

Review Committee

When reviewing criminal history records of candidates for employment and of current District employees, the human resources department will make individualized assessments as detailed herein and outlined in this regulation. All criminal history decisions will be referred to the review committee to consider the following individualized assessment factors:

1. The nature, circumstances, and gravity of the offense and frequency of the conduct;
2. The age of the person when the crime was committed;
3. The date of the offense and how much time has elapsed;
4. The adjudication of the offense (e.g., whether the person was found guilty by a trier of fact, pled guilty, entered a no contest plea, or received deferred adjudication);
5. The nature and responsibilities of the job sought, including the job duties, essential functions, level of supervision, level of interaction with students and employees, and job environment;
6. The accuracy of the person's disclosure of his or her criminal history during the selection process;
7. The potential effect of the conduct on the overall educational environment;
8. The person's rehabilitation efforts;
9. The likelihood of recurrence of the criminal conduct;
10. Any further information provided by the person conserving his or her criminal history record;
11. Whether the offense for which a person is convicted is a mandatory excludable offense under Texas Educational Code, Section 22.085; and
12. Whether an exclusion of the person based on the person's criminal history would be job-related and consistent with business or educational necessity.

For professionals and campus-based paraprofessionals, the review committee will be composed of the following employees:

1. The Superintendent;
2. The supervising assistant superintendent for elementary education or secondary education, as appropriate;
3. The campus principal; and

4. The assistant superintendent for human resources.

For noncampus-based paraprofessionals and for all auxiliary employees, the review committee will be composed of the following employees:

1. The Superintendent;
2. The supervising department director;
3. The assistant superintendent for business; and
4. The assistant superintendent for human resources.

**Arrests, Indictments,
Convictions, and
Other Adjudications**

Conviction records will constitute reliable evidence that a person engaged in the conduct alleged because the criminal justice system requires the highest degree of proof (“beyond a reasonable doubt”) for a conviction. Therefore, excluding extraordinary circumstances, the District will treat a conviction as proof of guilt.

Arrest records may not be reliable evidence that a person has actually committed a crime. To justify the use of arrest records as proof of misconduct, additional inquiries will be made. The review committee will examine the surrounding circumstances, offer the employee an opportunity to explain, and, if the employee denies engaging in the conduct, make the follow-up inquiries necessary to evaluate his or her credibility. The review committee is not required to conduct an informal trial or an extensive investigation to determine the employee’s guilt or innocence. However, the review committee will make simple inquiries that could shed light on the likelihood of the individual’s guilt in committing the underlying offense.

Deferred adjudication involves an individual entering a plea of guilty or no contest, which the court finds to be substantiated by evidence of guilt. A grant of deferred adjudication should be viewed as more indicative of a conviction. The review committee will make inquiries into evidence substantiating guilt similar to the inquiries made when an arrest is reported.

Arrests and deferred adjudications will be treated like convictions when inquiries suggest a high likelihood of the employee’s guilt of the underlying offense. Where such a determination is not found, the arrest or deferred adjudication will not be used to take an adverse employment action against the individual.

Not guilty adjudications and withdrawn or dismissed charges indicate that a court, a jury, or a law enforcement authority did not have sufficient proof beyond a reasonable doubt, which may or may not be indicative of guilt. The employee will be asked to explain, in writing, the circumstances and must provide a certified

copy of the court paperwork showing the final disposition of every charge. The review committee may make additional inquiries into evidence substantiating guilt.

Prohibited Offenses

Conviction of a prohibited offense makes a person ineligible for employment in the District. Prohibited offenses are those that are so severe that the District finds that continued employment of the individual places the safety of both students and other employees at risk. Prohibited offenses include but are not limited to the following: criminal homicide, murder, capital murder, kidnapping, aggravated kidnapping, smuggling of persons, false imprisonment, trafficking of persons, improper relationship between educator and student, public lewdness involving a child or student, indecency with a child, indecent exposure with a child or student, prohibited sexual conduct, sexual assault, aggravated sexual assault, rape, continuous sexual abuse of a child, injury to a child, child abuse, abandoning or endangering a child, sale or purchase of a child, arson, robbery, aggravated robbery, prostitution or solicitation of prostitution, child pornography, sexual solicitation of a child, and obscenity.

Review of Offenses

Any employee or applicant who is or may be disqualified from employment as a result of a criminal conviction will be notified of same before employment is terminated or the position is filled by another candidate. That employee/applicant will then have the opportunity to provide the District with a written explanation of why the offense should not prevent his or her continued employment or consideration for the position, due to his or her particular circumstance. That explanation will be reviewed by the review committee. The individual may provide proof of the following:

- An incorrect criminal history;
- Proof of a misidentification in a criminal history;
- An explanation of the facts and circumstances surrounding the conduct;
- The number of offenses for which the individual was convicted;
- The individual's age at the time of the offenses and the time that has elapsed;
- Evidence of the same type of work without incident;
- The individual's employment history before and after the conduct;

EMPLOYEE STANDARDS OF CONDUCT

DH
(REGULATION)

- Rehabilitation, training, education, employment, or character references;
- Information regarding the individual's fitness for the position;
- Whether the individual is bonded, licensed, or certified under federal, state, or local law; and
- Other pertinent information.

If the individual does not respond to the request for input, the review committee will make its employment decision without the information. All available information will be considered to determine whether an exclusion due to the applicant's or employee's criminal history is job-related and consistent with business or educational necessity.

Felony

A felony is an offense designated as such in the Texas Penal Code. The District will not employ anyone with a felony conviction occurring during the past ten years without approval from the Board. If the employee was convicted of a felony more than ten years prior to employment, the District must determine if the underlying offense relates to the duties and responsibilities of the position or if the conviction was for a prohibited offense. An employee may continue to be eligible for employment in the District if a felony conviction over ten years old does not relate to the duties and responsibilities of the employee's position and was not for a prohibited offense. If a felony conviction over ten years old does relate to the duties and responsibilities of the employee's position, then the review committee must consider the likelihood of recurrence of the employee's criminal behavior. A determination by the review committee that the employee's behavior will not recur makes the employee eligible for continued employment; a finding to the contrary makes the employee ineligible for continued employment if the exclusion is job-related and consistent with business or educational necessity based on the individualized assessment factors.

Class A and Class B Misdemeanors

Class A and Class B misdemeanors are those offenses designated as such in the Texas Penal Code. An employee may be eligible for continued employment if the conviction for a Class A or Class B misdemeanor is not related to duties and responsibilities of the employee's position. If the conviction occurred in the past five years and does relate to the duties and responsibilities of the employee's position, then the employee is ineligible for continued employment in the District if the review committee determines there is a high degree of likelihood for the recurrence of the behavior and an exclusion is job-related and consistent with business or educational necessity based on the individualized assessment factors.

EMPLOYEE STANDARDS OF CONDUCT

DH
(REGULATION)

**Class C
Misdemeanors**

Class C misdemeanors are those offenses designated as such in the Texas Penal Code. The District will not employ anyone convicted of a Class C misdemeanor involving moral turpitude within the past five years unless the review committee determines there is not a high degree of likelihood of recurrence of the behavior and an exclusion is not job-related and is not consistent with business or educational necessity based on the individualized assessment factors. If convicted of a Class C misdemeanor that does not involve moral turpitude and the conduct is not related to the employee's job responsibilities, the employee is eligible for continued employment in the District.

Moral Turpitude

For the purposes of this regulation and related procedures, the definition of moral turpitude is found at DH(LOCAL).

Multiple Offenses

An employee with multiple offenses that individually do not make him or her ineligible for employment may be deemed ineligible for continued employment when repetitious criminal behavior indicates a high degree of likelihood for recurrence of the behavior.

**Unlisted Criminal
History**

If a criminal history record does not list an event reported by the employee, he or she will be asked to explain, in writing, the circumstances for each reported incident. A certified copy of pertinent court paperwork showing final disposition of the charge must be included. The review committee may make additional inquiries.

Nondisclosure

An employee who has successfully completed a deferred adjudication and who has succeeded in having the criminal court grant an order of nondisclosure may thereafter deny the occurrence of the arrest and prosecution. *Texas Gov't Code 552.142*

**Claim of Error in
Records**

An employee who claims that the reported criminal history record is erroneous may undertake efforts to correct the record and provide a corrected record to the human resources department.

Juvenile Records

An employee will not be asked to disclose the contents of confidential juvenile records unless the employee was adjudicated as an adult.

**Candidates for
Employment**

The criteria and procedures detailed above and at DC(EXHIBIT) will be used when reviewing the criminal history record of candidates for employment.