

Date of Hearing: July 12, 2023

ASSEMBLY COMMITTEE ON EDUCATION
Al Muratsuchi, Chair
SB 531 (Ochoa Bogh) – As Amended June 1, 2023

SENATE VOTE: Not relevant

SUBJECT: Pupil safety: local educational agency contractors: background checks

SUMMARY: Exempts an entity having a contract with a local educational agency (LEA) for the purposes of student work experience programs from the requirement to have a valid criminal background check for all employees, provided that at least one supervisor in the workplace has a valid criminal records summary, that a representative of the LEA visits the workplace regularly, and the parent or guardian of the student signs an informed consent. Specifically, **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 of transition services identified in 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 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.

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)

FISCAL EFFECT: Unknown

COMMENTS:

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.”

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.

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.

Career Technical Education (CTE). CTE is a program of study that involves a multiyear sequence of courses that integrates core academic knowledge with technical and occupational knowledge to provide students with a pathway to postsecondary education and careers. California's CTE standards for grades 7 to 12 specify learning goals in 58 career pathways organized around 15 industry sectors.

Project WorkAbility provides work experience opportunities for students with exceptional needs. According to the CDE, WorkAbility was initiated in November 1981 as a pilot project to test the concept of work experience for youth with disabilities. The WorkAbility program is administered by the CDE. The program provides comprehensive pre-employment skills training, employment placement and follow-up for high school students in special education who are making the transition from school to work, independent living, and postsecondary education or training. Program services are appropriate to individual student needs, abilities, and interests.

The program offers students with an individualized education program (IEP) the opportunity to complete their secondary education while also obtaining marketable job skills. WorkAbility provides secondary students with an understanding of job-seeking and job-keeping skills. The employability of students improves through occupational class training and on-the-job subsidized or unsubsidized work experience.

The WorkAbility program seeks employers in the business community who will give students with disabilities a chance to prove themselves in a competitive integrated employment setting. Local program sites successfully coordinate state and local service providers to offer comprehensive services tailored to local economic, social, and geographic needs and abilities.

Impacts of fingerprinting requirement for contractors. As discussed previously, the requirement for all entities contracting with LEAs to ensure that all employees who could have contact with students be fingerprinted has had a dampening effect on options for work-based learning and transition programs for pupils with special needs, including WorkAbility.

The Career and College Transition Division of the CDE conducted a survey of LEAs regarding their experiences with the fingerprinting requirement for contractors and its impact on work-based learning opportunities for students during the fall of 2022. They received 309 responses from LEAs who had students engaged in some form of work-based learning. Responses included the following:

- 48 LEAs were requiring staff to accompany students on all work-based learning placements;
- 78 LEAs were no longer using outside entities for work-based learning (impacting over 13,000 students); and
- Across all LEAs responding, a total of 9,970 business partners declined to accept work-based learning student placements due to the fingerprinting requirement.

The Special Education Division of the CDE also surveyed LEAs regarding work-based learning placements for students with exceptional needs during the fall of 2022. They received 249 responses, representing 95% of all WorkAbility grantees. Findings included the following:

- 57% are still placing students in subsidized work experience placements;

- 22% have seen the number of employers willing to allow placements to be somewhat impacted, and 18% have seen this significantly impacted; and
- 2% are not able to place students in subsidized work experience placements.

In some cases, school staff accompany students with IEPs to the work placement and, in that case, the background check requirement does not apply. However, respondents noted that they do not have sufficient staffing resources to have staff present 100% of the time at subsidized placements, and that many employers are not willing to complete background checks of their employees to allow for subsidized placements without school staff supervision.

In addition, the Los Angeles Unified School District (LAUSD) provided information in November 2022 on the impact of the fingerprinting requirement on special education and other workplace placements:

- LAUSD typically partners with 850 outside entities for work-based learning placements – 450 for special education students and 400 for general education work-based learning;
- LAUSD is only placing students at outside entities which meet the new fingerprinting requirement. This had reduced the number of worksite options by approximately 90%;
- Of the retail businesses surveyed by LAUSD, 800 have declined to participate due to the costs and burden of the fingerprinting requirement;
- LAUSD reported that they had approximately 100 students with disabilities participating in work placements, down from approximately 1,500 prior to the fingerprinting requirement; and
- They also reported having 94 students participating in general education work-based learning, down from a high of 1,500 in 2021-22.

The Mountain Desert Career Pathways, representing 9 high school districts, community colleges, and businesses in San Bernardino County, in a letter dated December 5, 2022, notes:

The result of the changes to EC 45125.1 is the near complete cessation of internship, mentorships, job shadowing, and other work-based learning opportunities for hundreds of students in our communities. The effects of this loss is detrimental to the career development of students and the economic development of our region.

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:

- 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;
- Workplaces cannot comfortably ensure that students will only interact with those staff who have been cleared;

- Complications of staff turnover and ensuring any changes in staff comply with this requirement;
- Lack of infrastructure or capacity to maintain records of those cleared and communicate subsequent arrest and conviction information;
- Large employers (e.g. retail, hospitals, hotels) may employ thousands of workers and experience high turnover of staff; and
- Some employers (e.g. agriculture) may have workers who are undocumented.

Work experience is an essential component of CTE courses and programs. According to the CDE, work-based learning is defined 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. When feasible, work-based learning should be an integral part of a more comprehensive program that integrates academic courses and career technical education. High-quality work-based learning may include, but is not limited to, the following:

- Emphasis on learning in the workplace;
- Exposure to a wide range of career areas and worksites in order to help youth make informed choices about education, training options, and career pursuits;
- Thoughtful placement of pupils into opportunities that are evaluated for their safety, qualified supervision, and learning opportunities;
- Appropriate sequencing of experiences based upon the pupil's age and maturity, ranging from site visits and tours, job shadowing, unpaid and paid internships, and paid work experience;
- Explicit aim to supplement, or systematically reinforce, classroom instruction in technical courses, academic courses, or both;
- Systematic attention to the development of 21st century skills, such as communication, problem solving, teamwork, project planning, and critical thinking;
- A trained mentor who structures the learning at the worksite;
- Coordination between the classroom teacher and the workplace mentor or supervisor;
- Built-in regular assessment and feedback;
- Involvement of youth in choosing and structuring the experience; and
- Clear and measurable learning outcomes.

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."

Recommended Committee Amendments. Staff recommends that the bill be amended as follows:

- 1) Clarify that at least one person employed by the contractor deemed by the contractor to have responsibility for the safety of the pupil in the workplace be required to have a valid criminal background check.
- 2) Add cross references to relevant CTE work experience programs.
- 3) Remove the requirement that the work placement be part of transition services identified in the student's IEP.
- 4) Require parental consent when a parent is presumed to have immediate supervision of a pupil during educational services provided by a contractor as part of an independent study program where the local educational agency has not verified the completion of a valid criminal records summary for all of the employees of the contractor.

- 5) Add an urgency clause at the author's request so that the requirements will be in place for the 2023-24 school year.

Related legislation. AB 130 (Committee on Budget) Chapter 44, Statutes of 2021, 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 to any LEA that it is contracting with.

REGISTERED SUPPORT / OPPOSITION:

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

None on file

Analysis Prepared by: Debbie Look / ED. / (916) 319-2087