

FLORIDA DEPARTMENT OF EDUCATION

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Dr. Tony Bennett Commissioner of Education

Technical Assistance Paper

Related to the Background Screening Requirements of Noninstructional Contractors who are Permitted Access to School Grounds

Summary: The 2013 Florida Legislature passed and Governor Rick Scott signed, House Bill 21, regarding the background screening of noninstructional contractors. This Act became effective July 1, 2013. This Technical Assistance Paper is to provide guidance to districts and contractual personnel to implement section 1012.467, F.S., as amended by the 2013 Florida Legislature. This legislation creates the requirement for a uniform, statewide identification badge to be worn by noninstructional contractors when on school grounds. The badge signifies that the noninstructional contractor has met the screening standards set forth in s. 1012.467, F.S.

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- New Technical Assistance Paper
- Revises and replaces existing Technical Assistance:

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PAM STEWART CHANCELLOR OF PUBLIC SCHOOLS

I. Background

The 2013 Florida Legislature passed and Governor Rick Scott signed, House Bill 21, regarding the background screening of noninstructional contractors. This Act became effective July 1, 2013. This Technical Assistance Paper is to provide guidance to districts and contractual personnel to implement s. 1012.467, F.S., as amended by the 2013 Florida Legislature. This legislation creates the requirement for a uniform, statewide identification badge to be worn by noninstructional contractors when on school grounds. The badge signifies that the noninstructional contractor has met the screening standards set forth in s. 1012.467, F.S., which the bill has amended to read (amendments underlined):

(8)(a) The Department of Education shall create a uniform, statewide identification badge to be worn by noninstructional contractors signifying that a contractor has met the requirements of this section. The school district shall issue an identification badge to the contractor, which must bear a photograph of the contractor. An identification badge shall be issued if the contractor:

1. Is a resident and citizen of the United States or a permanent resident alien of the United States as determined by the United States Citizenship and Immigration Services;
2. Is 18 years of age or older; and
3. Meets the background screening requirements under this section.

(b)The uniform, statewide identification badge shall be recognized by all school districts and must be visible at all times that a noninstructional contractor is on school grounds.

(c)The identification badge shall be valid for a period of 5 years. If a noninstructional contractor provides notification pursuant to subsection (6), the contractor shall, within 48 hours, return the identification badge to the school district that issued the badge.

(d)The Department of Education shall determine a uniform cost that a school district may charge a noninstructional contractor for receipt of the identification badge, which shall be borne by the recipient of the badge.

(e)This subsection does not apply to noninstructional contractors who are exempt from background screening requirements pursuant to s. 1012.468.

II. Definitions

1. Noninstructional contractors are defined as any vendor, individual or entity under contract with a public school or school district, or employees of a noninstructional contractor or subcontractor and who receives remuneration (payment) for services performed for the school or school district. The statute, as amended, applies to noninstructional contractors who:

- Are permitted access on school grounds when students are present,
- Have direct contact with students or have access or control of school funds; and
- Have not been provided an exemption as defined in s. 1012.468, F.S.

2. Background screening means the state and national fingerprint-based criminal history.

3. Uniform badge means the uniform badge issued in accordance with s. 1012.467, F.S.

4. FSSRS means the Florida Shared School Results Systems, the repository of fingerprint records retained by the Florida Department of Law Enforcement and accessible by each Florida public school district.

5. The statute applies to persons contracted with any Florida public school in any Florida public school district, including:

- Traditional public schools;
- Charter schools;
- Alternative schools; and
- Florida School for the Deaf and the Blind.

III. New Requirements and Responsibilities

The Florida Department of Education must:

1. Create a uniform, statewide identification badge to be worn by noninstructional contractors; and
2. Establish a uniform cost that a school district may charge for the badge.

Florida public school districts must:

1. Issue the uniform identification badge to the noninstructional contractor who is subject to the criminal history background screening; and
2. Recognize the statewide identification badge.

Noninstructional contractors must:

1. Have the badge visible at all times while on school grounds;
2. Return the badge within 48 hours if arrested for any disqualifying offense, including:
 - a. Any offense listed in s. 943.0435(1)(a)1., F.S., relating to the registration of an individual as a sexual offender;

- b. Section 393.135, F.S., relating to sexual misconduct with certain developmentally disabled clients and the reporting of such sexual misconduct;
- c. Section 394.4593, F.S., relating to sexual misconduct with certain mental health patients and the reporting of such sexual misconduct;
- d. Section 775.30, F.S., relating to terrorism;
- e. Section 782.04, F.S., relating to murder;
- f. Section 787.01, F.S., relating to kidnapping;
- g. Any offense under chapter 800, relating to lewdness and indecent exposure;
- h. Section 826.04, F.S., relating to incest; and/or
- i. Section 827.03, F.S., relating to child abuse, aggravated child abuse or neglect of a child.

IV. Implementation

1. The Statewide Identification Badge

- Centered at the bottom of the badge must read, "This badge must be visible at all times."

2. The Background Screening

The uniform badge may be issued to noninstructional contractors who have undergone a fingerprint-based state and federal criminal history background check conducted by a Florida public school district and the issuing district has reviewed the results to determine that the noninstructional contractor has not been convicted of any of the following offenses:

- Any offense listed in s. 943.0435(1)(a)1., F.S., relating to the registration of an individual as a sexual offender;
- Section 393.135, F.S., relating to sexual misconduct with certain developmentally disabled clients and the reporting of such sexual misconduct;
- Section 394.4593, F.S., relating to sexual misconduct with certain mental health patients and the reporting of such sexual misconduct;
- Section 775.30, F.S., relating to terrorism;
- Section 782.04, F.S., relating to murder;
- Section 787.01, F.S., relating to kidnapping;
- Any offense under chapter 800, F.S., relating to lewdness and indecent exposure;
- Section 826.04, F.S., relating to incest; and/or

- Section 827.03, F.S., relating to child abuse, aggravated child abuse or neglect of a child.

For the purpose of this statute, conviction is defined as in s. 943.0435, F.S., and means:

“...that there has been a determination of guilt as a result of a trial or the entry of a plea of guilty or nolo contendere, regardless of whether adjudication is withheld, and includes an adjudication of delinquency of a juvenile as specified in this section. Conviction of a similar offense includes, but is not limited to, a conviction by a federal or military tribunal, including courts-martial conducted by the Armed Forces of the United States, and includes a conviction or entry of a plea of guilty or nolo contendere resulting in a sanction in any state of the United States or other jurisdiction. A sanction includes, but is not limited to, a fine, probation, community control, parole, conditional release, control release, or incarceration in a state prison, federal prison, private correctional facility, or local detention facility.”

The results of the criminal history background check are retained by the Florida Department of Law Enforcement and are valid for five (5) years from the date of submission. After five

(5) years, the record is automatically deleted and the noninstructional contractor must undergo another state and federal fingerprint based criminal history background check to continue serving as a paid contactor with any Florida public school or district.

V. Questions and Answers

1. How much does the uniform badge cost?

The uniform statewide badge costs \$10.00.

2. Are districts required to issue a uniform badge if a school district has already issued a district-specific badge? Yes. All Florida school districts that issue a badge to an approved contractor, must issue the uniform statewide badge.

3. Must a school district accept the uniform badge issued by another school district?

Yes. The uniform badge is valid in all public school districts and must be accepted by each school district, regardless of which school district issued the uniform badge.

4. Is a district required to conduct a background screening and issue a uniform badge for a contractor who does not provide services in that district? No. A district is neither required nor prohibited from conducting the screening for contractors who do not provide services in that district, but has discretion in the decision.

5. How will districts conduct background screening of contactors?

The process of the background screening itself has not changed and the FSSRS is still applicable.

6. Must a district use the screening standards in s. 1012.467, F.S.?

Yes. The uniform badge serves as the indicators that the contractor met the screening standards of this section.

7. How do districts verify a contractor's continued eligibility? Each contractor is required to notify his or her employer(s) and the school district within 48 hours of arrest for any of the disqualifying offenses. Contractors should notify each school district in which he or she provides services. The contractor must then return his or her badge to the issuing district within 48 hours of notification of arrest. Districts should continue to use the current screening process using the FSSRS to verify the contractor's eligibility status and to check for alerts indicating a new arrest.

8. If a contractor works for multiple companies who contract with a Florida public school district, must the contractor receive a badge and clearance for each company he or she works with? No. The badge is a uniform badge that indicates the contractor has met the screening standards of s. 1012.467, F. S., and applies to an individual not a company or organization.

9. Is a district required to charge for a badge?

No. If a fee is charged, it cannot exceed the \$10.00 cost of the uniform statewide badge as set by the Florida Department of Education.

10. Can a district modify the uniform badge by adding unique features such as barcodes or stickers? No.

11. Can a district issue a separate and unique badge? A district may issue its own unique badge, but the unique badge cannot supersede or replace the uniform badge. A district cannot charge an additional fee to a contractor for the district badge, require an additional background screening or apply a separate screening standard. It is the uniform badge that must be visible at all times.

12. What is the validity period of the badge?

The badge is valid for five (5) years from date of issuance and should coincide with the validity of the background screening.

13. Is there a cost for a replacement badge? There is no defined cost for a replacement badge and districts may determine if there is a charge for a replacement badge; however, the cost of the replacement should not exceed the \$10.00 cost of the initial uniform badge.

14. Upon expiration of the uniform badge, is the issuing district required to issue a subsequent badge? No. Any public school district can conduct the background screening and issue the badge.

15. Is the badge fee separate from the background screening fee? Yes. The cost of the badge is set by the Florida Department of Education and cannot exceed \$10.00. The background screening includes the cost of the state and federal criminal history check and the retention fee. Florida Statutes require that noninstructional contractors not be charged more than 30 percent above the total cost of the

background screening. Currently, the background screening for contractors shall not exceed \$83.85 as shown below.

FBI \$16.50 + FDLE \$24.00 + Retention fee \$24.00 = \$64.50 + \$19.35 (30%) = \$83.85

16. Is the badge valid in private schools, colleges and/or universities?

No. The requirements of ss. 1012.465, 1012.467 and 1012.468, F.S., apply only to Florida K-12 public schools and school districts.

17. What if the contractor is arrested for one of the disqualifying offenses? The contractor must notify his or her employer(s) and the school district within 48 hours of the arrest for any of the disqualifying offenses. The contractor must return the badge to the issuing district within 48 hours of the notification of arrest.

18. What is the penalty for a contractor who fails to report an arrest of a disqualifying offense? The penalty for failure to report an arrest for any of the disqualifying offenses listed in s. 1012.467, F.S., is a felony of the third degree punishable as provided in s. 775.082 or s. 775.083, F.S.

19. Is the employer of the contractor subject to any penalty for failure to report an arrest of its employees? Yes. If the employer knows the contractor has been arrested for any of the disqualifying offenses and authorizes the contractor to be present on school grounds when students are present, such employer commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083, F.S.

20. How will other districts (that did not issue the uniform badge) be notified of a contractor who is no longer eligible due to a subsequent arrest? Each district has access to the FSSRS and may use that system at any time to verify a contractor's background. If the district has accessed the FSSRS on an individual contractor, the district will be notified of any subsequent arrest during the time the record is retained and valid.

21. When issuing the initial uniform badge, the contractor's background screening retained in the FSSRS may expire before the five-year validity period of the badge. Should the initial uniform badge still be issued for five years? No. The validity of the uniform badge cannot exceed the validity of the retained background screening.

22. How do districts manage the conflicting effective dates, the expiration of a currently-retained background check, the currently-issued district badge and issuance of the initial uniform badge? District badges are issued under local policies and the uniform badge is a requirement of Florida law. Each district should determine how to manage return of district-issued badges. It is suggested that uniform badges be issued as soon as possible and that the initial uniform badge be valid through the end of the current validity period of the contractor's background screening as retained in the FSSRS. If the contractor's record has not been retained in the FSSRS, a new background check can be conducted and a uniform badge issued concurrently. A contractor whose record is retained in the FSSRS may choose to undergo a new background screening at any time to facilitate concurrence of the validity dates of the

uniform badge and the background screening; however, a district cannot require the contractor to do so. At the same time, a district cannot issue a uniform badge with an expiration date that exceeds the expiration of the contractor's background screening.

For example: If the contractor has a background screening conducted on May 1, 2012, and is issued a uniform badge on September 1, 2013, the expiration of the uniform badge should be the same as the expiration of the retained background screening, which is May 1, 2017.

23. Can a school district charge a fee for verifying information in the FSSRS? No. Section 1012.467(2)(f), F.S., prohibits districts from charging a fee for verifying the results of the contractor's retained background check.

24. Can a uniform badge be issued to an employee or volunteer? No. The uniform badge should only be issued to a contractor as defined in s. 1012.467, F.S. There are occasions when an individual may serve in both or all three capacities, but the badge should only be issued for the purposes of verification of background screening of a contractor.

25. Is a district required to issue a badge to a contractor granted an exemption under s. 1012.468, F.S.?

No. If an exemption to the background screening is given, a badge should not be issued.

26. Will the state maintain a database of contractors who failed to meet the screening standards? No. The law requires the districts to conduct the background screening and issue the badges. Currently, no state agency has jurisdiction in the background screening of school district contractors.

27. Do districts notify the Florida Department of Education if a contractor has a subsequent arrest of a disqualifying offense? No. The Florida Department of Education has no jurisdiction in the screening of school district contractors.

28. How do districts verify if the contractor requesting a uniform badge is a resident and citizen of the United States or a permanent resident alien? Each employer is responsible for completing and retaining a U.S. Citizenship and Immigration Services (USCIS) Form I-9 on each employee. The instructions to the USCIS Form I-9 explain who is authorized to work in the United States. Districts should request a copy of the employer's Form I-9 as verification the contractor is eligible under this criterion of the uniform badge. A sample of Form I-9 is provided in Attachment B.

29. Can a third-party company produce the uniform badge on behalf of the school district? Yes; however, the third-party company is only allowed to be notified of those noninstructional contractors that are approved to be issued a badge. A school district must not disseminate the results of the background screenings to unauthorized entities in accordance with the User Agreement with the Florida Department of Law Enforcement.

30. If a school district uses a third-party company to create and issue a badge and the company charges a fee for its services, can that fee be added to the \$10.00 cost of the badge? No. The total cost of creating and issuing the badge cannot exceed \$10.00.

31. Can the school district notify the employing company of the noninstructional contractor as to why the contractor was not approved to be badged? No. School districts are only allowed to share with the employing company that the non-instructional contractor was denied access to school grounds because of their background screening. School districts must not disseminate (verbally or physically) the actual results of the background screening to the employing company.

32. Can a third-party company create and manage a list of approved contractors? No. Third-party companies shall not maintain a database that contains a listing of non-instructional contractors that are approved and not approved for accessing school grounds, issued a badge under this law or any other activity that is determined by the state and national fingerprint-based criminal history.