

Chapter 392-300 WAC

FINGERPRINT RECORD CHECKS—ACCESS TO RECORDS—PRIVACY

WAC

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WAC 392-300-001 Purpose. Rules and regulations hereinafter set forth are established pursuant to RCW 28A.400.303, 28A.400.306, 28A.410.010 and chapter 126, Laws of 1996, SSB 6272, for the purpose of setting forth practices and procedures relating to access and review of record check information and databases.

[Statutory Authority: RCW 28A.400.303, 28A.400.306, 28A.410.010 and 1996 c 126. WSR 96-17-045 (Order 96-12), § 392-300-001, filed 8/19/96, effective 9/19/96.]

WAC 392-300-005 Definition—Record check information. As used in this chapter, "record check information" includes any record of arrest and prosecution (RAP sheet) provided by the Washington state patrol and/or the Federal Bureau of Investigation and any other information obtained by the superintendent of public instruction or designee as a result of the investigation of any data contained in RAP sheets.

[Statutory Authority: RCW 28A.400.303, 28A.400.306, 28A.410.010 and 1996 c 126. WSR 96-17-045 (Order 96-12), § 392-300-005, filed 8/19/96, effective 9/19/96.]

WAC 392-300-010 Definition—Record check database. As used in this chapter, "record check database" means the electronic database or printed copy equivalent maintained by the superintendent of public instruction or designee that contains:

(1) The names and other identifiable information of individuals checked under RCW 28A.400.303 and 28A.410.090; and

(2) Whether there is any record of arrest and prosecution for the individual.

(10/28/10)

[Statutory Authority: RCW 28A.400.303, 28A.400.306, 28A.410.010 and 1996 c 126. WSR 96-17-045 (Order 96-12), § 392-300-010, filed 8/19/96, effective 9/19/96.]

WAC 392-300-015 Definition—District employee. As used in this chapter, "district employee" shall mean any individual currently employed by or being considered for employment by a school district, a school district contractor, the state school for the deaf, the state school for the blind, an educational service district, educational service district contractor, or a Bureau of Indian Affairs funded school.

[Statutory Authority: RCW 28A.400.303, 28A.410.090. WSR 07-19-012, § 392-300-015, filed 9/7/07, effective 10/8/07. Statutory Authority: RCW 28A.150.290(1). WSR 02-06-044, § 392-300-015, filed 2/27/02, effective 3/30/02. Statutory Authority: RCW 28A.400.303, 28A.400.306, 28A.410.010 and 1996 c 126. WSR 96-17-045 (Order 96-12), § 392-300-015, filed 8/19/96, effective 9/19/96.]

WAC 392-300-020 Definition—Applicant. As used in this chapter, "applicant" means any individual who is applying for an educational certificate or employment under the rules and regulations of the superintendent of public instruction or the state board of education.

[Statutory Authority: RCW 28A.400.303, 28A.400.306, 28A.410.010 and 1996 c 126. WSR 96-17-045 (Order 96-12), § 392-300-020, filed 8/19/96, effective 9/19/96.]

WAC 392-300-025 Access to record check information by district employee or applicant. All district employees and applicants shall have access to record check information about them maintained by the superintendent of public instruction or designee. Any additional information collected by the superintendent of public instruction or designee as a result of the investigation of any data shall be available for inspection and copying by the district employee or applicant to whom it pertains during normal office hours in the office where the information is located. Information that is gathered as part of an ongoing investigation, shall not be released to the district employee or applicant until the investigation is completed.

[Statutory Authority: RCW 28A.400.303. WSR 10-17-059, § 392-300-025, filed 8/12/10, effective 9/12/10. Statutory Authority: RCW 28A.400.303, 28A.400.306, 28A.410.010 and 1996 c 126. WSR 96-17-045 (Order 96-12), § 392-300-025, filed 8/19/96, effective 9/19/96.]

WAC 392-300-030 Office hours. The individual's record check information shall be available to him or her for inspection and copying during the customary office hours of the agency. For purposes of this chapter, the customary office hours shall be from 8:00 a.m. to noon and from 1:00 pm. to 4:30 p.m., Monday through Friday, excluding legal holidays.

[Statutory Authority: RCW 28A.400.303, 28A.400.306, 28A.410.010 and 1996 c 126. WSR 96-17-045 (Order 96-12), § 392-300-030, filed 8/19/96, effective 9/19/96.]

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WAC 392-300-035 Requests for record check information. In accordance with the requirements of RCW 42.56.-100 that agencies prevent unreasonable invasions of privacy, protect public records from damage or disorganization, and prevent excessive interference with essential functions of the agency, record check information is obtainable by district employees or applicants to whom it pertains when they comply with the following procedures:

The request shall be made in writing. The district employee or applicant shall complete, sign and return the request for Background Check Results form located at <http://www.k12.wa.us/profpractices/fingerprint>. The written request shall be presented to the fingerprint records office of the superintendent of public instruction during customary office hours or may be mailed or faxed to the office. The request shall include the following information:

- (1) The name of the person requesting the record;
- (2) The time of day and the calendar date on which the request was made;
- (3) The nature of the request;
- (4) Height, weight and date of birth of individual fingerprinted; and
- (5) Social Security number of individual fingerprinted (optional).

[Statutory Authority: RCW 28A.400.303, WSR 10-17-059, § 392-300-035, filed 8/12/10, effective 9/12/10. Statutory Authority: RCW 42.56.100, WSR 09-02-024, § 392-300-035, filed 12/30/08, effective 1/30/09. Statutory Authority: RCW 28A.400.303, 28A.400.306, 28A.410.010 and 1996 c 126, WSR 96-17-045 (Order 96-12), § 392-300-035, filed 8/19/96, effective 9/19/96.]

WAC 392-300-040 Copying. No fee shall be charged for the inspection of record check information. The superintendent of public instruction may impose a reasonable charge for providing copies of records and for the use by any person of agency equipment to copy records; such charges shall not exceed the amount necessary to reimburse SPI for its actual costs incident to such copying. A record so copied shall not be released until and unless the person requesting the copied record has tendered payment for such copying to the appropriate official. All charges must be paid by money order or check.

[Statutory Authority: RCW 28A.400.303, 28A.400.306, 28A.410.010 and 1996 c 126, WSR 96-17-045 (Order 96-12), § 392-300-040, filed 8/19/96, effective 9/19/96.]

WAC 392-300-045 Protection of record check information. Members of the public and agency personnel not processing record check information shall not be permitted access to any criminal record information.

(1) Record check information and a facility for their inspection will be provided by the fingerprint record office. Such records shall not be removed from the place designated. Records may be copied pursuant to the provisions of WAC 392-300-040.

(2) All record check information shall be maintained in a secure and private environment in order to protect the confidentiality of all district employees or applicants.

(3) All employees of the superintendent of public instruction who have access to criminal record information shall undergo record checks by the Washington state patrol and the Federal Bureau of Investigation.

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[Statutory Authority: RCW 28A.400.303, 28A.400.306, 28A.410.010 and 1996 c 126, WSR 96-17-045 (Order 96-12), § 392-300-045, filed 8/19/96, effective 9/19/96.]

WAC 392-300-050 Access to record check database. School districts, the state school for the deaf, the state school for the blind, educational service districts, Bureau of Indian Affairs funded schools, authorized employees of approved private schools, colleges and universities shall establish written policies or procedures to determine which employees are authorized to access the database. Access to the superintendent of public instruction's record check database shall be limited to:

- (1) Employees of the superintendent of public instruction processing record check information including employees within the fingerprint records section, the office of professional practices, the legal services section, the certification section or their equivalents in case of future agency reorganization.
- (2) Authorized employees of school districts.
- (3) Authorized employees of educational service districts.
- (4) Authorized employees of college or universities with state board of education approved certification programs.
- (5) Authorized employees of the state school for the deaf.
- (6) Authorized employees of the state school for the blind.
- (7) Authorized employees of Bureau of Indian Affairs funded schools.
- (8) Authorized employees of approved private schools.
- (9) Other authorized individuals as determined by the superintendent of public instruction or designee.

Access to the database will be controlled by a confidential password issued by the superintendent of public instruction.

[Statutory Authority: RCW 28A.400.305, WSR 10-22-054, § 392-300-050, filed 10/28/10, effective 11/28/10. Statutory Authority: RCW 28A.400.303, 28A.410.090, WSR 07-19-012, § 392-300-050, filed 9/7/07, effective 10/8/07. Statutory Authority: RCW 28A.150.290(1), WSR 02-06-044, § 392-300-050, filed 2/27/02, effective 3/30/02. Statutory Authority: RCW 28A.400.303, 28A.400.306, 28A.410.010 and 1996 c 126, WSR 96-17-045 (Order 96-12), § 392-300-050, filed 8/19/96, effective 9/19/96.]

WAC 392-300-055 Prohibition of redissemination of fingerprint record information by educational service districts, the state school for the deaf, the state school for the blind, school districts, Bureau of Indian Affairs funded schools. Fingerprint record information is highly confidential and shall not be redisseminated to any organization or individual by any educational service district, state school for the deaf, state school for the blind, school district, or Bureau of Indian Affairs funded school.

[Statutory Authority: RCW 28A.400.303, 28A.410.090, WSR 07-19-012, § 392-300-055, filed 9/7/07, effective 10/8/07. Statutory Authority: RCW 28A.150.290(1), WSR 02-06-044, § 392-300-055, filed 2/27/02, effective 3/30/02. Statutory Authority: RCW 28A.400.303, 28A.400.306, 28A.410.010 and 1996 c 126, WSR 96-17-045 (Order 96-12), § 392-300-055, filed 8/19/96, effective 9/19/96.]

WAC 392-300-060 Protection of fingerprint record information by educational service districts, state school for the deaf, state school for the blind, school districts,

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and Bureau of Indian Affairs funded schools. Educational service districts, state school for the deaf, state school for the blind, school districts, and Bureau of Indian Affairs funded schools shall have policies and procedures to:

- (1) Protect the confidentiality of fingerprint record information, including the secure location of RAP sheets;
- (2) Limit access to authorized personnel processing or requiring fingerprint record information to make employment decisions; and
- (3) Prevent the unlawful redissemination of fingerprint record information.

Noncompliance with these provisions may allow for the recovery of civil damages under applicable federal and state statutes.

[Statutory Authority: RCW 28A.400.303, 28A.410.090. WSR 07-19-012, § 392-300-060, filed 9/7/07, effective 10/8/07. Statutory Authority: RCW 28A.150.290(1). WSR 02-06-044, § 392-300-060, filed 2/27/02, effective 3/30/02. Statutory Authority: RCW 28A.400.303, 28A.400.306, 28A.410.010 and 1996 c 126. WSR 96-17-045 (Order 96-12), § 392-300-060, filed 8/19/96, effective 9/19/96.]

WAC 392-300-070 Private school fingerprint process. Fingerprinting of subject individuals employed by private schools.

- (1) Definitions of private school terms.
 - (a) "Subject individual" means: Any person, certified or classified employed by a private school in a position having regularly scheduled, unsupervised access to children;
 - (b) "Regularly scheduled, unsupervised access to children" means contact with students that provides the person opportunity and probability for personal communication or touch when not under direct supervision;
 - (c) "Fee" means the total charges assessed to process fingerprint cards through the Washington state patrol and Federal Bureau of Investigation records check;
 - (d) "Information to be required" means all information requested by the office of the superintendent of public instruction;
 - (e) "Convictions of crimes" means, notwithstanding any other statutes or Washington administrative rule, conviction of a crime listed in WAC 180-86-013, or being under indictment for any of the crimes listed in WAC 180-86-013;
 - (f) "Private school" means a school that is approved with the Washington state board of education under chapter 180-90 WAC.

(2) The office of the superintendent of public instruction shall request criminal information from the Washington state patrol and the Federal Bureau of Investigation in the manner prescribed by law. A fee shall be charged for such services.

(3) Upon the private school's submission of the completed fingerprint cards and information form, the office of the superintendent of public instruction shall review the criminal records of subject individual.

(4) OSPI will send conviction information to administrators of approved private schools as allowed under RCW 10.97.050.

(5) The office of the superintendent of public instruction shall assure the destruction of all fingerprint cards, facsimiles or other materials from which fingerprints can be reproduced used by Washington state patrol or Federal Bureau of Investigation.

(6) Only cards and forms approved by the office of the superintendent of public instruction will be accepted. The office of the superintendent of public instruction will hold fingerprint cards on file and notify the private school and subject individual when there is no fee, an incorrect fee, when necessary information is missing from the fingerprint cards, or the information form was not received.

(7) The office of the superintendent of public instruction will return to the private school any fingerprint cards that the Washington state patrol or Federal Bureau of Investigation rejects for poor quality prints. The private school will be responsible for having the subject individual submit additional prints as required.

(8) The superintendent's office shall maintain a record of all properly submitted fingerprint cards in the current records database for a period of at least two years. The record shall include at least the following:

- (a) Card sequence number;
- (b) Name of private school submitting the cards;
- (c) Date cards received at the Washington state patrol;
- (d) Date letter regarding incomplete card was sent to the subject individual with a copy to the private school (only if applicable);
- (e) Date Washington state patrol received fingerprint cards;
- (f) Date private school was notified of Washington state patrol criminal history record or clearance;
- (g) Date private school was notified of Federal Bureau of Investigation record or lack of record.

This WAC will remain in effect through June 30, 2011.

[Statutory Authority: RCW 28A.400.305. WSR 10-22-054, § 392-300-070, filed 10/28/10, effective 11/28/10. Statutory Authority: RCW 28A.400.303. WSR 09-04-031, § 392-300-070, filed 1/29/09, effective 3/1/09. Statutory Authority: RCW 28A.410.010, 28A.400.305. WSR 00-21-077, § 392-300-070, filed 10/17/00, effective 11/17/00.]