



# TITLE 14 EDUCATION

## DELAWARE ADMINISTRATIVE CODE

### Finance and Personnel

#### 745 Criminal Background Check for Public School Related Employment

##### 1.0 Purpose

This regulation shall apply to all individuals seeking Public School related employment in a Delaware Public School. A Criminal Background Check shall be completed for Employee, Contractors or Volunteers of a Child Serving Entity. It shall consist of a fingerprinted Delaware and national background check completed by the State Bureau of Identification (SBI) and the Federal Bureau of Investigation (FBI). Additionally, a Child Protection Registry Check shall be completed by the Department of Services for Children, Youth and Their Families (DSCYF). Refer to 14 **DE Admin. Code** 746 Criminal Background Check for Student Teaching for the requirements and procedures related to Criminal Background Checks for a Student Teaching Placement in a Delaware Public School.

12 DE Reg. 327 (09/01/08)

19 DE Reg. 917 (04/01/16)

##### 2.0 Definitions

For purposes of this regulation, the following definitions apply:

**"Child Protection Registry Check"** means a computer search of the Child Protection Registry to determine if a person is a perpetrator in any substantiated cases of child abuse or neglect.

**"Child Serving Entity"** means Public Schools, including Employees of the Department of Education.

**"Continuously Employed"** means having worked in the same Public School for at least ninety one (91) working days in the prior school year. Substitute teachers shall be considered Continuously Employed when they have worked forty five (45) days in the prior school year in any combination of Delaware Public Schools. Persons who have participated in a Student Teaching Placement and who have fulfilled the requirements of 14 **DE Admin. Code** 746 shall be considered Continuously Employed if they participated for forty five (45) days in the prior school year in the school district or charter school where they are seeking Public School related employment.

**"Contractor"** means a person, not an Employee, providing services within a Child Serving Entity and who has Direct Access to children.

**"Covered Personnel"** means an "Employee," "Contractor," "Volunteer," as defined herein, or any person who is assigned to an extra duty position (also called Extra Pay for Extra Responsibility (EPER) position) in Public Schools whether the person receives compensation or not.

**"Criminal Background Check"** means a fingerprinted Delaware and national background check completed by the SBI and the FBI. Additionally, a Child Protection Registry Check shall be completed by DSCYF.

**"Direct Access"** means, pursuant to this regulation, the opportunity to have personal contact with students receiving care or education during the course of one's assigned duties.

**"Employee"** means any person seeking employment for compensation with a Child Serving Entity, or any person who for any reason has Direct Access to students at a Child Serving Entity. This definition also includes any person seeking a Student Teaching Placement in a Public School.

**"Public School"** means any Public School and includes any board of education, school district, reorganized school district, special school district, charter school or charter school board and any person acting as an agent thereof.

**"Student Teaching Placement"** means a structured, supervised learning experience for a student in a teacher education program in which the student teacher practices the skills being learned in the teacher education program and gradually assumes increased responsibility for instruction, classroom management, and other related duties for a class of students in a local school district or charter school. These skills are practiced under the direct supervision of the certified teacher who has official responsibility for the class.

**"Superintendent"** means the chief school officer of any public school district or charter school, or the equivalent of a superintendent, or the superintendent's designee.

**"Volunteer"** means a person providing volunteer services within a Child Serving Entity and who has Direct Access to students.

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**10 DE Reg. 684 (10/01/06)****12 DE Reg. 327 (09/01/08)****19 DE Reg. 917 (04/01/16)****3.0 Procedures for Candidates for Employment, Contractors or Volunteers to Obtain a Criminal Background Check**

- 3.1 A final candidate for a Covered Personnel position, as defined in 2.0, in a Public School shall be subject to the following procedures:
- 3.1.1 After notification by a Public School that he/she is a final candidate for a Covered Personnel position, the individual shall present him/herself to SBI personnel at one of the Delaware State Police Troops that processes such Criminal Background Checks or at an on site appointment arranged by the Public School. Public Schools at their option may require an applicant to submit a Criminal Background Check prior to becoming a final candidate.
  - 3.1.2 The candidate shall cooperate in all respects with this Criminal Background Check process, or his/her application cannot be accepted. On completion of the procedure, the candidate will be given a Verification Form of Processing by the SBI, which may be shown to the prospective placing Public School as proof that the candidate has completed the procedure. The candidate should retain the Verification Form of Processing for his/her records.
  - 3.1.3 The candidate shall have an original of the completed Criminal Background Check sent to one Public School. An original of all information sent to the Public School shall be sent by SBI to the candidate.
  - 3.1.4 As a part of the application for Public School related employment, the contract for services, or the Volunteer agreement, the candidate shall sign a Release for Criminal Background Check Information form approved by the Department of Education. The release will allow the Public School that was sent the original of the completed Criminal Background Check to do the following:
    - 3.1.4.1 Confirm the receipt of that original and disclose its contents to the Public School Superintendents of other Delaware Public Schools considering the person as a candidate.
    - 3.1.4.2 Send the original Criminal Background Check to the placing Public School if the candidate is hired, placed under contract in another Delaware Public School.
    - 3.1.4.3 Send any subsequent criminal history information to the person's employing or contracting Public School(s).
  - 3.1.5 Each final candidate shall have a determination of suitability made by the Public School and forwarded to him/her. If a determination is made to deny a candidate employment based upon the criminal history, he/she shall have an opportunity to appeal as set forth in 6.0.
  - 3.1.6 Final candidates for employment or entering into a contract for services may have Criminal Background Checks from other states accepted, if all of the following conditions are met:
    - 3.1.6.1 The Criminal Background Check shall have been conducted within the previous twelve (12) months and include a federal Criminal Background Check,
    - 3.1.6.2 The Criminal Background Check shall be sent directly from the Criminal Background Check agency in the other state to a Delaware Public School,
    - 3.1.6.3 A verification from the candidate's most recent employer(s) covering the previous twelve (12) months, stating that the employer knows of no offenses committed by the candidate during that time, shall be sent directly from the candidate's most recent employer(s) to the Delaware Public School which was sent the original background check.
    - 3.1.6.4 The out of state candidate shall sign a release to allow the Public School receiving the out of state Criminal Background Check and the reference to confirm their receipt, disclose their contents and forward them, subject to the same disclosure regulations that apply to Delaware Criminal Background Checks.
  - 3.1.7 Except as described herein, all costs associated with obtaining a Criminal Background Check shall be paid for by the person seeking a Covered Personnel position. Public Schools may use funds other than state funds to pay for Criminal Background Check costs and may enter into consortia to pay such costs for persons covered by the law who work in more than one Public School during the course of the school year.

**10 DE Reg. 684 (10/01/06)****12 DE Reg. 327 (09/01/08)**

**19 DE Reg. 917 (04/01/16)**

**4.0 Procedures for Public Schools for Criminal Background Checks on Candidates for Employment, Contractors or Volunteers**

- 4.1 Public Schools shall require all persons subject to the law and these regulations to complete a release as a part of the application process for employment, volunteering or to provide contracting services, and if they become a final candidate for a Covered Personnel position, to initiate the Criminal Background Check process prior to entering into the Covered Personnel position.
- 4.2 The Public School sending the original of a completed Criminal Background Check shall keep the information received in a confidential manner and shall:
  - 4.2.1 If requested by another Delaware Public School Superintendent and assured that a signed release is on file in the requesting Public School, confirm the receipt of that original and disclose its contents to the Superintendent of the requesting Delaware Public School considering the person for hire, a contract, or a volunteer opportunity;
  - 4.2.2 If requested by another Delaware Public School Superintendent and sent a copy of the signed release on file in the requesting Public School, send the original Criminal Background Check to the requesting Delaware Public School if the candidate is placed in a Covered Personnel position; and
  - 4.2.3 If sent any subsequent criminal history information on the person hired, placed under contract, or assuming an extra duty (EPER) or Volunteer position in another Public School, forward such information to the Public School.
  - 4.2.4 Public Schools may also share and forward the above information with the Delaware Department of Education under the same conditions applicable to Public Schools. The provision shall apply only when the Department of Education is acting in its capacity as an employer, a party to a contract for services or taking on a person in an extra duty position (EPER).
- 4.3 The Public School, in accordance with 31 **Del.C.** §309(e), shall make a determination of suitability as an Employee, Contractor or Volunteer on each person it requested to initiate the Criminal Background Check process. That determination shall be communicated to the person in writing. If a determination is made to deny a candidate employment based upon the criminal history, he/she shall have an opportunity to appeal for reconsideration as set forth in 6.0.
- 4.4 When a candidate is finally placed in a Covered Personnel position the Public School shall do the following if the original of the completed Criminal Background Check is not yet in its possession:
  - 4.4.1 Make a written request to the Public School that received the original of the completed Criminal Background Check to forward the original copy to the placing Public School for placement in the Employee's, Contractor's, or Volunteer's file. As a part of the request, the placing Public School shall forward a copy of the release signed by the candidate.
  - 4.4.2 Notify SBI that the candidate has become Covered Personnel in the Public School and is no longer associated with the Public School that received the original of the completed Criminal Background Check.
- 4.5 A Public School may place the candidate in a Covered Personnel position provisionally in accordance with 31 **Del.C.** §309(c)(7); however, the Public School shall require the candidate to comply with the provisions described in these regulations, including the requirement to initiate the Criminal Background Check prior to being placed provisionally as an Employee, Contractor, or Volunteer.

**10 DE Reg. 684 (10/01/06)**

**19 DE Reg. 917 (04/01/16)**

**5.0 Length of Validity of Criminal Background Check and Exemption for "Continuous Employment"**

- 5.1 A Criminal Background Check obtained under these regulations shall only be valid for twelve (12) months. If a person is not Continuously Employed by a Delaware Public School within that period, the Public School receiving the original Criminal Background Check need not retain it beyond that time. If the person becomes Continuously Employed by a Delaware Public School, the original Criminal Background Check shall be kept on file for a minimum of five (5) years.
- 5.2 Each person who has been Continuously Employed in a Public School shall be exempt from obtaining a Criminal Background Check.

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- 5.3 A person who transfers between Delaware Public Schools and is placed in a Covered Personnel position shall comply with 31 **Del.C.** §309 and these regulations before becoming an Employee, Contractor, or Volunteer. A Criminal Background Check performed within the previous twelve (12) months and held by another Public School or out of state school, and supplied under 3.0 and 4.0 of these regulations is one means of complying with 31 **Del.C.** §309, et seq., and these regulations.

**10 DE Reg. 684 (10/01/06)**

**19 DE Reg. 917 (04/01/16)**

#### **6.0 Determination of Suitability and Appeal Process**

- 6.1 A person covered by 31 **Del.C.** §309, and these regulations, shall have the opportunity to respond to a Public School regarding any criminal history information obtained prior to a determination of suitability as an Employee, Contractor, or Volunteer being made. See 31 **Del.C.** §309(e)(1)(b). Such a response shall be made within ten (10) working days of the person's receipt of the Criminal Background Check information from SBI.
- 6.1.1 The determination of suitability as an Employee, Contractor, or Volunteer shall be made by the Public School pursuant to 31 **Del.C.** §309(d) and any other criteria the Public School may establish.
- 6.2 The Public School shall communicate the results of the determination of suitability to the person, in writing, within five (5) working days of the receipt of the person's response to the criminal history information. If a determination is made to deny a person employment, based upon the criminal history, the person shall have an opportunity to appeal for reconsideration as set forth in 6.3.
- 6.3 Appeal for Reconsideration
- 6.3.1 An appeal for reconsideration shall be initiated by a person notified that he/she is being denied or being terminated from employment, pursuant to 31 **Del.C.** §309(e)(1)(b), by submitting a letter of appeal to the Public School Superintendent within ten (10) working days of the receipt of written notice.
- 6.3.2 The appeal shall be reviewed by the Public School Superintendent and the appellant shall have the right to be heard by the Public School Superintendent within ten (10) working days of the receipt of the letter of appeal.
- 6.3.2.1 Local Public Schools shall develop procedures for appeals for reconsideration. The process shall be as informal and accessible as possible, but shall allow for impartial and complete review.
- 6.3.3 A written decision shall be rendered by the Public School Superintendent within ten (10) working days of the hearing. A decision made by the Public School Superintendent under this appeal procedure is final, unless the Public School has made specific provisions for appeal to another entity within the Public School. The decision shall not be appealable to the State Board of Education or to the Department of Education.

**10 DE Reg. 684 (10/01/06)**

**19 DE Reg. 917 (04/01/16)**

#### **7.0 Confidentiality**

- 7.1 All information and records pertaining to Criminal Background Checks, pursuant to 31 **Del.C.** §309, et seq., and these regulations, shall be maintained in a confidential manner including, but not limited to, the following:
- 7.1.1 Access to Criminal Background Check records, and letters of reference accompanying out of state Criminal Background Checks, and determination of suitability shall be limited to the Public School Superintendent and one person designated to assist in the processing of Criminal Background Checks, who will receive training in confidentiality, be required to sign an agreement to keep such information confidential and employ proper precautions to ensure that interoffice communications remain confidential.
- 7.1.2 All such records shall be kept in locked, fireproof cabinets;
- 7.1.3 No information from such records shall be released without the signed approval of and the appropriate signed release of the candidate or person placed in a Covered Personnel position.

**10 DE Reg. 684 (10/01/06)**

**19 DE Reg. 917 (04/01/16)**

#### **8.0 Penalties**

The Public School Superintendent shall report to the appropriate police authorities evidence of any person who knowingly provides false, incomplete or inaccurate criminal history information or who otherwise knowingly violates the provisions of 31 **Del.C.** §311.

**10 DE Reg. 684 (10/01/06)**

**19 DE Reg. 917 (04/01/16)**

**9.0 Subsequent Criminal History Information**

- 9.1 Subsequent criminal history on a person in a Covered Personnel position may be sent by SBI to the Public School Superintendent and shall be used by the Public School in making a determination about the person's continued suitability for placement in a Public School environment.
- 9.2 If subsequent criminal history information is mistakenly directed to a Public School other than the current Public School of Covered Personnel, the information shall be forwarded immediately to the employing Public School by the receiving Public School Superintendent.
- 9.3 If a person is known to be in a Covered Personnel position in more than one Public School, the Superintendent of the Public School receiving the subsequent criminal history information on that person shall share the information received immediately with the Public School Superintendent of the other Public School(s).

**5 DE Reg. 865 (10/1/01)**

**10 DE Reg. 684 (10/01/06)**

**19 DE Reg. 917 (04/01/16)**