

All SFUSD contractors are required to comply with the criminal background check provisions of the Education Code Section 45125.1.

SFUSD cannot provide you advice on the interpretation of the Education Code or the Penal Code – this is your agency’s responsibility.

Below are “tips” on how to read your SFUSD contract to find out which Education and Penal Code your agency should be familiar with regarding the criminal background checks of the California Education Code.

Please note: All California law is subject to change at any time. It is your agency’s responsibility to keep current on applicable laws and codes that affect your SFUSD contract provisions.

I. SFUSD ExCEL Lead Agency Contract:

Section 22 of the SFUSD Contract for ExCEL Lead Agency details the requirements for Criminal Background Checks. NOTE: SFUSD contract language is subject to change. It is your agency’s responsibility to be familiar and understand the SFUSD contract provisions agreed to by signing the SFUSD contract.

22. **CRIMINAL BACKGROUND CHECKS; SUBSEQUENT ARREST NOTIFICATION**

a. Criminal Background Check

(1) Contractor is required to comply with the criminal background check provisions of Education Code Section 45125.1. Contractor will conduct criminal background checks through the California Department of Justice (CDOJ), including both CDOJ and Federal Bureau of Investigation (FBI) background checks, for all Contractor employees, agents, and volunteers assigned to the District, and will certify that no employees, agents, or volunteers who have been convicted of serious or violent felonies as specified, will have contact with District pupils pursuant to this Agreement. This prohibition does not apply to an employee, agent or volunteer who has obtained a certificate of rehabilitation and pardon pursuant to California Penal Code Section 4852.01 et seq. for a serious or violent felony listed under EC 45122.1.

(2) Contractor will provide the District with a list of all employees, agents and volunteers who have cleared the criminal background check, as detailed above, and who will have contact with District pupils pursuant to this Agreement, and specify to which sites they will be assigned.

(3) Contractor will be responsible for the costs of the criminal background checks.

(4) As written certification of its compliance with this Section, Contractor will complete and submit the Criminal Background Check/Tuberculosis Clearance Certification Form (“CBC/TB form”) (ATTACHED).

(5) For any Contractor employees, agents or volunteers that Contractor hires subsequent to Contractor’s initial submission of the CBC/TB form to District, Contractor will conduct background checks and submit additional CBC/TB forms to District, as required.

(6) The criminal background check requirement applies only to Contractor’s employees, agents or volunteers who will have no contact or only limited contact with students. Contractor’s employees, agents or volunteers who will have no contact or only limited contact with students are not required to meet criminal background check requirements. If Contractor asserts that all of its employees, agents or volunteers will have no contact or only limited contact with District students by checking the “no contact” box on the CBC/TB form, the District’s Cabinet-level Administrator supervising this Agreement will have the responsibility to make a reasonable determination of whether Contractor, its employees, agents or volunteers will have only limited contact with students. The District’s determination shall control.

b. Subsequent Arrest Notification

(1) In addition to the initial criminal background check, Contractor will obtain subsequent arrest notification to monitor future arrests of employees, agents and volunteers who will have contact with District students, and is responsible for all costs associated with these subsequent notifications.

(2) Upon receipt of notice that any of its employees, agents, or volunteers has been arrested or convicted of a serious or violent felony as described in EC 45125.1 (including 45122.1), a sexual offense as defined by EC 44010, or a controlled substance offense as described in EC 44011, Contractor will immediately prohibit such employee, agent, or volunteer from having any contact with pupils, and will immediately notify SFUSD.

c. Failure by Contractor to comply with this Section may result in termination of this Agreement at the District’s sole discretion.

23. **TUBERCULOSIS TESTING**

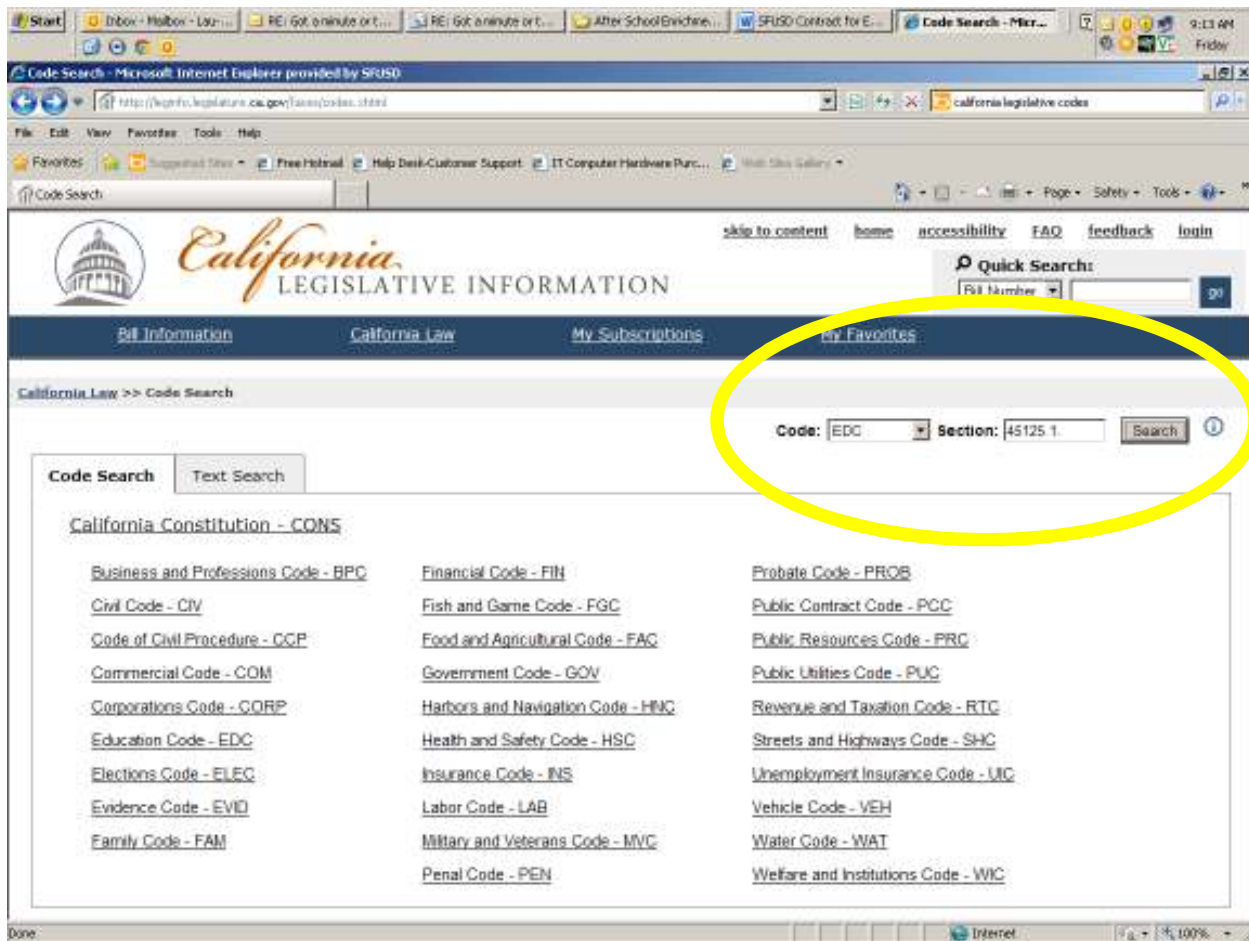
a. Contractor agrees that all of its employees, agents and volunteers whose functions require frequent or prolonged contact with students will complete tuberculosis testing the same as the testing that

SFUSD Contract for ExCEL Lead Agency: Criminal Background Checks; Subsequent Arrest Notification: **Tips on how to look up the Education Code and Penal Code for the requirements**

II. California Legislative Codes:

To look up any California legislative codes go to: <http://leginfo.legislature.ca.gov/faces/codes.xhtml>

This is the official site of the California legislative information and laws. At this website, you can look up all California codes. To look up a particular code, you click on the name of the code (e.g.: Education Code, Health Code, Penal Code and type in the code section you are looking for in the “search” feature



- The link to Education Code 45125.1 is:
http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=EDC§ionNum=45125.1

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This section refers you to another section of the Education Code to look up:

(e) (1) The Department of Justice shall ascertain whether the individual whose fingerprints were submitted to it pursuant to subdivision (a) has been arrested or convicted of any crime insofar as that fact can be ascertained from information available to the department. Upon implementation of an electronic fingerprinting system with terminals located statewide and managed by the Department of Justice, the department shall ascertain the information required pursuant to this section within three working days. **When the Department of Justice ascertains that an individual whose fingerprints were submitted to it pursuant to subdivision (a) has a pending criminal proceeding for a felony as defined in Section 45122.1 or has been convicted of a felony as defined in Section 45122.1, the department shall notify the employer designated by the individual of that fact. The notification shall be delivered by telephone or electronic mail to the employer.**

Section 45122.1

http://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=EDC§ionNum=45122.1.

This section then refers you to the Penal Code section to look up:

ARTICLE 1. Employment [45100 - 45139]
(Article 1 enacted by Stats. 1976, Ch. 1010.)

45122.1.

(a) In addition to any other prohibition or provision, no person who has been convicted of a violent or serious felony shall be employed by a school district pursuant to this chapter. A school district shall not retain in employment a current classified employee who has been convicted of a

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violent or serious felony, and who is a temporary, substitute, or a probationary employee who has not attained permanent status.

(b) This section applies to any violent or serious offense which, if committed in this state, would have been punishable as a violent or serious felony.

(c) (1) For purposes of this section, a violent felony is any felony listed in subdivision (c) of Section 667.5 of the Penal Code and a serious felony is any felony listed in subdivision (c) of Section 1192.7 of the Penal Code.

(2) For purposes of this section, the term "school district" has the same meaning as defined in Section 41302.5.

(d) When the Department of Justice ascertains that an individual who is an applicant for employment by a school district has been convicted of a violent or serious felony, the department shall notify the school district of the criminal information pertaining to the applicant. The notification shall be delivered by telephone and shall be confirmed in writing and delivered to the school district by first-class mail.

(e) Notwithstanding subdivision (a), a person shall not be denied employment or terminated from employment solely on the basis that the person has been convicted of a violent or serious felony if the person has obtained a certificate of rehabilitation and pardon pursuant to Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code.

(f) Notwithstanding subdivision (e), a person shall not be denied employment or terminated from employment solely on the basis that the person has been convicted of a serious felony that is not also a violent felony if that person can prove to the sentencing court of the offense in question, by clear and convincing evidence, that he or she has been rehabilitated for the purposes of school employment for at least one year. If the offense in question occurred outside this state, then the person may seek a finding of rehabilitation from the court in the school district in which he or she is a resident.

(g) Notwithstanding any other provision of law, when the Department of Justice notifies a school district by telephone that a current temporary, substitute, or probationary employee who has not attained permanent status, has been convicted of a violent or serious felony, that employee shall immediately be placed on leave without pay. When the school district receives written notification of the fact of conviction from the Department of Justice, the employee shall be terminated automatically and without regard to any other procedure for termination specified in this code or school district procedures unless the employee challenges the record of the Department of Justice and the Department of Justice withdraws in writing its notification to the school district. Upon receipt of written withdrawal of notification from the Department of Justice, the employee shall immediately be reinstated with full restoration of salary and benefits for the period of time from the suspension without pay to the reinstatement.

Penal Code Section 667.5:

http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=PEN§ionNum=667.5.

AND

Penal Code Section 1192.7:

http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=PEN§ionNum=1192.7.