

TECHNICAL ASSISTANCE ADVISORY

Prepared by the N.H. Department of Education and Department of Safety

SCHOOL EMPLOYEE BACKGROUND INVESTIGATION, INCLUDING A CRIMINAL HISTORY RECORDS CHECK

Purpose.

The purpose of this Technical Assistance Advisory is to provide clear and concise requirements for School Administrative Units (hereinafter, the "SAU"), School Districts, and Charter Schools with respect to a school employee background investigation, including a Criminal History Records Check, for each selected applicant regularly in contact with pupils in the performance of his/her duties.

Definitions.

The following definitions shall apply:

- (a) "Background investigation" means an investigation into the past employment and other background of a selected applicant in a SAU, School District, or Charter School or an employee or employees of a contractor which contracts with an SAU, School District, or Charter School with the intent of determining whether:
 - (1) The applicant is qualified for the position for which he/she has applied, and
 - (2) The applicant has been found guilty of any criminal activity or conduct that would make him/her ineligible for employment.

- (b) "Conditional offer of employment" means an offer of employment extended to a selected applicant subject to a successfully completed Criminal History Records Check which is satisfactory to the SAU, School District, or Charter School.

- (c) "Contractor" means a private business or agency or an employee or employees of the contractor which contracts with an SAU, School District, or Charter School to provide services, including but not limited to:
 - (1) cafeteria workers,
 - (2) school bus drivers,
 - (3) custodial personnel, or

(4) any other direct service or services to students of the District or Charter School.

- (d) "Criminal History Check" means a Criminal History Record inquiry conducted by the New Hampshire State Police through its records and through the Federal Bureau of Investigation (hereinafter, the "FBI").
- (e) "Persons regularly in contact with pupils" means a person or persons who, in the performance of his/her duties:
 - (1) Comes in direct contact with pupils on a daily basis for any period of time;
 - (2) Meets regularly, once or twice a week, with students, including, but not limited to, an art, music, or physical education teacher; or
 - (3) A substitute teacher who comes in direct contact with pupils on a limited basis.
- (f) "School employee" means an employee in any position in an SAU, School District, or Charter School.
- (g) "Selected applicant" means a person selected for employment who has provided an SAU, School District, or Charter School with:
 - (1) A signed notarized Criminal History release form, and
 - (2) A complete set of fingerprints taken by a qualified law enforcement agency or an authorized employee of an SAU, School District, or Charter School which have been submitted by an SAU, School District, or Charter School to the New Hampshire State Police for a Criminal History Check.
- (h) "Subcontractor" means a private business or agency or an employee or employees of a contractor which contracts with a contractor to provide services.

Employee Background Investigation.

Each SAU, School District, or Charter School, as part of the employment process, shall conduct an employee background investigation for each selected applicant for employment.

Criminal Records Check.

- (a) For each selected applicant the SAU, School District or Charter School shall submit, with appropriate fees, a notarized Criminal History Records release form and a complete set of fingerprints to the New Hampshire State Police so

that the State Police can conduct a Criminal History Record Inquiry through its records and through the FBI.

- (b) No selected applicant may be extended a conditional offer of employment unless the SAU, School District or Charter School has initiated a Criminal History Records Check.
- (c) A Criminal History Records Check shall be prepared in compliance with RSA 189:13-a and with New Hampshire Department of Safety requirements included in this advisory.
- (d) The Department of Safety shall submit the results of a Criminal History Records Check to a selected applicant's prospective employer(s) and the Department of Education.
- (e) The SAU, School District, and the Charter School shall assure confidentiality of employees' Criminal Record Report upon receipt of that report from the Division of State Police and the FBI.
 - (1) Only authorized personnel, as determined by the SAU, local School District, or Charter School shall have access to such record.
- (f) No selected applicant shall be extended a final offer of employment if such person has been convicted of:
 - (1) Murder,
 - (2) Child pornography,
 - (3) Aggravated felonious sexual assault,
 - (4) Felonious sexual assault, or
 - (5) Kidnapping.
- (g) A SAU Board, School Board, or a Charter School Board of Trustees may deny a selected applicant a final offer of employment if such person has been convicted of conduct in addition to (f) above, as determined by the SAU, School District, or Charter School. The governing body must adopt a policy to allow this prerogative.

Criminal Records Check Through the Division of State Police, Department of Safety.

- (a) The law (RSA 189:13-a) requires that an SAU, School District, or Charter School must submit to the State Police a complete set of fingerprints and a release form for each individual covered by the law. The State Police must conduct a New Hampshire Criminal Records Check and will forward the fingerprints to the FBI for a national records check. The FBI will not conduct that check without a proper set of fingerprints.

- (b) The State Police will provide to each SAU, School District, and Charter School a set of records release forms and fingerprint cards. The records release forms and fingerprint cards, provided by the State Police, will be the only types of forms which will be accepted. However, each SAU, School District, or Charter School may reproduce the release form as is necessary.
- (c) The selected applicant will complete the release form and bring the fingerprint card to a person qualified to take fingerprints. Depending on arrangements which have been made by the District, this may be a local law enforcement agency or a trained individual employed by the SAU, School District, or Charter School. The release form and the fingerprints must be provided by the selected applicant to the SAU, School District, or Charter School.
- (d) The SAU, School District, or Charter School will then forward the release form and the fingerprints to the State Police. The submission of the release form and the fingerprints must be accompanied by the proper fees, which cover the cost of both the State and Federal Records Checks. Inadequate fees will delay the process. The fees are as follows:

For selected applicants – current fee established by state plus postage.

- (e) The Criminal History Records Check done by the FBI will take a minimum of 30 days. The FBI will forward the results to the State Police, and the State Police will notify the persons named on the release forms of the results. The FBI will destroy the fingerprint cards once the check has been completed. No copy of the fingerprints will be kept by the State Police.
- (f) The results of the completed Criminal History Records Checks by the State Police will be sent separately from the completed Criminal History Records Checks by the FBI.

Criminal History Records Checks by the State Police for Persons Who Work for Several Districts.

- (a) Employees of multiple School Districts will submit the proper release form, fingerprints, and fees to one of the Districts.

- (b) The release form will identify each District, and the employee will provide the results to each District.
- (c) The fee for this type of check will be the same as if the applicant was employed by only one District.

Fingerprints.

- (a) The two overriding issues with respect to the fingerprints are that they be taken properly and that they be placed on the fingerprint cards supplied by the State Police.
- (b) The question of who actually takes the fingerprints is left to the District. The law allows this to be done by a "qualified law enforcement agency or an authorized employee" of the SAU, School District, or Charter School.
- (c) In some cases, then, the prints may be taken by the local law enforcement agency. Local law enforcement must use the fingerprint cards supplied to the District by the State Police.

Conditional Offer of Employment.

- (a) An SAU, School District, or Charter School may extend a conditional offer of employment to a selected applicant, with a final offer of employment subject to a successfully completed Records Check including a Criminal History Records Check.
- (b) A selected applicant extended a conditional offer of employment shall be eligible for the same salary and fringe benefits as if he/she were provided a final offer of employment.
- (c) A conditional offer of employment may continue during the time the SAU, School District, or Charter School is awaiting receipt of a completed records Check including a Criminal History Records Check report.
- (d) In the event that the first set of fingerprints is invalid and a second set of fingerprints is necessary in order to complete the Criminal History Records Check, the conditional offer of employment shall remain in effect.
- (e) A conditional offer of employment for a selected applicant shall be valid for no more than one submission of fingerprints.

Final Offer of Employment.

- (a) An SAU, School District, or Charter School may extend a final offer of employment to a selected applicant, who has a conditional offer of employment, if the selected applicant receives a successfully completed Records Check including a Criminal History Records Check.(b) If a selected applicant is extended a final offer of employment, the individual shall be entitled to membership in the collective bargaining unit subject to the requirements of RSA 273-A and shall immediately be covered by the terms and conditions of the collective bargaining agreement.

Records Retention.

An SAU, School District, or Charter School may transfer personnel files, including a Criminal History Records Check, to alternative electronic media if authorized by the individual and provided that the SAU, School District, or Charter School assures privacy of such record.

Additional Criminal History Records Checks.

An SAU, School District, or Charter School may require a Criminal History Records Check at a time or times subsequent to the original Records Check if deemed necessary.

Contractor or Subcontractor Responsibility.

- (a) An employee background investigation including a Criminal History Records Check shall be conducted by a contractor or subcontractor for each employee in regular contact with pupils in accordance with this advisory.
- (b) The cost of such investigation, including Criminal History Checks, for employees or selected applicants for employment with such contractors shall be borne by the contractor or subcontractor.
- (c) The contractor or subcontractor shall submit to the SAU, School District, or Charter School a written verification that a background investigation, including a successfully completed Records Check, including a Criminal History Records Check has been done for each employee of the contractor or subcontractor who is regularly in contact with pupils.
- (d) In the event that services formerly performed by an SAU, School District, or Charter School are provided by a contractor, an employee background investigation shall not be required for a school employee who becomes an employee of the contractor.

Unsuccessful Criminal History Records Check.

If an SAU, School District, or Charter School receives an unsuccessful Criminal History Records Report for a selected applicant, the SAU, School District, or Charter School shall immediately, within 24 hours of receipt of such report, excluding Saturday, Sunday, or a holiday, dismiss the selected applicant.

Cost of an Employee Background Investigation, Including Criminal History Records Check.

The cost of a background investigation, including a Criminal History Check or any other relevant records Check shall be borne by the selected applicant unless otherwise determined by an SAU, School Board, or Charter School.

PROFESSIONAL AND SUPPORT STAFF POSITIONS

EMPLOYEE INITIATION OF A CRIMINAL RECORDS HISTORY CHECK

*(The new employee must initiate the Criminal Records Check at the Superintendent's Office **before** s/he can be issued a conditional employment contract.)*

1. Sign and have notarized the Criminal Records Release Authorization form.
2. Arrange to have your fingerprints taken by making an appointment with the appropriate police department through the SAU.
3. At the SAU you will complete a (1) Criminal Records Release Authorization form, (2) a fingerprints card (prior to prints being taken), and (3) check for the current fee made payable to State of New Hampshire - Criminal Records. The fee is set by the New Hampshire Department of Safety and is to be paid by the employee, not the School District. **Do not send these materials directly to the Department of Safety.**
4. Once the completed forms have been logged and sent to the NH Department of Safety via certified mail, you will be issued an employment contract. Sign two copies of the conditional employment contract. Retain a photocopy and keep both originals at the Superintendent's office. (One original will be sent back to you after the School Board Chair has signed it.) Pursuant to RSA 198:13-a, this conditional employment contract entitles you to the same salary and economic benefits as you would otherwise receive under a final offer of employment, except that you are not covered by the terms and conditions of any applicable collective bargaining agreement while conditionally employed.

Completion of Criminal Records History Check

5. The Superintendent's office will send by certified mail your Criminal Records Release Authorization form, fingerprints card, and payment to the New Hampshire Department of Safety, Division of State Police, Central Reporting for Criminal Records, 10 Hazen Drive, Concord.
6. The State Police will conduct a New Hampshire Criminal Records Check and will forward your fingerprints to the FBI for a National Criminal Records Check. The check done by the FBI will take a minimum of 30 days after the state report is received. The FBI will destroy your fingerprint card once the check has completed. No copy of the fingerprint card will be kept by the State Police.

7. The results of the completed Criminal Records Check conducted by the State Police will be sent to the Superintendent and the Department of Education separately from the completed Records Check conducted by the FBI. Your two-part Criminal Records Report shall be kept confidential, and only the Superintendent and the Principal shall have access to it. The Department of Education establishes its own confidentiality procedure. The Criminal Records Reports issued by the FBI and the N.H. Department of Safety become the property of the School Administrative Unit. Fingerprint files are destroyed once the FBI report received indicates no criminal record. A fingerprint memo is placed in the employee file indicating the criminal history check was completed. If the criminal history record information indicates that an applicant has been convicted of a felony or crime the SAU shall review the information for a hiring decision and the division of State Police notifies the Department of Education of any such convictions. The SAU shall destroy any criminal history information that indicates a criminal record within 30 days of receiving the information.

Final Offer of Employment

8. The District will automatically convert your conditional employment to a final employment contract if you have not been found guilty of a criminal activity, or to any other contract if you have not been found guilty of a criminal activity. If the Criminal Records Check is unsatisfactory, then state law requires that you be dismissed from employment within 24 hours of our receipt of the report, excluding Saturday, Sunday or holidays.

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