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# California State Senate

## EDUCATION



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## AGENDA

Wednesday, September 13, 2023  
Upon Call of the Chair -- Room 112

### **PURSUANT TO SENATE RULE 29.10(d)**

### **MEASURES HEARD IN FILE ORDER**

1. SB 531 Ochoa-Bogh Pupil safety: local educational agency contractors: background checks.

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# SENATE COMMITTEE ON EDUCATION

Senator Josh Newman, Chair

2023 - 2024 Regular

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**Bill No:** SB 531 **Hearing Date:** September 13, 2023  
**Author:** Ochoa Bogh  
**Version:** August 14, 2023  
**Urgency:** Yes **Fiscal:** Yes  
**Consultant:** Ian Johnson

**Subject:** Pupil safety: local educational agency contractors: background checks.

**NOTE:** This bill has been amended to replace its contents and this is the first time the bill is being heard in its current form.

## SUMMARY

This bill, an urgency measure, exempts an entity that partners with a local educational agency (LEA) to provide student work experience from the requirement to have a valid criminal background check for all employees, as specified.

## BACKGROUND

Existing law:

- 1) Requires any entity that has a contract with an LEA to ensure that any employee who interacts with students, outside of the immediate supervision and control of the student's parent, guardian, or school employee, have a valid criminal records summary. Requires that the contracting entity immediately provide any subsequent arrest and conviction information it receives regarding those employees to any LEA that it is contracting with. (Education Code (EC) 45125.1)
- 2) Prohibits a school district from employing any person who has been convicted of a violent or serious felony, and prohibits a school district from retaining a current classified employee who is a temporary, substitute, or a probationary employee who has not attained permanent status, if they have been convicted of a violent or serious felony. (EC 45122.1)
- 3) Finds and declares that Project WorkAbility is a true partnership established at the state level through nonfinancial interagency agreements between the California Department of Education (CDE), the Department of Employment Development (EED), and the Department of Rehabilitation (DOR), and has elevated awareness in the private sector of the employment potential of individuals with exceptional needs, and focuses its efforts in developing careers for these youth, and preventing needless economic and social dependency on state and community agencies and resources. (EC 56470)
- 4) Authorizes the population served by WorkAbility projects to include secondary students with disabilities, adults with disabilities and other individuals who experience barriers to successful completion of school. (EC 56472)

- 5) Specifies that all laws or rules applicable to minors in employment relationships are applicable to students enrolled in work experience education courses, including the employment of students in part-time jobs selected or approved as having educational value and coordinated by school employees. (EC 51763 and 51764)
- 6) Authorizes the governing board of a school district that establishes and supervises a work experience education program in which students with intellectual disabilities are employed in part-time jobs to use funds derived from any source to pay the wages of the students employed, to the extent permissible by law or regulation. (EC 51765)
- 7) Authorizes LEAs to provide students with work-based learning opportunities through partnership academies, regional occupational programs, work experience education, community classrooms, cooperative career technical education (CTE) programs, and job shadowing experiences. Defines “work-based learning” as an educational approach or instructional methodology that uses the workplace or real work to provide pupils with the knowledge and skills that will help them connect school experiences to real-life work activities and future career opportunities. States that when feasible, work-based learning should be an integral part of a more comprehensive program that integrates academic courses and career technical education. (EC 51760.1)
- 8) Defines a “community classroom” as an instructional methodology which utilizes unpaid on-the-job training experiences at business, industry, and public agency sites to assist students in acquiring those competencies necessary to acquire entry-level employment, and so concurrent, formalized classroom instruction can be extended. Requires the community classroom teacher to make at least one visitation every 3 weeks to consult with the management of the community classroom, observe students at the training station, provide instruction, ensure that student acquisition of competencies identified in the individualized training plan is occurring, and observe the student engaged in the job training experiences. (California Code of Regulations (CCR), Title 5, Sections 10080 – 10088)
- 9) Requires that all laws or rules applicable to minors in employment relationships be applicable to students enrolled in work experience education courses. (EC 51763)
- 10) Prohibits any minor under the age of 16 from being employed or permitted to work with specified machinery in a workshop or factory or in other hazardous occupations as defined. (Labor Code (LAB) 1292, 1293, 1294)
- 11) Specifies that Sections 1292, 1293, and 1294 of the Labor Code do not apply to specified work experience programs if all of the following occur:
  - a) The work experience coordinator determines that the students have been sufficiently trained in the employment or work otherwise prohibited;
  - b) Parental approval is obtained; and

- c) The principal or counselor of the student has determined that the progress of the student toward graduation will not be impaired. (EC 51769.5)

## ANALYSIS

This bill:

- 1) Requires that an employee of an entity having a contract with an LEA to offer work experience opportunities for students, including as part a pupil's individualized education program (IEP), meet the following conditions in order to be exempt from the requirement to have a valid criminal records summary for all of their employees:
  - a) At least one supervisor in the workplace who has direct contact with the student and has been designated by the employer as the employee of record who is responsible for the safety of the pupil, has a valid criminal records summary, as specified;
  - b) A staff representative of the LEA makes at least one visitation every three weeks to consult with the student's workplace liaison, observe the student at the workplace, and check in with the student to ensure their health, safety, and welfare, by addressing any concerns the student has raised; and
  - c) The parent or guardian of the student has signed a consent form regarding the student's work placement, attesting that they understand the duties assigned to the student and the nature of the workplace environment.
- 2) Requires an LEA contracting with a contractor for services as part of a student's independent study program, where the student is under the immediate supervision of their parent or guardian during the provision of those services, to verify completion of a valid criminal background check for all employees of the contractor who interact with the student, or to ensure that the parent or guardian signs a consent form attesting that they understand that the person employed by the contractor has not completed a valid criminal background check.

## STAFF COMMENTS

- 1) ***Need for the bill.*** According to the author, "Student safety remains a top priority, and SB 531 ensures there are necessary safeguards in place to protect students from potential harm at the workplace, while also ensuring access to professional development and vocational training in various career fields."

"Updating the requirements will encourage community business partners to continue contracting with LEAs in order to provide work training opportunities for high school students. Without this change, on-the-job work experience will only be available through traditional employment or internships that do not offer the same level of protection for students as contracted LEA work-based programs."

- 2) **Background check requirement expanded to contractors.** The Budget Act of 2021 requires that any entity contracting with an LEA ensure that any employee who interacts with students, outside of the immediate supervision of a school employee or the student's parent or guardian, have a valid criminal records summary, and that any subsequent arrest and conviction information be provided to the LEA it is contracting with.

Prior to the enactment of this provision, criminal background checks were required for entities contracting with LEAs only for janitorial services, schoolsite administrative services, grounds and landscape maintenance, student transportation, and schoolsite food services. The 2021 Budget Act expanded this requirement to any contract involving individuals interacting with students, whether in-person or online.

- 3) **Unintended consequences of background check requirement.** As the requirement for all employees of an entity holding a contract with an LEA to have a valid criminal background check went into effect, student work experience opportunities have been negatively impacted. Many employers who previously had hosted students for work experience and WorkAbility were unable or unwilling to comply with the requirement that all of their employees who might have contact with the student(s) be fingerprinted.

In addition, LEAs contracting with entities for the provision of educational services as part of an independent study program for pupils may not be in compliance with the fingerprinting requirement as they are presuming that the pupil is under the immediate control and supervision of the parent or guardian. As this may not be the case in every circumstance, there is a need to ensure parents or guardians are made aware that the employees of the entity that their pupils are interacting with may not have a valid criminal records summary, by signing an informed consent.

- 4) **Barriers to complying with the fingerprinting requirement.** LEAs and the CDE have identified some of the challenges identified by outside entities in complying with the fingerprinting requirement for all of their staff who may have contact with students. These include the following:
- a) Workplaces cannot bear the burden of the cost associated with staff fingerprinting of any staff who interact with students, including the fingerprinting service cost, travel cost, and extra staff time;
  - b) Workplaces cannot comfortably ensure that students will only interact with those staff who have been cleared;
  - c) Complications of staff turnover and ensuring any changes in staff comply with this requirement;
  - d) Lack of infrastructure or capacity to maintain records of those cleared and communicate subsequent arrest and conviction information;

- e) Large employers (e.g. retail, hospitals, hotels) may employ thousands of workers and experience high turnover of staff; and
  - f) Some employers (e.g. agriculture) may have workers who are undocumented.
- 5) ***Arguments in support.*** CAROCP, the Association of Career and College Readiness Organizations, among others writes, "One of the many ways that public education supports California's students is through critical work based learning incorporated into CTE pathways and WorkAbility programs. It offers skills training and career exploration in addition to personal development and enrichment, all of which are integral components of our successful programs."

"Recent trailer bill language changed fingerprinting and associated criminal history reporting requirements for entities that contract with LEAs, including employers that have partnered with schools for years to provide workplace-driven learning. This change was well-intended and commendable in concept, but the stricter requirements on contracted CTE and WorkAbility employers made a significant impact on the availability of work experience opportunities for students. In sum, current law can be interpreted to require employers to provide criminal history information for all of their employees to the LEA, regardless of their interaction or even workplace presence in relation to a student."

"Because of the burden and cost associated with the increased fingerprinting requirement, many employers are choosing to forego partnering with schools rather than navigating the new obstacles, including submitting their employees' criminal history information to an LEA. The work opportunities are closing for our CTE students and students with disabilities. Our students with disabilities that have relied on WorkAbility programs to help with the transition from school to work and independent living and thrived in job placements such as grocery stores, fast food restaurants, and warehouses will have fewer possibilities."

"SB 531 is a reasonable solution that maintains student safety as a priority. The well-being of our students will be upheld through safeguards such as regular job site visits by school staff and applying the fingerprinting requirement to supervisors who work directly with students. We also believe that this would complement legislative efforts in recent years that ensures criminal history is not a barrier to employment prospects, and respects current employee data privacy."

"CTE pathways and WorkAbility programs have enriched students' experiences for decades. SB 531 is sorely needed to preserve the work experience component that is integral to these programs' value so that students may graduate with the skills needed to pursue a career and find success in their livelihood."

## SUPPORT

Association of California School Administrators  
 California County Superintendents  
 CAROCP - the Association of Career and College Readiness Organizations

College and Career Advantage  
Eden Area Regional Occupational Program  
First Place for Youth  
Inner City Industry  
Mountain Desert Career Pathways Joint Powers Authority  
North Orange County ROP  
Riverside County Office of Education  
San Bernardino County District Advocates for Better Schools  
San Diego Unified School District  
Tri-valley Regional Occupational Program  
Valley ROP

**OPPOSITION**

An individual

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