision for, a felony or misdemeanor offense that would prevent a person from being employed under Education Code 22.085. Midland Academy Charter may adopt a stricter standard.

Sec. 3.5. SBEC Notification

Pursuant to 19 TAC 249.14(d)(1), if Midland Academy Charter obtains information that a covered contract employee who holds a certificate issued by the State Board for Educator Certification (SBEC) has a reported criminal history, the Superintendent or the Superintendent's designee shall notify SBEC of that criminal history within seven calendar days of the date that information is obtained.

Education Code 22.0834; *19 TAC 153.1117(b)–(c)*.

Sec. 4. EMERGENCY EXCEPTION

In the event of an emergency, Midland Academy Charter may allow a covered contract employee to enter Midland Academy Charter property without the required criminal history record information review if the person is accompanied by a Midland Academy Charter employee.

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Midland Academy Charter may adopt rules regarding an emergency situation. *Education Code 22.0834(f)*; *19 TAC 153.1117(b)(2)*.

Sec. 5. CONTRACTORS PROVIDING TRANSPORTATION SERVICES

In addition to the requirements described above at "Criminal History: In General," if Midland Academy Charter contracts with a person for transportation services, Midland Academy Charter shall obtain criminal history record information from any law enforcement or criminal justice agency relating to a person employed by the person as a bus driver or a person the person intends to employ as a bus driver. A person who contracts with Midland Academy Charter to provide transportation services shall submit to Midland Academy Charter the name and other identification data required to obtain the criminal history record information of such persons. If Midland Academy Charter obtains information that such a person has been convicted of a felony or a misdemeanor involving moral turpitude, Midland Academy Charter shall inform the chief personnel officer of the person with whom Midland Academy Charter has contracted, and the person may not employ that person to drive a bus on which students are transported without the permission of the Board. *Education Code 22.084(a)–(b).*

Sec. 5.1. Commercial Transportation Company

In addition to the requirements described above at "Criminal History: In General," if Midland Academy Charter contracts with a commercial transportation company for transportation services, the company may obtain all criminal history record information that relates to a person employed by the company as a bus driver, bus monitor, or bus aide, or a person the company intends to employ in one of those positions. If the company obtains criminal history record information indicating that a person it employs or intends to employ has been convicted of a felony or a misdemeanor involving moral turpitude, the company may not, without the permission of the Board, employ that person to drive or serve as a bus monitor or bus aide on a bus on which students are transported. If the commercial transportation company obtains the criminal history record information, Midland Academy Charter is not required to do the same. *Education Code 22.084(c)-(d)*.

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