

1 State of Arkansas
2 89th General Assembly
3 Regular Session, 2013
4

A Bill

SENATE BILL 457

5 By: Senator Elliott
6 By: Representative Lenderman
7

For An Act To Be Entitled

9 AN ACT TO AMEND ARKANSAS LAWS GOVERNING BACKGROUND
10 CHECKS FOR EDUCATORS, FISCAL OFFICERS, NONLICENSED
11 SCHOOL DISTRICT STAFF, AND STUDENT TEACHERS; AND FOR
12 OTHER PURPOSES.
13
14

Subtitle

15 TO AMEND ARKANSAS LAWS GOVERNING
16 BACKGROUND CHECKS FOR EDUCATORS, FISCAL
17 OFFICERS, NONLICENSED SCHOOL DISTRICT
18 STAFF, AND STUDENT TEACHERS.
19
20
21

22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
23

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

25 6-17-410. Teacher licensure -- ~~First-time applicant~~ Application,
26 renewal application, revocation, suspension, and probation.

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

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

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



1 fingerprint identification system.

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

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

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

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

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

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

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

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

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

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

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

1 Maltreatment Central Registry check are delayed.

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

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

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

20 (1) Capital murder as prohibited in § 5-10-101;

21 (2) Murder in the first degree as prohibited in § 5-10-102 and
22 murder in the second degree as prohibited in § 5-10-103;

23 (3) Manslaughter as prohibited in § 5-10-104;

24 (4) Battery in the first degree as prohibited in § 5-13-201 and
25 battery in the second degree as prohibited in § 5-13-202;

26 (5) Aggravated assault as prohibited in § 5-13-204;

27 (6) Terroristic threatening in the first degree as prohibited in
28 § 5-13-301;

29 (7) Kidnapping as prohibited in § 5-11-102;

30 (8) Rape as prohibited in § 5-14-103;

31 (9) Sexual assault in the first degree, second degree, third
32 degree, and fourth degree as prohibited in §§ 5-14-124 -- 5-14-127;

33 (10) Incest as prohibited in § 5-26-202;

34 (11) Engaging children in sexually explicit conduct for use in
35 visual or print media, transportation of minors for prohibited sexual
36 conduct, employing or consenting to the use of a child in a sexual

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

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

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

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

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

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

11 (17) False imprisonment in the first degree as prohibited in §
12 5-11-103;

13 (18) Permanent detention or restraint as prohibited in § 5-11-
14 106;

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

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

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

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

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

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

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

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

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

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

29 (29) Felony theft as prohibited in §§ 5-36-103 -- 5-36-106 and
30 5-36-202;

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

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

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

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

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

1 (35) Domestic battering in the first degree as prohibited by §
 2 5-26-303;

3 (36) Domestic battering in the second degree as prohibited by §
 4 5-26-304;

5 (37) Felony violation of an order of protection as prohibited by
 6 § 5-53-134;

7 (38) Prostitution as prohibited by § 5-70-102;

8 (39) Sexual solicitation as prohibited by § 5-70-103;

9 (40) Promoting prostitution in the first degree as prohibited by
 10 § 5-70-104;

11 (41) Promoting prostitution in the second degree as prohibited
 12 by § 5-70-105;

13 (42) Stalking as prohibited by § 5-71-229;

14 (43) Failure to notify by a mandated reporter in the first
 15 degree as prohibited by § 12-18-201; and

16 (44) Any felony not listed in this subsection (c) and involving
 17 physical or sexual injury, mistreatment, or abuse against another.

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

19 (A) "Cause" means any of the following:

20 (i) Holding a license obtained by fraudulent means;

21 (ii) Revocation of a license in another state;

22 (iii) Intentionally compromising the validity or
 23 security of any student test or testing program administered by or required
 24 by the state board or the Department of Education;

25 (iv) Having the completed examination test score of
 26 any testing program required by the state board for teacher licensure
 27 declared invalid by the testing program company and so reported to the
 28 Department of Education by the testing company;

29 (v) Having an expunged or a pardoned conviction for
 30 any sexual or physical abuse offense committed against a child or any offense
 31 in subsection (c) of this section;

32 (vi) Failing to establish or maintain the necessary
 33 requirements and standards set forth in Arkansas law or state board rules and
 34 regulations for teacher licensure;

35 (vii) Knowingly submitting or providing false or
 36 misleading information or knowingly failing to submit or provide information

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

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

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

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

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

13 (A) Revoke a license permanently;

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

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

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

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

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

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

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

36 (ii) If the person requesting the hearing fails to

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

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

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

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

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

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

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

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

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

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

19 (B) The circumstances surrounding the crime or incident;

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

21 (D) Subsequent work history;

22 (E) Employment references;

23 (F) Character references; and

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

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

30 (i) Written request for a hearing;

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

33 (iii) Written recommendation from the teacher
34 preparation program.

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

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

3 (ii) Fulfillment of all other requirements for
 4 licensure.

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

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

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

16 (B) Holds a license obtained by fraudulent means;

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

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

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

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

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

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

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

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

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

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

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

10
 11 SECTION 2. Arkansas Code § 6-17-411 is amended to read as follows:

12 6-17-411. Criminal records check as a condition for initial employment
 13 of licensed personnel.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10
 11 SECTION 3. Arkansas Code § 6-17-414 is amended to read as follows:

12 6-17-414. Criminal records check as a condition for initial employment
 13 of nonlicensed personnel.

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

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

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

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

29 ~~(v) As used in this section, "nonlicensed staff~~
 30 ~~position" includes parental monitors on school buses as permitted under § 6-~~
 31 ~~19-127.~~

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

1 checks.

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

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

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

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

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

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

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

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

3 (1) Capital murder as prohibited in § 5-10-101;

4 (2) Murder in the first degree as prohibited in § 5-10-102 and
5 murder in the second degree as prohibited in § 5-10-103;

6 (3) Manslaughter as prohibited in § 5-10-104;

7 (4) Battery in the first degree as prohibited in § 5-13-201 and
8 battery in the second degree as prohibited in § 5-13-202;

9 (5) Aggravated assault as prohibited in § 5-13-204;

10 (6) Terroristic threatening in the first degree as prohibited in
11 § 5-13-301;

12 (7) Kidnapping as prohibited in § 5-11-102;

13 (8) Rape as prohibited in § 5-14-103;

14 (9) Sexual assault in the first degree, second degree, third
15 degree, and fourth degree, as prohibited in §§ 5-14-124 – 5-14-127;

16 (10) Incest as prohibited in § 5-26-202;

17 (11) Engaging children in sexually explicit conduct for use in
18 visual or print media, transportation of minors for prohibited sexual
19 conduct, employing or consenting to the use of a child in a sexual
20 performance, or producing, directing, or promoting a sexual performance by a
21 child as prohibited in §§ 5-27-303, 5-27-305, 5-27-402, and 5-27-403;

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

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

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

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

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

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

33 (18) False imprisonment in the first degree as prohibited in §
34 5-11-103;

35 (19) Permanent detention or restraint as prohibited in § 5-11-
36 106;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 (3) The waiver may be requested by:

32 (A) The hiring official;

33 (B) The affected applicant; or

34 (C) The person subject to dismissal.

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

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

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

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

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

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

23 (h) As used in this section:

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

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

28
 29 SECTION 4. Arkansas Code § 6-17-421 is amended to read as follows:

30 6-17-421. Criminal records check for fraudulent acts.

31 (a) For purposes of this section:

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

34 (2) "Educational entity" means:

35 (A) A school district;

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

1 (C) An education service cooperative;

2 (3) "Fiscal officer" means any licensed or ~~classified~~
 3 nonlicensed employee of ~~a school district or education service cooperative~~ an
 4 educational entity who has any right, duty, or responsibility to access funds
 5 of ~~a school district~~ an educational entity in excess of five thousand dollars
 6 (\$5,000), specifically including, ~~but not limited to,~~ without limitation
 7 superintendents, fiscal officers, and bookkeepers; and

8 ~~(3)~~(4) "Fraudulent act" means an act:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 employed and to the state board.

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

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

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

10 (B) The length of time since the conviction;

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

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

16 (E) Any other relevant facts.

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

21
 22 SECTION 5. Arkansas Code § 6-17-422(h), concerning the duties of the
 23 Professional Licensure Standards Board, is amended to add an additional
 24 subdivision to read as follows:

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

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

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

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

1 6-17-410 and applicable federal standards.

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

5
6
7 **APPROVED: 03/21/2013**
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36

1