



Climbing Towards College & Career Readiness

CRIMINAL BACKGROUND CHECKS
AND TUBERCULOSIS RISK
ASSESSMENT AND EXAMINATION

Criminal Background Checks and Tuberculosis Risk Assessment and Examination

A commitment to the safety and well-being of our students is a core value of Ararat Charter School. No condition or activity will be permitted that might compromise that safety, and the well-being of students takes precedence over all other considerations. While we place great value on the contributions of staff, educators, and volunteers, there are conditions that are incompatible with unescorted access to children. Conditions deemed by the Governing Board to preclude working at Ararat Charter School include conviction on charges of serious or violent misdemeanors or felonies, particularly those committed against minors or involving abuse or molestation. Ararat Charter School has therefore adopted a strict policy of prohibiting any individual with such a history from contact with any of Ararat Charter School's students on its school grounds, during field trips, or other sanctioned school activities.

The Governing Board will adopt a specific list of offenses and offense categories deemed incompatible with work for or at the School. To ensure the safety of the students, all individuals working or volunteering at Ararat Charter School will be required to submit to a background criminal investigation as follows:

I. Employees

All employees of Ararat Charter School are required to, (1) disclose any arrest and/or conviction, and (2) undergo fingerprint criminal background checks through the California Department of Justice (DOJ) and Federal Bureau of Investigation (FBI) before employment to ensure that they have no arrest or conviction for any serious or violent misdemeanor or felony. Employment is contingent upon clearance by the director of human resources and/or the school's principal. All employees will be subject to DOJ subsequent arrest notification during the term of their employment with Ararat Charter School. If Ararat Charter School receives subsequent notification of an arrest for any serious or violent misdemeanor or felony, the school principal will have discretion as to whether or not to suspend employment until the arrest is adjudicated. All records will be maintained in a strictly confidential manner in compliance with DOJ reporting requirements. (Education Code 35021, 44010, 45125)

Employees shall be assessed and examined (if necessary) for tuberculosis prior to commencing employment and working with students as required by Education Code Section 49406.

II. Volunteers

All adults at the Ararat Charter School campuses who will be working with or supervising students in any capacity are first required to, (1) disclose any arrest and/or conviction, and (2) undergo fingerprint criminal background checks through the California Department of Justice (DOJ) and Federal Bureau of Investigation (FBI) before commencing volunteer work to ensure that they have no arrest or conviction for any serious or violent misdemeanor or felony. Furthermore, clearance is contingent upon a successful background check and receiving clearance from a review team designated by the school principal. A registered volunteer may not begin work at Ararat Charter School until the individual has obtained clearance from the school's Principal. Persons receiving clearance will be termed "registered volunteers." Registered volunteers will be subject to DOJ subsequent arrest notification during the term of their volunteerism at Ararat Charter School. If Ararat Charter School receives subsequent notification of a registered volunteer's arrest for any serious or violent misdemeanor or felony, the school's principal will have discretion as to whether or not to suspend volunteerism until the arrest is adjudicated. All records will be maintained in a strictly

confidential manner in compliance with DOJ reporting requirements. (Education Code 35021, 44010, 45125)

Volunteers who will have no contact with students are not required to undergo fingerprint criminal background checks. Individuals who volunteer their time off campus or on campus during hours when there are no students present shall be referred to as “volunteers.”

Volunteers who have frequent and prolonged contact with students shall be assessed and examined (if necessary) for tuberculosis prior to initiating a volunteer assignment as required by Education Code Section 49406. (Reference Parent Volunteer Handbook.)

III. Visitors

A person coming on to an Ararat Charter School school’s campus is exempt from having to go through a criminal background check through the California Department of Justice (DOJ) and Federal Bureau of Investigation (FBI) if and only if one of the following apply:

- a) The visitor is coming on to campus for the sole purpose of observing an assembly, performance, or speech or to participate in large scale school events including, but not limited to, back to school night, open house, and PIC meetings or sponsored events.
- b) The visitor is coming on to campus to attend a classroom “party” or other classroom “special event.”
- c) The visitor is a guest presenter/lecturer.

All school campus visitors must be informed and must adhere to the laws and school policies of visitors to school campuses, as stated in the California Education Code (Education Code 44810 (a); 44811 (a); 51101, (a): (1), (2), (12) and Board Rules (1265, 2002). (Reference “Visitors on Campus,” in the Parent/Student Handbook.)

IV. Contract Services

Any employee who is under contract with Ararat Charter School for services rendered must certify that any employee who renders those services and who may come into contact with students has no convictions for any serious or violent misdemeanor or felony as defined in Education Code 45122.1, unless the employee has received a certificate of rehabilitation and a pardon (Education Code 45125.1) before performing any work at an Ararat Charter School. This certification must be on file with Ararat Charter School prior to commencement of work.

Legal Reference:

EDUCATION CODE

- 35021.1 Automated records check
- 44010 Sex offenses
- 44011 Controlled substance offense
- 45125.5 Automated records check
- 45126 Duty of Department of Justice to furnish information

PENAL CODE

- 667.5 Violent felonies 1192.7 Serious felonies
- 1203.4 Dismissal of conviction
- 11075-11081 Criminal record dissemination
- 11102.2 Maintenance of criminal offender records; custodian of records
- 11105 Access to criminal history information 11105.2 Subsequent arrest notification
- 11105.3 Record of conviction involving sex crimes, drug crimes or crimes of violence; availability to employer for applicants for positions with supervisory or disciplinary power over minors
- 11140-11144 Furnishing of state criminal history information
- 13300-13305 Local summary criminal history information

CODE OF REGULATIONS, TITLE 11

- 701-708 Criminal offender record information
- 720-724 Incomplete criminal history information
- 994-994.15 Certification of individuals who take fingerprint impressions

COURT DECISIONS

- Central Valley Chapter of the 7th Step Foundation Inc. v. Evelle J. Younger, (1989) 214 Cal. App. 3d 145

MANAGEMENT RESOURCES

- WEB SITES
- Department of Justice/Attorney General's Office <http://www.oag.ca.gov/fingerprints>
- Regulations Ararat Charter School

Criminal Record Check

The Principal or designee shall not hire or retain in employment, in a certificated or classified position, a person who has been convicted of a violent or serious felony as defined in Penal Code 667.5(c) or 1192.7(c), a controlled substance offense as defined in Education Code 44011, or a sex offense as defined in Education Code 44010. However, the Principal or designee shall not deny or terminate employment if: (Education Code 44830.1, 44836, 45122.1, 45123)

1. The conviction for a violent or serious felony, controlled substance offense, or sex offense is reversed and the person is acquitted of the offense in a new trial or the charges against the person are dismissed, unless the sex offense for which the conviction is dismissed pursuant to Penal Code 1203.4 involves a victim who was a minor.
2. A person convicted of a violent or serious felony has obtained a certificate of rehabilitation or a pardon.
3. A person who has been convicted of a serious felony, that is not also a violent felony, proves to the sentencing court that he/she has been rehabilitated for purposes of school employment for at least one year.

4. A person who has been convicted of a controlled substance offense is applying for or is employed in a certificated position and has a credential issued by the Commission on Teacher Credentialing.
5. A person who has been convicted of a controlled substance offense is applying for or is employed in a classified position and has been determined by the Governing Board, from the evidence presented, to have been rehabilitated for at least five years.

A certificated employee may be hired by the school, without obtaining a criminal record summary if that employee is employed as a certificated employee in another California school district and became a permanent employee of another California school district as of October 1, 1997. (Education Code 44830.1, 44836)

The Principal or designee shall not issue a temporary certificate of clearance to an person whose application for a credential, certificate, or permit is being processed by the Commission on Teacher Credentialing if that person has been convicted of a violent or serious felony, unless the person is otherwise exempt pursuant to Education code 44332.6 or 44830.1 (Education Code 44332.5, 44332.6)

Pre-Employment Record Check

The Principal or designee shall require each person to be employed by the school to submit his/her fingerprints electronically through the Live Scan system so that a criminal record check may be conducted by the Department of Justice (DOJ). The Principal or designee shall provide the applicant with a Live Scan request form and a list of nearby Live Scan locations.

When a person is applying for a classified position, the Principal or designee shall request that the DOJ also obtain a criminal record check through the Federal Bureau of Investigation whenever the applicant meets one of the following conditions: (Education Code 45125)

1. The applicant has not resided in California for at least one year immediately preceding the application for employment.
2. The applicant has resided in California for more than one year, but less than seven years, and the DOJ has ascertained that the person was convicted of a sex offense where the victim was a minor or a drug offense where an element of the offense is either the distribution to or the use of a controlled substance by a minor.

The Principal or designee shall immediately notify the DOJ when an applicant who has submitted his/her fingerprints to the DOJ is not subsequently employed by the school. (Penal Code 11105.2)

Subsequent Arrest Notification

The Principal or designee shall request subsequent arrest notification from the Department of Justice as provided under Penal Code 11105.2. (Education Code 44830.1)

The Principal or designee shall enter into a contract with the DOJ to receive notification of subsequent arrests resulting in conviction of any person whose fingerprints have been submitted to the DOJ. (Education Code 44830.1, 45125; Penal Code 11105.2)

Upon Telephone or email notification by the DOJ that a temporary employee, substitute employee or probationary employee serving before March 15 of the employee's second probationary year if he/she has been convicted of a violent or serious felony, the Principal or designee shall immediately place that employee on leave without pay. (Education Code 44830.1, 45122.1)

When the school receives written electronic notification by the DOJ of the fact of conviction the temporary employee, substitute employee, or probationary employee serving before March 15 of his/her second probationary year shall be terminated automatically unless the employee challenges the Department of Justice record and the Department of Justice withdraws in writing its notification. Upon receipt of the written withdrawal of the notification by the DOJ the Principal or designee shall immediately reinstate that employee with full restoration of salary and benefits for the period of time from the suspension without pay to the reinstatement if the employee is still employed by the school. (Education Code 44830.1)

The Principal or designee shall immediately notify the DOJ whenever a person whose fingerprints are maintained by the DOJ is terminated. (Penal Code 11105.2)

Notification of Applicant/Employee

The Principal or designee shall expeditiously furnish a copy of any DOJ notification to the applicant or employee to whom it relates if the information is a basis for an adverse employment decision. The copy shall be delivered in person or to the last contact information provided by the applicant or employee. (Penal Code 11105, 11105.2)

Maintenance of Records

The Principal shall designate at least one custodian of records who shall be responsible for the security, storage, dissemination, and destruction of all Criminal Offender Record Information (CORI) furnished to the school and shall serve as the primary contact for the DOJ for any related issues. (Penal Code 11102.2)

An employee designated as custodian of records shall receive a criminal background check clearance from the DOJ prior to serving in that capacity. (Penal Code 11102.2)

The custodian of records shall sign and return to the DOJ the Employee Statement Form acknowledging his/her understanding of the laws prohibiting misuse of CORI. In addition, the custodian of records shall ensure that any individual with access to CORI has on file a signed Employee Statement Form.

To ensure its confidentiality, CORI shall be accessible only to the custodian of records and shall be kept in a locked file separate from other files. CORI shall be used only for the purpose for which it is requested and its contents shall not be disclosed or reproduced. (Education Code 44830.1, 45125)

Once a hiring determination is made, the applicant's CORI shall be destroyed to the extent that the identity of the individual can no longer be reasonably ascertained. (Education Code 44830.1, 45125; 11 CCR 708)

The Principal or designee shall immediately notify the DOJ whenever a designated custodian of records ceases to serve in that capacity. (Penal Code 11102.2)

Legal Reference:

EDUCATION CODE

- 44010 Sex offenses
- 44011 Controlled substance offense
- 44332-44332.6 Temporary certificate of clearance
- 44346.1 Applicants for credential, conviction of a violent or serious felony
- 44830.1 Certificated employees, conviction of a violent or serious felony
- 44830.2 Certificated employees; interagency agreement
- 44836 Conviction of a sex offense or controlled substance offense
- 45122.1 Classified employees, conviction of a violent or serious felony
- 45125 Use of personal identification cards to ascertain conviction of crime
- 45125.01 Classified employees; interagency agreements
- 45125.5 Automated records check
- 45126 Duty of Department of Justice to furnish information
- 49024 activity supervisor of clearance certificates

PENAL CODE

- 667.5 Violent felonies 1192.7 Serious felonies
- 1203.4 Dismissal of conviction
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