

MEMORANDUM



FROM: Lisa M Freiley, Staff Counsel/Director Labor & PACE Services
SUBJ: Criminal Background Checks
DATE: December 22, 2015

During the 2015 Legislative session ORS 342.232 was modified to repeal language stating districts could hire non-licensed employees and allow them to report to work pending the return of a state and national criminal background check. This repeal goes into effect January 1, 2016.

Oregon School Boards Association (OSBA) staff met with the Oregon Department of Education (ODE) staff responsible for handling the criminal background checks for non-licensed employees. During our meeting OSBA staff expressed concerns about the length of time to complete the criminal background checks and the inability of newly hired staff to work during this time period.

Following our meeting, ODE staff reviewed the repealed statutory language and its current rules. As a result, ODE is asserting that OAR 581-021-0500(2) allows school districts to adopt and implement a policy that specifies "subject individuals may begin to carry out terms of a contract or employment on a probationary basis pending the return of criminal records checks by the FBI."

In other words, Oregon courts have held that rules properly promulgated by state agencies have the same force as laws enacted by the Legislature. All the rules ODE is relying upon have been adopted in accordance with its standard procedures. Thus, the rules that ODE is basing its interpretation have been properly adopted and would be viewed by Oregon courts to have the same weight as if enacted by the Legislature.

While OAR 581-021-0500(2) gives districts the right to have new employees start work pending the completion of the background check, it is important to recognize there is a certain level of risk that goes with this practice. The most obvious risk is the hiring of an individual who is not legally allowed to work for a public school. Allowing an individual to start work prior to having actual knowledge of the individual's legal qualifications could result in the person having unsupervised access to students and injuring a student.

An option districts should strongly consider would be the implementation of a background check program *independent* of the one operated through ODE. This background check should be comprehensive and include both a search of state and national records to ascertain an individual's eligibility to have unsupervised contact with students. Implementation of such a program would allow the district to put the individual to work and make reasonable efforts to ensure students are not at risk for contact with people who should not have unsupervised contact with them.

For those who are Property and Casualty Coverage for Education (PACE) members, there is a criminal background service which is available to members. The first five (5) background checks every year are free of charge and any additional background checks are \$29 per check. Information about the background check program can be found at the following link: <http://pace.osba.org/Benefits/Articles/Service-BackgroundChecks.aspx>

Any decisions a district makes in its hiring process needs to balance both the need to find qualified staff and get them into the classroom in a timely fashion with the duty to make sure those staff members do not themselves present a risk of injury to the students they are hired to serve.

As districts work through these issues, please feel free to call Lisa Freiley, Staff Counsel/Director of Labor & PACE Services or Peggy Holstedt, Director of Policy Services with any questions, (503) 588-2800.