DEFINITIONS

"Criminal history clearinghouse" (Clearinghouse) means the electronic clearinghouse and subscription service established by the Department of Public Safety (DPS) to provide criminal history record information to persons entitled to receive that information and to provide updates to such information. A person who is the subject of the criminal history record information requested must consent to the release of the information. *Gov't Code 411.0845(a), (h)*

"Criminal history record information" (CHRI) means information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, information, and other formal criminal charges and their dispositions. *Gov't Code 411.082(2)*

"National criminal history record information" (NCHRI) means criminal history record information obtained from DPS under Government Code Chapter 411, Subchapter F, and the Federal Bureau of Investigation (FBI) under Government Code 411.087. *Education Code 22.081(2)*

CERTIFIED PERSONS

The State Board for Educator Certification (SBEC) shall review the NCHRI of a person who is an applicant for or holder of a certificate and who is employed by or is an applicant for employment by the District. *Education Code 22.0831(c)*

NONCERTIFIED EMPLOYEES

APPLICABILITY

This section applies to a person who is not an applicant for or holder of a certificate from SBEC and who, on or after January 1, 2008, is offered employment by:

1. The District; or
2. A shared services arrangement, if the employee's or applicant's duties are or will be performed on school property or at another location where students are regularly present.

[For noncertified employees of a district or shared services arrangement hired before January 1, 2008, see ALL OTHER EMPLOYEES, below.]

INFORMATION TO DPS AND TEA

Before or immediately after employing or securing the services of a person subject to this section, the District shall send or ensure that the person sends to DPS information that DPS requires for obtaining NCHRI, which may include fingerprints and photographs.

The District shall provide TEA with the name of a person to whom this section applies. TEA shall examine the CHRI of the person and notify the District if the person may not be hired or must be discharged under Education Code 22.085.

EMPLOYMENT PENDING REVIEW

After the required information is submitted, the person may begin employment, but that employment is conditional upon the review of that person's CHRI by TEA and must be terminated if TEA makes a determination that the employee or applicant is ineligible for employment.

CRIMINAL HISTORY

The District shall obtain all CHRI that relates to a person subject to this section through the Clearinghouse and shall subscribe to the CHRI of that person. The District may require the person to pay any fees related to obtaining the CHRI.

Education Code 22.0833; 19 TAC 153.1109(d)

SUBSTITUTE TEACHERS

This section applies to a person who is a substitute teacher for the District or a shared services arrangement.

APPLICABILITY

For purposes of the CHRI review requirements, a "substitute teacher" is a teacher who is on call or on a list of approved substitutes to replace a regular teacher and has no regular or guaranteed hours. A substitute teacher may be certified or noncertified.

INFORMATION TO DPS AND TEA

The District shall send or ensure that a person to whom this section applies sends to DPS information required for obtaining NCHRI, which may include fingerprints and photographs.

The District shall provide TEA with the name of a person to whom this section applies. TEA shall examine the CHRI and certification records of the person and notify the District if the person:

1. May not be hired or must be discharged as provided by Education Code 22.085; or
2. May not be employed as a substitute teacher because the person's educator certification has been revoked or is suspended.

EMPLOYMENT PENDING REVIEW

After the required information is submitted, the person may begin employment, but that employment is conditional upon the review of that person's CHRI by TEA and must be terminated if TEA makes a determination that the employee or applicant is ineligible for employment.

CRIMINAL HISTORY

The District shall obtain all CHRI that relates to a person to whom this section applies through the Clearinghouse. The District may require the person to pay any fees related to obtaining the CHRI.

Education Code 22.0836; 19 TAC 153.1101(5), .1111(d)

STUDENT TEACHERS

APPLICABILITY

This section applies to a person participating in an internship consisting of student teaching to receive a teaching certificate.

CRIMINAL HISTORY

A student teacher may not perform any student teaching until:

1. The student teacher has provided to the District a driver's license or another form of identification containing the person's photograph issued by an entity of the United States government; and

2. The District has obtained from DPS all CHRI that relates to a student teacher. The District may also obtain CHRI relating to a student teacher from any other law enforcement agency, criminal justice agency, or private consumer reporting agency. The District may require a student teacher to pay any costs related to obtaining the CHRI.

Education Code 22.0835

COORDINATION OF EFFORTS

TEA, SBEC, the District, and a shared services arrangement may coordinate as necessary to ensure that criminal history reviews authorized or required under Education Code Chapter 22, Subchapter C are not unnecessarily duplicated. *Education Code 22.0833(h)*

ALL OTHER EMPLOYEES

The District shall obtain CHRI that relates to a person who is not subject to an NCHRI review under Education Code Chapter 21, Subchapter C and who is an employee of:

1. The District; or

2. A shared services arrangement, if the employee's duties are performed on school property or at another location where students are regularly present.

The District may obtain the CHRI from:

1. DPS;

2. A law enforcement or criminal justice agency; or

3. A private consumer reporting agency [see CONSUMER CREDIT REPORTS, below].

Education Code 22.083(a), (a-1), (c); Gov't Code 411.097

CONFIDENTIALITY OF RECORD

CHRI that the District obtains from DPS, including any identification information that could reveal the identity of a person about whom CHRI is requested and information that directly or indirectly indicates or implies involvement of a person in the criminal justice system:

1. Is for the exclusive use of the District; and

2. May be disclosed or used by the District only if, and only to the extent, disclosure is authorized or directed by a statute, rule, or order of a court of competent jurisdiction.

For purposes of these confidentiality provisions, “criminal history record” information does not refer to any specific document provided by DPS, but to the information contained, wholly or partly, in a document’s original form or any subsequent form or use.

The District or an individual may not confirm the existence or nonexistence of CHRI to any person who is not eligible to receive the information.

Gov’t Code 411.084

CHRI obtained by the District, in the original form or any subsequent form, may not be released to any person except the individual who is the subject of the information, TEA, or SBEC, or by court order. The CHRI is not subject to disclosure under Government Code Chapter 552 (Public Information Act).

An employee of the District may request from the District a copy of any CHRI related to that employee that the District has obtained from DPS. The District may charge a fee to provide the information, not to exceed the actual cost of copying the CHRI.

Gov’t Code 411.097(d), (f)

DESTRUCTION OF CHRI

The District shall destroy CHRI obtained from DPS on the earlier of:

1. The date the information is used for the authorized purpose; or
2. The first anniversary of the date the information was originally obtained.

Gov’t Code 411.097(d)(3)

CONFIDENTIALITY OF INFORMATION OBTAINED FROM APPLICANT OR EMPLOYEE

The District may not release information collected about a person in order to obtain CHRI, including the person’s name, address, phone number, social security number, driver’s license number, other identification number, and fingerprint records, except:

1. To comply with Government Code Chapter 22, Subchapter C (criminal records);
2. By court order; or
3. With the consent of the person who is the subject of the information.

In addition, the information is not subject to disclosure under Government Code Chapter 522 (Public Information Act).

The District shall destroy the information not later than the first anniversary of the date the information is received.

Education Code 22.08391

SBEC NOTIFICATION

The Superintendent shall promptly notify SBEC in writing by filing a report with the TEA staff within seven calendar days of the date the Superintendent obtains or has knowledge of information indicating that an applicant for or holder of a certificate issued by SBEC has a reported criminal history.

"Reported criminal history" means information concerning any formal criminal justice system charges and dispositions. The term includes arrests, detentions, indictments, criminal informations, convictions, deferred adjudications, and probations in any state or federal jurisdiction.

Education Code 22.087; 19 TAC 249.14(d), .3(43) [See also DH]

Note: For criminal history record provisions regarding volunteers, see GKG. For provisions on employees of entities that contract with the District, see CJA.

DISCHARGE OF CONVICTED EMPLOYEES

The District shall discharge or refuse to hire an employee or applicant for employment if the District obtains information through a CHRI review that:

1. The employee or applicant has been convicted of:
   a. A felony under Penal Code Title 5;
   b. An offense requiring registration as a sex offender under Code of Criminal Procedure Chapter 62; or
   c. An offense under the laws of another state or federal law that is equivalent to an offense under paragraphs a or b; and
2. At the time the offense occurred, the victim of the offense was under 18 years of age or was enrolled in a public school.

EXCEPTION

However, the District is not required to discharge or refuse to hire an employee or applicant if the person committed an offense under Title 5, Penal Code and:

1. The date of the offense is more than 30 years before:

a. June 15, 2007, in the case of a person employed by the District as of that date; or

b. The date the person's employment will begin, in the case of a person applying for employment with the District after June 15, 2007; and

2. The employee or applicant for employment satisfied all terms of the court order entered on conviction.

CERTIFICATION TO SBEC

Each school year, the Superintendent shall certify to the Commissioner that the District has complied with the above provisions.

SANCTIONS

SBEC may impose a sanction on an educator who does not discharge an employee or refuse to hire an applicant if the educator knows or should have known, through a criminal history record information review, that the employee or applicant has been convicted of an offense described above.

OPTIONAL TERMINATION

The District may discharge an employee if the District obtains information of the employee's conviction of a felony or misdemeanor involving moral turpitude that the employee did not disclose to SBEC or to the District. An employee so discharged is considered to have been discharged for misconduct for the purposes of Labor Code 207.044 (unemployment compensation).

Education Code 22.085 [See DF]

CONSUMER CREDIT REPORTS

DEFINITIONS

"Adverse action" includes a denial of employment or any other decision for employment purposes that adversely affects any current or prospective employee.

"Consumer report" includes any information from a consumer reporting agency that is used or expected to be used as a factor in establishing the person's eligibility for employment.

"Consumer reporting agency" is an agency that, for monetary fees, dues, or on a cooperative nonprofit basis, regularly assembles or evaluates consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties.

"Employment purposes" when used in connection with a consumer report means a report used for the purpose of evaluating a person for employment, promotion, reassignment, or retention as an employee.

15 U.S.C. 1681a

OBTAINING REPORTS

The District may not procure a consumer report for employment purposes unless:

1. The District has provided the applicant or employee a written disclosure that a consumer report may be obtained for employment purposes; and
2. The applicant or employee has authorized in writing the procurement of the consumer report.

ADVERSE ACTION

Before taking any adverse action based on the consumer report, the District shall provide the applicant or employee a copy of the consumer report and a written description of the person's rights under the Fair Credit Reporting Act, as prescribed by the Federal Trade Commission.

15 U.S.C. 1681b(b)(2)

Note: The following provisions apply to a district that uses consumer reports.

ADDRESS DISCREPANCIES

"Notice of address discrepancy" means a notice sent to a user by a consumer reporting agency that informs the user of a substantial difference between the address for the consumer that the user provided to request the consumer report and the address(es) in the agency's file for the consumer.

The District must develop and implement reasonable policies and procedures designed to enable the District, when it receives a notice of address discrepancy, to form a reasonable belief that a consumer report relates to the consumer about whom it has requested the report.

If the District regularly and in the ordinary course of business furnishes information to the consumer reporting agency from which it received the notice of address discrepancy, the District must also develop and implement reasonable policies and procedures for furnishing an address for the consumer, which the District has reasonably confirmed is accurate, to the consumer reporting agency.

16 CFR 641.1

DISPOSAL OF RECORDS

The District must properly dispose of a consumer report by taking reasonable measures to protect against unauthorized access to or use of the information.

"Dispose" includes discarding or abandoning the consumer report, or selling, donating, or transferring any medium, including computer equipment, upon which the consumer report is stored.

Examples of reasonable measures include:

1. Burning, pulverizing, or shredding papers containing a consumer report so the information cannot practicably be read or reconstructed;

2. Destroying or erasing electronic media containing a consumer report so that the information cannot practicably be read or reconstructed; or

3. After due diligence, entering into and monitoring compliance with a contract with another party engaged in the business of record destruction to dispose of the consumer report.

16 CFR 682.3