



Guidance & Scenarios for HB 745: Require background checks for certain school employees and volunteers 2025 Legislative Session

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Background

The purpose of this document is to provide guidance for schools on implementation of [HB 745](#) from the 2025 Legislative Session, specifically with respect to the new background check requirements for work-based learning and contracted bus drivers. We recommend contacting your district's legal counsel with any questions regarding the specifics of creating and implementation your district's policy. This guidance was jointly crafted with MTSBA, Kaleva Law, and the Office of Public Instruction

Overview

HB 745 was adopted during the 2025 legislative session and went into effect on July 1, 2025. The law requires school districts to adopt a student protection policy that requires background checks for any individual who may have unsupervised contact with students. It requires school districts who fail to comply with their student protection policy to submit a correction plan with the superintendent of public instruction.

Interpretation

Based on the definitions in [ARM 10.40.101](#) effective March 2026, a student protection policy adopted pursuant to [§ 20-3-323, MCA](#), must ensure that students do not have **unsupervised contact** with an adult who has not undergone a fingerprint-based national criminal history background check that complies with the requirements of § 20-3-323(1)(d), MCA. This means that a student may not be left unattended and alone in the physical presence of an adult who has not undergone such a background check, except for in the case of a momentary absence. For there to be a violation of the law, the adult must not only be alone the student(s), but must also engage in contact, as defined in the rule.

Following are some example scenarios to demonstrate compliance with HB 745, as interpreted by the Office of Public Instruction in its proposed rule.

Scenarios

Scenario 1: Bus Driver

A bus driver who is an employee of a private contractor of transportation services for a school district is driving a bus full of students and interacting with each of them as they get on the bus and is regulating their conduct as passengers. There is no other adult present. The bus driver has not completed a fingerprint background check.

Is this a violation of the law?

Answer:

Yes, this scenario constitutes a violation of the law based on the definitions provided in the document. Here's why:

1. **"Contact" Definition:** The bus driver is interacting with each student as they get on the bus and regulating their conduct as passengers. This qualifies as "contact," which is defined as any direct, personal interaction involving communication or engagement of any kind between an adult and a student.
2. **"Unsupervised" Definition:** The bus driver is the only adult present, meaning the students are left "unattended and alone in the physical presence of an adult" who has not undergone a fingerprint-based national criminal history background check. Since the bus driver is engaging in "contact" with the students, this meets the statutory definition of "unsupervised contact."
3. **"In transit to a school-sponsored activity" Definition:** While the students are "in transit" (being transported by a private contractor on a bus contracted by the school

district), the rule requires that any adult with unsupervised contact must have completed the fingerprint-based background check.

Since the bus driver has not completed the required fingerprint background check and is engaging in contact with students while being the only adult present, this scenario violates the law.

Scenario 2: Bus Driver and Bus Attendant

Everything is the same from Scenario 1, except there is an adult employee of the contractor present on the bus. Neither of the adults has completed a fingerprint background check.

Is this a violation of the law?

Answer:

No, this scenario does not constitute a violation of the law based on the definitions provided in the document. Here's why:

1. **"Unsupervised " Definition:** When one or more students are left unattended and alone in the physical presence of a single adult who has not undergone a fingerprint-based national criminal history background check, they are unsupervised. In this scenario, there are two adults present on the bus, so the students are not "alone" with a single adult. Therefore, the situation does not meet the definition of "unsupervised."
2. **"Contact" Definition:** While both adults may be interacting with students, the presence of multiple adults ensures that the students are not left "alone" with one adult, which is the key condition for a violation under the "unsupervised contact" definition.

As long as there are multiple adults present, even if neither has completed a fingerprint background check, the situation complies with the rule and does not violate the law.

Scenario 3: Work Based Learning Commercial Setting

Work Based Learning Setting. A student is engaged in work based learning for school credit at a plumbing supply store. There is a store manager and another adult employee present, and the supply store is open to the public for business. Neither the store manager nor the other adult has completed a fingerprint background check, but both individuals are present at all times during the 8-10 am timeframe in which the student participates in work based learning.

Is this a violation of the law?

Answer:

No, this scenario does not constitute a violation of the law based on the definitions provided in the document. Here's why:

1. **"Unsupervised" Definition:** When a student is left unattended and alone in the physical presence of a single adult who has not undergone a fingerprint-based national criminal history background check, they are unsupervised. In this scenario, there are two adults present at all times during the student's work-based learning, so the student is not "alone" with a single adult. Therefore, this does not meet the definition of "unsupervised contact."
2. **"Public Environment" Definition:** The plumbing supply store is open to the public for business, which qualifies as a "public environment." In such environments, students are in spaces where the general public is allowed to enter without restriction, and they can be seen and monitored by other individuals. This further ensures compliance with the rule.

Since the student is in a public environment and is not left alone with a single adult, this scenario does not violate the law.

Scenario 4: Work-Based Learning Commercial Setting with Change in Facts

Everything is the same as in scenario 3, except the adult employees are sometimes both present and sometimes only one is present. Assume occasional interactions between the student and the adult(s) as part of the work based learning experience.

Is this a violation of the law?

Answer:

It depends. This scenario could constitute a violation of the law during the times when only one adult is present with the student; however if members of the public are also present during the times when only one adult employee is present, the law is not violated. Here's why:

1. **"Unsupervised" Definition:** A student is unsupervised when left unattended and alone in the physical presence of a single adult who has not undergone a fingerprint-based national criminal history background check. In this scenario, there are times when only one adult is present with the student, and the student is interacting with that adult. However, the store is also open to the public. If more than one adult is physically present, the student is considered "alone" with an adult who has not

completed the required background check under the definition of “unsupervised contact.”

2. **"Public Environment" Definition:** While the plumbing supply store is a public environment, the definition of “unsupervised contact” still applies if the student is left alone with a single adult. However, if other adults (such as members of the public) are present, the student is not left alone.

Therefore, during the times when only one adult is present and interacting with the student, this scenario would violate the law. However, if other adults are present, it would not violate the law.

Scenario 5: Work-Based Learning Commercial Setting with Change in Facts

Continue to assume everything the same as scenario 3, with the exception that the supply store is wholesale only and is open only to licensed plumbers and only by appointment, Both adults periodically leave the public area of the store for short term activities. Assume bathroom breaks, getting a drink out of the employee lounge, collecting the mail from the mailbox in front of the store.

Is this a violation of the law?

Answer:

No, this scenario does not constitute a violation of the law based on the definitions provided in the document. Here's why:

1. **"Momentary Absence" Definition:** The document defines "momentary absence" as brief, temporary intervals during which a second adult is physically away.
2. **"Unsupervised" and "Contact" Definitions:** The student is not considered "unattended" during a momentary absence of a supervisor in a public environment.

Scenario 6: Work-Based Learning Solo Practitioner

A work-based learning partner is a solo practitioner electrician, and a student participates in work based learning for that partner. The work-based learning partner has no employees, and the work is based in the field, doing electrical work at various locations. The work-based learning partner has not completed a fingerprint background check.

Is this a violation?

Answer:

Yes, this scenario constitutes a violation of the law. Here's why:

1. **"Unsupervised" and "Contact" Definitions:** The proposed rule defines "unsupervised" as a situation where one or more students are left unattended and alone in the physical presence of an adult who has not undergone a fingerprint-based national criminal history background check, and "contact" as direct, personal interactions involving communication or engagement of any kind. In this scenario, the student is working directly with a solo practitioner electrician who has not completed the required background check.
2. **Work-Based Learning Setting:** While work-based learning is an approved instructional setting, the rule still requires that adults who have unsupervised contact with students undergo a fingerprint-based national criminal history background check. Since the electrician has no employees and works alone, the student would be left alone with the electrician during the work-based learning activities.
3. **Violation of Rule:** The lack of a completed fingerprint-based background check for the solo practitioner electrician, combined with the fact that the student is alone with the electrician in the field, constitutes unsupervised contact as defined by the rule. This is a direct violation.

To comply with the rule, the electrician would need to complete the required fingerprint-based national criminal history background check before engaging in work-based learning activities with the student.

Scenario 8: Field Trip with Combination of Adults

A school organizes a field trip to Lewis and Clark Caverns. The district owns its own bus. Adults present include the bus driver, who remains with the bus at all times, the teachers of two classes and 6 parent chaperones who are assigned in teams of 2 each. Only the teachers and the bus driver have completed fingerprint background checks.

Is this a violation of the law?

Answer:

No, this scenario does not constitute a violation of the law. Here's why:

1. **"Unsupervised" Definition:** The rule defines "unsupervised" contact as a situation where one or more students are left unattended and alone in the physical presence of an adult who has not undergone a fingerprint-based national criminal history background check. In this scenario, the parent chaperones are assigned in teams of two, meaning no student is left alone with a single adult who has not completed the background check.

2. **Public Environment:** The field trip to Lewis and Clark Caverns likely takes place in a public environment, where multiple students and adults are present, and students can be seen and monitored by others. This further reduces the risk of unsupervised contact.
3. **Compliance with Rule:** Since the parent chaperones are working in pairs and the students are not left alone with a single adult who has not undergone a background check, the situation complies with the rule.

Therefore, this scenario does not violate the school district's rule regarding fingerprint-based national criminal history background checks.

Scenario 9: Field Trip With Combination of Adults – Change in Facts

This scenario is the same as Scenario 8, but a student becomes ill during the field trip and is sent back to the bus to rest while the rest of the class continues. The teacher accompanies the student and delivers the student to the bus driver, who supervises the student until the rest of the class returns.

Is this a violation of the law?

Answer:

No, this scenario does not constitute a violation of the law. Here's why:

1. **Teacher's Background Check:** The teacher accompanying the student back to the bus has completed the required fingerprint-based national criminal history background check. Therefore, the teacher is authorized to have unsupervised contact with the student during transit.
2. **Bus Driver's Background Check:** Once the student is delivered to the bus driver, who has also completed the background check, the student remains under the supervision of an authorized adult.

Since both the teacher and the bus driver have undergone the required fingerprint-based national criminal history background checks, the student is never left alone with an adult who has not completed the background check. Therefore, this scenario complies with the rule and does not violate the law.

This scenario is the same as Scenario 9, except a parent chaperone who has not completed a fingerprint background check accompanies the student back to the bus.

Is this a violation of the law?

Answer:

Yes, this scenario would violate the law because the parent chaperone has not undergone the required fingerprint-based national criminal history background check. Here's the reasoning:

1. **Parent Chaperone's Background Check:** If the parent chaperone has not completed the required background check, they are not authorized to have unsupervised contact with the student. In this scenario, the student is left alone with the parent chaperone during transit back to the bus, which qualifies as "unsupervised contact" under the rule.
2. **Rule Violation:** The rule explicitly states that "unsupervised contact" occurs when a student is left unattended and alone in the physical presence of an adult who has not undergone the required background check and interacts with that adult. This would be a violation.

Scenario 11: Online Courses, Adult without Fingerprint Background Check

A student takes an online course and interacts with the instructor of that course but only virtually with no in person element to the instruction. The teacher has not completed a fingerprint background check.

Is this a violation of the law?

Answer:

No, this scenario does not violate the law.

The proposed rule defines "contact" as direct, personal interaction involving communication or engagement between an adult and a student. However, to be "unsupervised," the student must be left unattended and alone in the physical presence of an adult. Since the interaction in this scenario is entirely virtual and does not involve physical presence, it does not fall under the scope of unsupervised contact as defined in the proposed rule.

Therefore, the instructor's lack of a fingerprint-based national criminal history background check does not constitute a violation in this case.

Scenario 12: Fingerprint Background Collected/Reported Contrary to Law

A work-based learning partner in a healthcare setting conducts fingerprint background checks of each of their employees overseeing students in work-based learning. They have a CRISS trained individual who reviews the results of the fingerprint background check for the work based learning partner. The work based learning partner obtains authorization from each individual to review the results for the employer. Individual employees are matched

one on one with a student to oversee the learning process and interact in a variety of settings.

Is this a violation of the law?

Answer: It depends, but likely. On the positive side, the work-based learning partner has a CRISS trained individual reviewing the results of the fingerprint background checks. However, the authorization of each person undergoing a fingerprint background check is insufficiently narrow and does not authorize the sharing of results with the school district, only with the work-based learning partner. Additionally, there is no indication in the scenario that the individual reviewing the results of the fingerprint background check has been approved by the trustees of the district sending students to earn credit in the work based learning setting. This scenario illustrates the importance of ensuring that each distinct requirement of the law is met before an adult is provided unsupervised contact with a student.

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This guidance is provided by the Montana Office of Public Instruction (OPI) to assist school boards and administrators in implementing HB 745. It is not legal advice. Districts should always consult with their legal counsel regarding legal questions or specific situations.
