

BRIGHTON AREA SCHOOLS

FREQUENTLY ASKED QUESTIONS ABOUT THE NEW

“SCHOOL SAFETY LEGISLATION” (2005 PA 129-131-138)

The following FAQ is offered to Brighton Area Schools employees to help answer questions that might arise as a result of new School Safety Legislation. Additionally, and most importantly, the FAQ provides information to employees about their responsibilities under the new legislation.

I. NEW LEGISLATION

1. ***What is the “School Safety Legislation”?***

The School Safety Legislation amends various acts to require a criminal history check for all full and part-time school employees, and each person who is assigned to “regularly and continuously work under contract”, prohibits schools from hiring or assigning people whose criminal record checks indicate they have been convicted of “listed offenses” under the Sex Offenders Registration Act; requires employees to notify their district when charged with particular crimes and requires the superintendent and board of education to agree in writing to continue employment of a person convicted of a felony.

2. ***When is the new legislation effective?***

January 1, 2006 is the effective date of the new legislation.

3. ***What is the purpose of the new legislation?***

A recent state audit showed there were 222 school employees with criminal records working in schools, yet the official files of only 44 of those employees contained information from their background checks or a description of their criminal charges and convictions. The legislation will prohibit schools from hiring sex offenders and foster better communication between the prosecutor’s office and the schools regarding those charged with sex offender crimes.

II. FINGERPRINTING

4. ***Will I have to be fingerprinted?***

Yes, **all employees**, full and part time, who are working in the district on January 1, 2006 must submit their fingerprints between January 1, 2006 and July 8, 2008. *MCL 380.1230g*

5. ***I was fingerprinted when I was hired. Will I be printed again? Why?***

Yes. If you are working in the district on January 1, 2006 you will have to submit your prints for a criminal records check. The reason you will have to be printed again is because the Michigan State Police are required by law, now, to save and maintain all fingerprints that are submitted to them under the School Safety Legislation *MCL 380.1230f*

6. ***Where do I go to be fingerprinted?***

The Livingston Educational Service Agency (LESA) is an approved site for electronic fingerprinting. The LESA has purchased portable equipment for the purpose of completing this requirement and will be training staff in local districts to use the equipment, which will be rotated among the districts on a scheduled basis. **You will be notified of the scheduled date and time for your fingerprinting.** Each employee will be expected to appear for their

appointment at the scheduled time. As we have close to one thousand employees in Brighton Area Schools subject to fingerprinting, your cooperation in keeping the appointment will help greatly in making this a smooth process.

7. ***Will I have to pay for the fingerprinting?***

No. Brighton Area Schools will pay for the cost of **current, non-substitute**, employees fingerprinting during the period of January 1, 2006-July 1, 2008. However, if you miss your appointment you will be required to make your own arrangements and pay for the fingerprinting process.

III. CONVICTIONS, LISTED OFFENSES, FELONIES, PRIVACY ISSUES

8. ***What happens to my fingerprint record?***

The Michigan State Police will send the results of your criminal history check to the Office of Human Resources and the attention of Donald E. Thomas, Assistant Superintendent for Human Resources and Pupil Services. The results are kept in your personnel file. The results are, by law, only to be used for the purpose of evaluating your qualifications for employment. The results shall not be disclosed to any person not directly involved in evaluating your qualifications for employment.

9. ***What if my criminal record results show a conviction?***

It depends on the type of conviction. If the results of the criminal history check reveal that you have been convicted of a “listed offense” then the district “**shall not employ**” or allow you to “regularly or continuously work under contract” in any capacity in the district. Or, if the district has notice from an authoritative source that you have been convicted of a listed offense, then you shall not be employed in any capacity or be allowed to regularly and continuously work in the district. You would be terminated, subject to either procedural or substantive safeguards given to employees under bargaining agreements, individual contracts or board policies.

If the results of the criminal history check reveal that you have been convicted of a **felony** other than a listed offense, then the district **shall not employ** you in any capacity or allow you to “regularly or continuously work under contract” **unless** the superintendent and the board of education each specifically approve your continued employment in writing. *MCL 380.1230g(8)*.

10. ***What is a “listed offense”?***

A listed offense is a term describing particular crimes in the Sex Offenders Registration Act , MCL 28.722. The listed offenses are as follows:

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| MCL 750.145a, b: | Accosting, enticing or soliciting a child for immoral purposes |
| MCL 750.145c: | Involvement in child sexually abusive activity or material (child pornography) |
| MCL 750.158: | Crime against nature or sodomy, if victim less than 18 years |
| MCL 750.167(a)(f):
MCL 750.335a | A Third (or subsequent) violation of any combination of engaging in obscene or indecent conduct in public, indecent exposure or a local ordinance substantially corresponding to either offense. |
| MCL 750.338, a, b: | Gross indecency between males, females or male and female, if the victim is less than 18 years (except for a juvenile disposition or adjudication) |
| MCL 750.349: | Kidnapping |
| MCL 750.350: | Leading, enticing or carrying away a child under 14 years |

MCL 750.455:	Pandering
MCL 750.520b-e:	1 st , 2 nd , 3 rd and 4 th degree Criminal Sexual Conduct (CSC)
MCL 750.520g:	Assault with the intent to commit CSC
MCL 750.10a:	Any offense committed by a sexually delinquent person Any other violation of a law of this state or a local ordinance of a municipality that by its nature constitutes a sexual offense against an individual less than 18 years An attempt or conspiracy to commit an offense described in the offenses enumerated above. An offense under the laws of the United States, any other state, or any other country, tribal or military law which is substantially similar to a “listed offense”.

11. ***What actions will the board take if I have been convicted of a listed offense?***

The board “shall not employ” you if you have been convicted of a listed offense. *MCL 380.1230g(8)* If you are a teacher who has been convicted of a felony that is a listed offense, the board must discontinue your salary effective upon the date of the conviction. *MCL 38.103(2)*. The district must still follow any substantive or procedural safeguards that are in the collective bargaining agreements, individual contract or board policies.

12. ***If my criminal background check shows I have been convicted of a felony, other than a listed offense, what action will the board of education take?***

The statute requires that the superintendent and board of education each specifically approve your continued employment in writing. *MCL 380.1230g(8)*. If you are a teacher, the board may discontinue your salary upon the effective date of the conviction. *MCL 38.103(2)*. The district must still follow procedural or substantive safeguards for employees under collective bargaining agreements, board policies, individual contracts and Teacher Tenure Act, where applicable.

13. ***What about my privacy right not to have the results of my criminal record disclosed?***

The School Code prohibits criminal history results from being disclosed to anyone not involved in evaluating the qualifications of an individual for employment. Both the board of education and the superintendent are involved in evaluating the qualifications of an individual. Section 8(a) of the Michigan Open Meetings Act allows closed sessions at a board meeting to consider the dismissal, suspension or disciplining of a school district employee, if the named employee requests a closed hearing. Therefore, if the board of education and the superintendent need to consider the criminal record of an employee to determine if that employee should be continued as employee, the employee can request a closed hearing.

14. ***Can my criminal record results be released under a Freedom of Information Act request?***

The Freedom of Information Act requires the disclosure of public records upon request; however, there are exemptions from disclosure. There is an exemption for “records or information specifically described and exempted from disclosure by statute.” The School Code specifically limits disclosure of criminal record results except to those individuals involved in the evaluation of an individual’s qualifications for employment. As a result, an employee’s criminal history result would be exempt from a FOIA request.

IV. SELF-REPORTING REQUIREMENTS

15. ***What are the new self-reporting requirements?***

The new legislation requires **ALL** school employees, applicants (who have had an initial criminal history check) and persons “regularly and continuously working under contract” who are **charged** with a crime listed in MCL 380.1535a(1) (or a violation of a substantially similar law of another state, or of the United States) to **report** the criminal charge to the district and the Michigan Department of Education **within three (3) business days after the arraignment**. *MCL 380.1230d(1)*. For the district submission requirement, you are to submit that report to Donald E. Thomas, Assistant Superintendent Human Resources and Pupil Services.

16. ***What are the crimes listed in MCL 380.1535a(1) that I have to report within three business days of arraignment?***

The crimes listed in MCL 380.1535a(1) are as follows:

- Any felony
- Any of the following **misdemeanor violations**:
 - CSC or attempt to commit CSC – 4th degree (**also a listed offense**)
 - Child abuse or attempt to commit child abuse – 3rd or 4th degree
 - Cruelty, torture or indecent exposure involving a child
 - Delivery or distribution of a narcotic to minors, students, near school property; distribution of marijuana; penalties *MCL 333.7410*
 - Breaking and entering or entering without breaking; buildings, tents, boats, railroad cars; entering public buildings when expressly denied. *MCL 750.115*
 - Consumption or possession of alcohol by minors or controlled substances at social gatherings. *MCL 750.141a*
 - Accosting, enticing or soliciting child for immoral purposes *MCL 750.145a*. (**also a listed offense**)
 - Indecent exposure *MCL 750.335a* (**listed offense if 3rd or subsequent violation**)
 - Removal or damage of fixture, attachment, or other property belonging to, connected with, or used in construction of vacant building or structure. *MCL 750.359*
 - Assault and assault and battery; domestic assault. *MCL 750.81*
 - Assault and infliction of serious injury. *750.81a*
 - Internet use; for the purpose of committing crime against minor. *MCL 750.145d*
 - Selling or furnishing alcohol to minors *MCL 436.1701*
 - Any misdemeanor that is a **listed offense**
 - Any violation of a substantially similar law of another state, of a political subdivision of the state or another state, or of the United States.

17. ***What if I fail to report an arraignment within the three- day time period?***

If you violate MCL 380.1230d(1) by not reporting an arraignment for a crime listed in MCL 380.1535a(1), you are guilty of a misdemeanor or a felony, depending on the crime for which you were arraigned. *MCL 380.1230d(3)(a), (b)*. Additionally, if you are a tenured teacher, failure to report is considered to be reasonable and adversely related to your ability to serve in an elementary or secondary school and is sufficient grounds to support discharge or demotion. *MCL 38.101a*

18. ***If I am arraigned on any crime listed in MCL 380.1535a(1), what is the procedure for reporting to the district and to the Michigan Department of Education?***

You will be required to report on a form prescribed by the Michigan Department of Education and available on the district's Intranet website (Arraignment Disclosure Form). The form **must be submitted to the Donald E. Thomas, Assistant Superintendent Human Resources and Pupil Services and to the Michigan Department of Education within three business days of being arraigned for the crime.**

19. ***What happens to that report once I submit it to Brighton Area Schools?***

The report will be kept in your personnel file.

20. ***Will the report stay in my personnel file regardless of whether or not I am convicted?***

If you submit the report as required and you are subsequently **not** convicted of any crime after the completion of the judicial proceedings resulting from that charge, you **may request that the department and the district delete the report from their records**. To have that record deleted from your personnel file, submit, in writing, a request along with documentation of the dismissal, to Donald E. Thomas, Assistant Superintendent Human Resources and Pupil Services. That report will then be deleted from your personnel file. *MCL 380.1230d(5)*

21. ***Are there steps I must take if I am convicted of a crime listed in MCL 380.1535a(1); MCL 380.1539b(1)?***

If you enter a plea of guilty or nolo contendere or if there is a finding of guilt by judge or jury of any crime after having been initially charged with a crime as described in MCL 380.1535a(1) (*See Number 16*) or MCL 380.1539b(1) (*same crimes as MCL 380.1535a(1)*), you must immediately disclose to the court that you are employed or working under contract for the district. You must also **immediately** provide a copy of that form to the prosecuting attorney in charge of the case, the superintendent of public instruction and the superintendent or chief administrator of the district. For the district reporting requirements, you are to submit the copy of the form to Donald E. Thomas, Assistant Superintendent Human Resources and Pupil Services. *MCL 380.1230d(2)*

22. ***Does Brighton Area Schools supply the form that I am required to submit if convicted?***

No. The State Court Administrative Office will prescribe the form. *MCL 380.1230d(2)*

23. ***What if I fail to disclose to the court, the prosecutor, the superintendent of public instruction or the superintendent or chief administrator of the district that I have been convicted?***

If you fail to report your conviction as required under MCL 380.1230d(2), you are guilty of a misdemeanor or felony, depending on the crime for which you were convicted. *MCL 380.1230d(3(a),(b))*.

24. ***What are the district's options if I fail to report as required?***

If you are convicted and fail to report as required, you “may be discharged” from employment after notice and opportunity for a hearing. *MCL 380.1230d(4)*. If a collective bargaining agreement is not in compliance with this subsection 4, then it does not apply until after the expiration of the agreement. .

V. TEACHERS AND EMPLOYEES WITH STATE BOARD APPROVAL

25. ***If I am convicted of a crime enumerated in MCL 380.1535a(1) or MCL 380.1539b(1)(See question 16 of this FAQ for a listing of those crimes) what effect will that have on my teaching certificate or State Board Approval?***

If you hold a teaching certificate or state board approval and are convicted of a crime described in MCL 380.1535a(1) or MCL 380.1539b(1), within 10 working days after receiving notice of the conviction, the superintendent of public instruction shall notify you in writing that your teaching certificate or state board approval may be suspended because of the conviction. You will receive notification of your right to a hearing before the superintendent of public instruction. If you do not avail yourself to the hearing, within 15 working days, your teaching certificate/state board approval shall be suspended. After the hearing, if the Superintendent of Public Instruction finds the conviction is “reasonably and adversely related to the person’s present fitness to serve in an elementary or secondary school” or that person is “unfit” to teach, the certificate may be suspended. *MCL 380.1535a(1); MCL 380.1539b(1)*

26. ***Can my teaching certificate or state board approval be affected in any other way?***

Yes. If you are convicted of the following crimes the superintendent of public instruction **shall order summary suspension** of your teaching certificate or state board approval and shall provide an opportunity for a hearing:

- CSC in any degree, assault with intent to commit CSC or attempt to commit CSC in any degree
- Felonious assault on a child, child abuse in the 1st degree or attempt to commit child abuse in the 1st degree
- Cruelty, torture or indecent exposure involving a child
- Unlawful manufacture, delivery or possession of controlled substances, distribution of marijuana to minors near school property, recruiting a minor to commit a felony
- Assault with intent to commit murder, assault with intent to rob/steal while armed, attempt to murder, accosting, enticing or soliciting a child for immoral purposes, prior conviction for same, child sexually abusive activity or material, first degree murder, second degree murder, enticing away a child under 14 years, prostitution, pandering, dangerous weapon/aggravated assault, using internet for criminal solicitation of minors
- Sodomy (if victim less than 18)
- Gross indecency between males, between females or between males and females, if victim is an individual less than 18
- Sexually delinquent person
- Attempt or conspiracy to commit any of the above
- Violation of a substantially similar law of another state, jurisdiction, or of the United States
- Any other crime listed in subsection 1 of MCL 380.1535a/1539a if the superintendent of public instruction determines that the public health, safety or welfare requires emergency action based on the circumstances underlying the conviction. *MCL 380.1535a(2)*

27. ***I am a teacher or employee with a state board approval and I have entered a plea of guilty or nolo contendere or a judge/jury finds me guilty of a crime listed above in question 26, can I still work in the district?***

The district can suspend you from active performance and if the district suspends you, your compensation must be discontinued during the certificate/approval suspension/revocation proceedings until the superintendent of public instruction makes a final determination. If the certificate/approval is ultimately not revoked/suspended, the district will make you whole for lost compensation, less interest. *MCL 380.1535a(4); MCL 380.1539b(4)*.

28. ***I still have questions about this legislation. Who can I talk with about my questions?***

The Brighton Area School's administration will work to assure there is minimal disruption to your schedule in order to fulfill the fingerprinting mandate. The administration is committed to providing a safe and secure environment for staff and students. For at least the past ten years, the Brighton Area Schools has provided a safe and secure environment for students and staff by requiring all newly hired non-certified applicants to submit information for a non-fingerprint criminal history check, even though not statutorily required to do so.

Please understand that, as with all new legislation, there will be forthcoming interpretations, which will be communicated to you as we receive them. If you have further questions, please contact the Office of Human Resources at 810-299-4090 or by email to dthomas@bas.k12.mi.us.