



QUICK REFERENCE GUIDE

BACKGROUND CHECKS

This guide is intended to be a starting point for understanding background checks, when they are required and what PACE recommends as best practice. This guide should not be substituted for legal advice, especially for more complex situations. If you have further questions or need additional guidance please reach out to your retained general counsel or [PACE Legal Services](#).

PACE often gets asked about background checks and their requirements. This topic can often be confusing because of the various requirements and distinct terminology. Following are definitions to common background check terminology:

Background Check – an all-encompassing term for different checks, that you as an educational employer are required to do per ORS 339.374. The following types of background checks will be further explored in subsequent sections: criminal records check, reference check and ODE/TSPC verification.

Contractor – “a person providing services to an education provider under a contract in a manner that requires the person to have direct, unsupervised contact with students,” as defined by ORS 339.370(3).

Volunteer – “a person acting as a volunteer for an education provider in a manner that requires the person to have direct, unsupervised contact with students,” as defined by ORS 339.370(14).

Direct, unsupervised contact with students – “contact with students that provides the person opportunity and probability for personal communication or touch when not under direct supervision,” as defined by OAR 581-021-0510(3).

These definitions and legal requirements are found in OSBA model policy GCDA/GDDA and GCDA/GDDA-AR. It is recommended that the entity contact the OSBA Policy Department to confirm that it has the most recent version of this policy.



Types of background checks required by ORS 339.374 to help prevent sexual abuse and molestation (SAM).

Criminal Records Check

Please note that the preceding definitions of contractor and volunteer may not encompass every contractor and volunteer that walks onto your campus.

Employees

- All non-licensed employees are required to submit to a fingerprinting and criminal records check through the Oregon Department of Education (ODE) upon offer of employment.
- All licensed staff go through a fingerprinting and criminal records check upon licensure through the Teacher Standards and Practices Commission (TSPC).

Contractors

- Contractors are required to submit to the same fingerprinting and criminal records check as required for employees.

QUICK REFERENCE GUIDE | BACKGROUND CHECKS

Volunteers

- Educational entities are required to have a policy requiring volunteers to undergo a criminal records check.
- There is currently no regulatory guidance on the contents of a criminal records check.
 - As a best practice, PACE recommends at a minimum, that the criminal records check be from a national database. There are some educational service districts (ESD) that provide this service through a contract.
 - You should already have policy (GCDA/GDDA and associated AR) that defines what your entity does for criminal records checks. Some of those policies may require positions such as volunteer coaches to undergo fingerprinting in addition to the criminal records check. Be aware of and follow your policy.

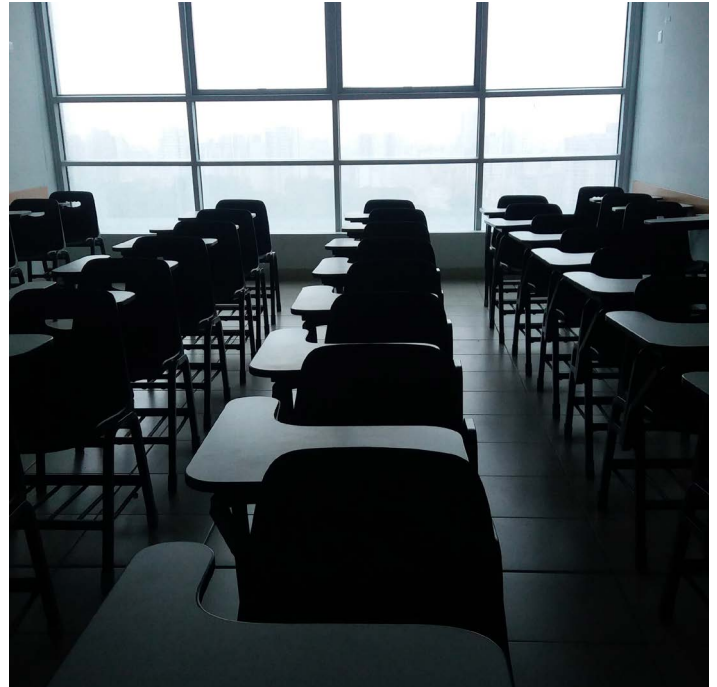
Reference Check

In 2009, Oregon passed the first bill related to sexual conduct of school employees. This bill included a provision that educational providers must conduct a reference check of the last three educational employers for all new hires. The reference check is to verify with those employers if the prospective employee:

- has been the subject of a substantiated report of abuse or sexual conduct; or
- is the subject of an ongoing investigation related to a report of suspected abuse or suspected sexual conduct, and if so, includes:
 - dates of reports;
 - definitions of “abuse” and sexual conduct” used in the investigation; and
 - standards used to determine whether any reports were substantiated.

This law requires the prospective employee to furnish you with:

- a list of their previous and current educational employers;
- written authorization for those employers to release certain information pertinent to this law (PACE has a sample disclosure release that can be used for this process); and
- a written statement of whether they have been the subject of a substantiated report of child abuse or sexual conduct and/or they are the subject of an ongoing investigation related to a report of suspected child abuse or suspected conduct.



ODE/TSPC Verification

In 2019 the Oregon Legislature passed a bill that resulted in major changes to Oregon’s sexual conduct laws. The main change related to background checks was the addition of a verification that must be completed related to the investigation of substantiated reports of sexual conduct.

Prior to the educational provider hiring a new employee or accepting the services of a contractor or volunteer, the educational provider must verify with:

- TSPC for those persons who are licensed by the TSPC or
- ODE for those persons who are not licensed by TSPC

if the person is the subject of an ongoing investigation or has a substantiated report relating to conduct by the person that may constitute sexual conduct. Refer to ODE’s webpage on sexual conduct that includes ODE’s verification process.

If you have any additional questions or need further assistance, please reach out to the Risk Management Department at 800-285-5461 or at riskmanagement@sdao.com

BACKGROUND CHECKS | FREQUENTLY ASKED QUESTIONS

This FAQ is designed to supplement the Background Check QRG. PACE created this FAQ with best practices and clarifying background check requirements in mind. Please reference the QRG to understand the terminology used in this document for the different required background checks. Note, this FAQ should not substitute for legal advice, especially for more complex or unique situations. If you have further questions or need additional guidance please reach out to your retained general counsel or PACE Legal Services.

Q: What background checks do I need to complete for licensed staff?

A: You need to conduct a:

- reference check
- TSPC verification

**Fingerprinting and criminal records check is completed upon licensure with TSPC.*

Q: What background checks do I need complete for unlicensed staff?

A: You need to conduct a:

- fingerprinting and criminal records check through ODE
- reference check
- ODE verification

Q: What background checks do I need to complete for an unlicensed staff position that is being filled by an individual who holds a current TSPC licensure?

A: You need to conduct a:

- reference check
- TSPC verification

**Fingerprinting and criminal records check is completed upon licensure with TSPC.*

Q: What background checks do I need complete for contactors?

A: For those contactors that will have contact with students that provides the person the opportunity and probability for personal communication or touch when not under direct supervision, you need to conduct:

- the same criminal records check and fingerprinting you would conduct on your employees, and
- ODE/TSPC verification (TSPC for those persons who are licensed by the TSPC or ODE for those persons who are not licensed by TSPC)

Q: What background checks do I need complete for volunteers?

A: You need to:

- reference and follow your policy (GCDA/GDDA and associated AR), and
- for those volunteers who have contact with students that provides the person the opportunity and probability for personal communication or touch when not under direct supervision, you need to conduct:
 - ODE/TSPC verification (TSPC for those persons who are licensed by the TSPC or ODE for those persons who are not licensed by TSPC)

Q: What background checks do I need to complete for an "Agent"?

A: "Agents" should fall into the category of either a contractor or volunteer with the educational entity, and therefore should be background checked accordingly.

- If you feel you have a unique situation where an agent does not fall into either of these categories, please contact PACE Legal.

Q: What do we do for those contractors and volunteers that do not have contact with students that provides the person the opportunity and probability for personal communication or touch when not under direct supervision?

A: Nothing is required statutorily, but as a best practice you need to put controls in place to help reduce the likelihood of grooming behaviors and other sexual misconduct. Those controls may include actions such as:

- developing processes and practices to ensure those individuals do not have direct unsupervised contact with students, and/or
- electing to complete criminal records checks on these individuals (you need to follow your policy for your volunteers), and/or
- electing to conduct the ODE/TSPC verification.

If you have further questions or need additional guidance please reach out to your retained general counsel or PACE Legal Services.

If you have any additional questions or need additional guidance, please reach out to your retained general counsel or PACE Legal Services.