PG-5.530: CRIMINAL HISTORY CHECKS FOR PUBLIC WORKS CONTRACTORS

Sec. 1. DEFINITIONS

"Contracting entity" means an entity that contracts directly with Midland Academy Charter or a shared services arrangement to provide engineering, architectural, or construction services to Midland Academy Charter or the shared services **arrangement**.

"Instructional facility" means real property, an improvement to real property, or a necessary fixture of an improvement to real property that is used predominantly for teaching Midland Academy Charter's required curriculum.

"Subcontracting entity" means an entity that contracts with another entity that is not Midland Academy Charter to provide engineering, architectural, or construction services to Midland Academy Charter or shared services arrangement.

Education Code 22.08341.

Sec. 2. APPLICABILITY OF POLICY

This policy applies to a person who is not an applicant for or holder of a certificate under Subchapter B, Chapter 21 of the Texas Education Code and who is employed by a contracting or subcontracting entity on a project to design, construct, alter, or repair a public work if the person has or will have:

1. Continuing duties related to the contracted services; and
2. The opportunity for direct contact with students in connection with the person's continuing duties.

Education Code 22.08341(b).

For purposes of this policy, a person does not have the opportunity for direct contact with students if:

1. The public work does not involve the construction, alteration, or repair of an instructional facility;
2. For a public work that involves construction of a new instructional facility, the person's duties related to the contracted services will be completed not later than the seventh day before the first date the facility will be used for instructional purposes; or
3. For a public work that involves an existing instructional facility:

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a. The public work area contains sanitary facilities and is separated from all areas used by students by a secure barrier fence that is not less than six feet in height; and
b. The contracting entity adopts a policy prohibiting employees, including subcontracting entity employees, from interacting with students or entering areas used by students, informs employees of the policy, and enforces the policy at the public work area.

Education Code 22.08341(c).

Sec. 3. DISQUALIFYING CRIMINAL HISTORIES

A contracting entity or subcontracting entity may not permit an employee described in Section 5.15.2 to provide services at an instructional facility if the employee, during the preceding 30 years, was convicted of any of the following offenses and the victim was under 18 years of age or was enrolled in a public school:

1. A felon offense under Title 5, Penal Code;
2. An offense or conviction of which a defendant is required to register as a sex offender under Chapter 62, Code of Criminal Procedure; or
3. An offense under the laws of another state or federal law that is equivalent to an offense under items 1 or 2 above.

Education Code 22.08341(d).

Sec. 4. DUTIES OF CONTRACTING OR SUBCONTRACTING ENTITIES

For a person described in Section 5.15.2, the contracting entity or subcontracting entity that employees the person shall:

1. Send or ensure that the person sends to the Texas Department of Public Safety (the "Department") information that is required by the Department for obtaining national criminal history record information, which may include fingerprints and photographs;
2. Obtain all criminal history record information that relates to the person through the criminal history clearinghouse as provided by Section 411.0845, Government Code; and
3. Certify to Midland Academy Charter, shared services arrangement, or contracting entity, as applicable, that the contracting entity or subcontracting entity that employs the person has received all criminal history record information relating to the person.

A contracting entity shall certify to Midland Academy Charter or shared services arrangement, as applicable, that the contracting entity has obtained written certifications from any subcontracting

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entity that the subcontracting entity has complied with its obligations to receive all criminal history record information as it relates to the subcontracting entity's employees.

Education Code 22.08341(e)-(f).

If a contracting entity or subcontracting entity determines that Section 5.15.2 does not apply to an employee, the contracting or subcontracting entity shall make a reasonable effort to ensure that the conditions or precautions that resulted in the determination that Section 5.15.2 does not apply to the employee continue to exist throughout the time that the contracted services are provided.

Education Code 22.08341(i).

Sec. 5. CRIMINAL HISTORY RECORD INFORMATION OBTAINED BY MIDLAND ACADEMY CHARTER

Midland Academy Charter or a shared services arrangement may directly obtain the criminal history record information of a person described in Section 5.15.2 through the criminal history clearinghouse as provided by Section 411.0845, Government Code.

Education Code 22.08341(h).

Sec. 6. EMERGENCY EXCEPTION

In the event of an emergency, Midland Academy Charter may allow a person to whom Section 5.15.2 applies to enter an instructional facility if the person is accompanied by a Midland Academy Charter employee. Midland Academy Charter may adopt rules regarding an emergency situation. *Education Code 22.08341(j).*

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