

TECHNICAL ASSISTANCE ADVISORY

Prepared by the Department of Education and the 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, or 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 a 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 successful completed criminal history record 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 a SAU, school district, or charter school to provide services including but not limited to:
 - (1) cafeteria workers,
 - (2) school bus drivers,
 - (3) custodial personnel,
 - (4) any other direct service or services to students of the district or charter school.
- (d) “Criminal history records check” means a criminal history records 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.
- (4) Designated volunteers are categories of volunteers that designated by the governing bodies of SAU, school districts, or charter schools to have criminal history records checks performed.
- (f) “School employee” means an employee in any position in a SAU, school district, or charter school.
- (g) “Selected applicant” means a person selected for employment who has provided a SAU, school district, or charter school with:
 - (1) A signed notarized criminal history records release form, and
 - (2) A complete set of fingerprints taken by a qualified law enforcement agency or an authorized employee of a SAU, school district, or charter school which have been submitted by a SAU, school district, or charter school to the New Hampshire State Police for a criminal history record check.
- (h) “Subcontractor” means a private business or agency or an employee or employees of a contractor that 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

SAU’s, school districts, or charter schools are not liable in any lawsuit for negligence or deficiencies, if the SAU, school district, or charter school satisfies the requirements of RSA 189:13-a, I

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 provided by the state police, (Attachment #1) and a complete set of fingerprints on a FBI Applicant Fingerprint Card (Attachment #2) to the New Hampshire State Police so that the State Police can conduct a criminal history record inquiry through the state repository 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 record check shall be prepared in compliance with RSA 189:13-a (Attachment #3) and with New Hampshire Department of Safety requirements included in this advisory.
- (d) The Department of Safety, Division of State Police shall notify, in writing, to the submitting agency whether the selected applicant does or does not have any convictions under RSA 189:13-a, V or a submitted list of other felonies
 - (1) The SAU, school district, or charter school will immediately destroy a “does not

have any convictions” notification received from the state police.

(2) The SAU, school district, or charter school has 30 days to destroy a “does have a conviction” notification received from the state police.

(3) Under no circumstances shall the criminal history records notification be kept by the school administrative unit, school district, or charter school.

(e) No selected applicant shall be extended a final offer of employment if such person has been convicted of:

(1) RSA 630:1 Capital Murder

(2) RSA 630:1-a First Degree Murder

(3) RSA 630:1-b Second Degree Murder

(4) RSA 630:2 Manslaughter

(5) RSA 632-A:2 Aggravated Felonious Sexual Assault

(6) RSA 632-A:3 Felonious Sexual Assault

(7) RSA 632-A:4 Sexual Assault

(8) RSA 633:1 Kidnapping

(9) RSA 639:2 Incest

(10) RSA 639:3 Endangering Welfare of Child or Incompetent

(11) RSA 645:1,I (b) Indecent Exposure and Lewdness

(12) RSA 645:2 Prostitution and Related Offenses

(13) RSA 649-A:3 Child Pornography

(14) RSA 649-B:3 Computer Pornography and Child Exploitation Prevention

(15) RSA 649-B:4 Certain Uses of Computer Services Prohibited

(16) RSA 650:2 Obscene Matter Offenses

(f) A SAU, school board, or charter school board of trustees may deny a selected applicant a final offer of employment if such person has been convicted of a felony in addition to (e) above as determined by the SAU, school district, or charter school.

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

(a) The law (RSA 189:13-a) requires that a SAU, school district, or charter school must submit to the State Police a complete set of fingerprints and a notarized 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 or charter school a set of records release forms and fingerprints cards. The records release forms and the

- (a) Because criminal history record information must be destroyed by the SAU, school district, or charter school, there is no record information to share with another SAU, school district, or charter school.
- (b) The sole exception will apply to substitute teacher applicants.
- (c) Substitute teachers concurrently applying to multiple SAU's, school districts, or charters schools will submit the proper release forms, fingerprints and fees to only one of the districts.
- (d) Upon request, in person or in writing to the state police, the substitute teacher applicant will receive a copy of their criminal history record notification.
- (e) The substitute teacher applicant will show the state police notification to the other SAU's school districts or charter schools, and this will satisfy the statutory requirements for the criminal history records check.
- (f) This copy of the substitute's criminal history record notification will be valid for 14 days from the date of the notification. After this time period the criminal history records

check process must be reinitiated.

Fingerprints.

- (a) The overriding issues with respect to the fingerprints are that they be taken properly on the FBI Applicant Fingerprint Card supplied by the State Police.
- (b) The law allows this to be done by a qualified law enforcement agency or an authorized person employed by the SAU, school district, or charter school.
- (c) If, after two attempts a set of fingerprints is invalid, a SAU, school district, or charter school may, in lieu of fingerprints, accept clearances from every city, town or county where an applicant has lived during the past five years.
- (d) To assure that completed criminal history records checks are returned to the correct SAU's, school districts or charter schools, the SAU, school district, or charter school must place the name, address and identification number in Employer and Address section and the OCA section of the FBI Applicant Fingerprint Card.

Conditional Offer of Employment.

- (a) A SAU, school district, or charter may extend a conditional offer of employment to a selected applicant, with a final offer of employment subject to a successful 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 criminal history records notifications.
- (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 on resubmission of fingerprints and the subsequent clearances for the law enforcement agencies in the city, town or county which the applicant has lived for the last five years.

Final Offer of Employment.

- (a) A 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.

Under no circumstances shall the criminal records be released to the school administrative unit, school district, or charter school. The school administrative unit, school district or charter school shall maintain the confidentiality of all criminal history records information received pursuant to this paragraph. If the criminal history records information indicates no criminal record, the school administrative unit, school district or charter school shall immediately destroy the information received from the Division of the State Police. If the criminal history record information indicates that the applicant has been convicted of a felony or a crime listed in paragraph V, the school administrative unit, school district or charter school shall review the information for a hiring decision, and the division of state police shall notify the department of education of any such convictions. The school administrative unit, school district or charter school shall destroy any criminal history record information that indicates a criminal record within 30 days of receiving such information.

Contractors 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 records 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 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 performed by a SAU, school district, or charter school, are now 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 Notification.

If a SAU, school district, or charter school receives a criminal history records notification which states “does have a conviction” for crimes listed in RSA 189:13-a V, or a separate list of felonies submitted by that agency’s governing authority 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 history records check or any other relevant records check shall be borne by the selected applicant unless otherwise determined by a SAU, school board, or charter school.

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EMPLOYEE INITIATION OF A CRIMINAL HISTORY RECORDS 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.
3. Bring your (1) signed Criminal Records Release Authorization form, (2) completed fingerprints card, and (3) check for \$34 made payable to State of New Hampshire - Criminal Records. The fee is set by the New Hampshire Division of Safety and is to be paid by the employee, not the School District.

Do not send these materials directly to the Division 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 contracts. Retain one copy and send the other copy to the Superintendent's office. 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 History Records 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. 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 Report issued by the FBI and the NH Department of Safety becomes the property of the School Administrative Unit, however, you, as an employee, may request and receive one attested copy of these Reports from the Superintendent's Office at no charge.

Final Offer of Employment

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 of any other contract if you

have not been found guilty of any Criminal Records Check, then state law requires that you be dismissed from employment within 24 hours of our receipt of the report, excluding Saturday, Sunday or holidays.

See Policy GBCD

First Reading: May 11, 2010

Second Reading: June 2, 2010

Final Adoption: June 2, 2010

Policy Committee Reviewed: February 22, 2022