

EMPLOYMENT REQUIREMENTS AND RESTRICTIONS
CRIMINAL HISTORY AND CREDIT REPORTS

DBAA
(LOCAL)

**Criminal History
Record Check-
Applicants**

Under authority of the Education Code, the District shall obtain the criminal history record for each applicant for employment with the District who, in the opinion of the District, is a serious candidate and who may be offered a position.

The District may obtain the information from any law enforcement agency or other background agency, including, but not limited to, a police department, the Department of Public Safety, or the Texas Department of Corrections.

The District shall not issue any applicant a written contract of employment until it has obtained a criminal history record and reviewed it under the guidelines of this policy.

For the purposes of this policy, "conviction" shall include probation, deferred adjudication, a finding of guilt or acceptance by the court of a plea of guilty or *nolo contendere*.

A person shall not be denied employment solely on the basis of the deferred adjudication or arrest. Rather, the underlying facts that led to the arrest or deferred adjudication shall be examined prior to any recommendation to employ.

Confidentiality
Requirement

Criminal history information is privileged and for the use of the District and the State Board for Educator Certification. No District employee shall release or disclose such information to a person other than the applicant, the legal review committee, or the Superintendent or designee, under penalty of law and/or discharge.

Criminal History
Restrictions

If a person has been charged with a criminal offense that has been dismissed through deferred adjudication, that person shall be considered for employment with the District except when the charge was for criminal homicide; capital murder; attempted murder; murder; voluntary manslaughter; involuntary manslaughter; unlawful transport; false imprisonment; trafficking of persons; improper relationship between educator and student; public lewdness involving a child or student; indecent exposure with a child or student; prohibited sexual conduct; sexual assault; rape; child abuse; abandoning or endangering a child; sale or purchase of a child; arson; indecency with a child; any felony theft offense; injury to a child, the elderly, or a person with a disability; kidnapping; aggravated kidnapping; aggravated sexual assault of a child; robbery; aggravated robbery; prostitution or solicitation of prostitution; child pornography; sexual solicitation of a child; obscenity; any felony where a deadly weapon was used or exhibited; any felony related to the manufacture, delivery, or possession of marijuana, a controlled substance, or a dangerous drug; or any other crime that adversely affects the mission of the District.

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Moral Turpitude

No one convicted of a felony or any misdemeanor involving moral turpitude shall be considered for employment in the District. Moral turpitude is an act of baseness, vileness, or depravity in the private or social duties outside the accepted standards of decency that shocks the conscience of an ordinary person.

No one charged with any felony or misdemeanor involving moral turpitude shall be considered for employment in the District until there is a final disposition of the charge, except as may be allowed by the legal review committee, in accordance with the provisions below. [See DH(LOCAL)]

Examples of moral turpitude include, but are not limited to:

1. Public lewdness;
2. Prostitution;
3. Theft; and
4. Fraud.

No one currently on probation, including deferred adjudication probation, for any offense shall be considered for employment, unless allowed by the legal review committee, in accordance with provisions below.

*Arrests,
Indictments,
Convictions, and
Other
Adjudications*

Conviction records shall constitute reliable evidence that a person engaged in the conduct alleged as the criminal justice system requires the highest degree of proof ("beyond a reasonable doubt") for a conviction. Therefore, excluding extraordinary circumstances, the District shall 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 shall be made. The legal review committee shall examine the surrounding circumstances, offer the employee or applicant an opportunity to explain, and, if the employee or applicant denies engaging in the conduct, make the follow-up inquiries necessary to evaluate his or her credibility. The review committee shall not be required to conduct an informal trial or an extensive investigation to determine the employee's guilt or innocence. However, the review committee shall 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 shall

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make inquiries into evidence substantiating guilt similar to the inquiries made when an arrest is reported.

Not guilty adjudication and withdrawn or dismissed charges shall 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 shall 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.

Felony

A felony is an offense designated as such in the Texas Penal Code. The District shall not employ anyone with a felony conviction occurring during the past ten years. If the employee was convicted of a felony more than ten years prior to employment, the District must determine if the underlying offenses relate to the duties and responsibilities of the position or if the conviction was for a non-reviewable felony. 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 nonreviewable 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 shall allow the employee to be eligible for continued employment; a finding to the contrary shall cause the employee to be ineligible for continued employment.

*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, the employee shall be 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.

*Class C
Misdemeanors*

Class C misdemeanors are those offenses designated as such in the Texas Penal Code. The District shall not employ anyone convicted of a Class C misdemeanor involving moral turpitude. If convicted of a Class C misdemeanor that does not involve moral turpitude, the employee shall be ineligible for continued employment in the District if the review committee determines there is a high degree of likelihood for recurrence of the behavior.

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- 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 shall be asked to explain, in writing, the circumstances for each reported incident. A certified copy of the 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, in accordance with Texas Government Code 552.142.
- Claim of Error in Records* An employee or applicant who claims that the reported criminal history record is erroneous may be provided an opportunity to correct the record.
- Juvenile Records* An employee shall not be asked to disclose the contents of confidential juvenile records unless the employee was adjudicated as an adult.
- Legal Review Committee* The application of a person who has a criminal history record that would preclude employment with the District using the criteria listed above shall be reviewed by the legal review committee as established by the District's human resources department. The school attorney shall serve in an advisory capacity.
- The committee shall assess the records of potential employees. The legal review committee shall not review applications whose criminal record includes a conviction, deferred adjudication, or plea of guilt or *nolo contendere* for the offense of criminal homicide; capital murder; attempted murder; murder; voluntary manslaughter; involuntary manslaughter; unlawful transport; false imprisonment; trafficking of persons; improper relationship between educator and student; public lewdness involving a child or student; indecent exposure with a child or student; prohibited sexual conduct; sexual assault; rape; child abuse; abandoning or endangering a child; sale or purchase of a child; arson; indecency with a child; any felony theft offense; injury to a child, the elderly, or a person with a disability; kidnapping; aggravated kidnapping; aggravated sexual assault of a child; robbery; aggravated robbery; prostitution or solicitation of prostitution; child pornography; sexual solicitation of a child; obscenity; any felony where a deadly weapon was used or exhibited; any felony related to the manufacture, delivery, or possession of

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Governing
Criteria for
Employment
Decisions

marijuana, a controlled substance, or a dangerous drug; or any other crime that adversely affects the mission of the District.

The following criteria shall be used by the legal review committee in determining whether or not to recommend a waiver of the criminal history restrictions to employment:

1. The relationship and seriousness of the crime.
2. The nature of the crime to the purpose of the District.
3. The extent to which employment might offer an opportunity to engage in further criminal activity of the same type as that in which the person had previously been involved.
4. The relationship of the crime to the ability, capacity, or fitness required to perform the duties and the responsibilities of the position with the District.
5. The age of the person at the time of the commission of the crime.
6. The time elapsed since the person's last criminal activity.
7. The evidence of the person's rehabilitation or rehabilitative effort while incarcerated or following release.
8. If the person holds a professional license, the results of any action taken by the licensing authority.
9. The other evidence of the person's present fitness, including letter(s) of recommendation from:
 - a. Prosecutors or law enforcement or correctional officers involved in the prosecution, arrest, or custody of the person.
 - b. The law enforcement officers in the community where the person resides.
 - c. Any other persons in contact with the convicted person.
10. The individual's patterns of habitual criminal activity.
11. The publicity surrounding the actual crime.
12. The person's clear and present danger to other staff, students, or the general public.
13. Probable guilt or innocence.
14. The accuracy of the information the employee provided to the District.

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	<p>15. The potential impact of the conduct on the educational environment.</p> <p>16. Any extenuating circumstances.</p>
<p>Legal Review Committee Recommendation</p>	<p>If, after applying the criteria outlined above, the legal review committee believes that the applicant should be considered for employment, the committee shall jointly sign a recommendation to the Superintendent or designee that such applicant is eligible for hire.</p>
<p><i>Super-Intendent's Decision</i></p>	<p>If the Superintendent approves the recommendation, the applicant shall be considered eligible for hire.</p>
<p>Failure to Disclose Information on Application</p>	<p>An applicant shall not be employed by the District if he or she fails to disclose information on the employment application or during questioning regarding any criminal conviction, crime, deferred adjudication, or similar type of decree, or if he or she misrepresents any information regarding such conviction, crime, deferred adjudication, or similar type of decree.</p>
<p>Criminal History Background Check—Employees</p>	<p>At least once annually, the District shall obtain criminal history records of El Paso County and the counties contiguous to El Paso County. The District may obtain this information from any other county when it has reason to believe that an employee has been convicted of a crime in such county or from a police department, the Department of Public Safety, or the Texas Department of Corrections.</p> <p>The District may suspend or terminate the employment of any person convicted of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of the individual or directly relates to, or adversely affects, the mission of the District.</p>
<p>Penalties for Failing to Disclose Criminal Information</p>	<p>The legal review committee shall assess the records of employees found to have criminal records that would bar them from employment with the District. The committee shall use the following guidelines to determine if an employee should be recommended for termination based on his or her criminal record:</p> <ol style="list-style-type: none">1. The omission by the employee to not disclose a prior criminal conviction when requested at the time of employment shall be presumed to be intentional. The District, however, shall have the burden of proof.2. If the employee was not asked to divulge any previous convictions as a prerequisite to employment, a recommendation for termination shall be based on the same criteria as required for applicants.

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3. If a conviction involving a felony or misdemeanor involving moral turpitude is discovered subsequent to employment, a recommendation for termination shall be based on the same criteria as required for applicants as found above.

An employee shall notify the District within three working days if he or she is charged with, convicted of, granted deferred adjudication, or has entered a plea of *nolo contendere* for any criminal offense. This notification shall be made in writing to the employee's immediate supervisor or principal. Failure to make such notification may result in termination of employment.

Any employee placed on deferred adjudication may be recommended for termination based upon the underlying facts that led to the deferred adjudication. For the purposes of any termination hearing, the facts to which the individual pleaded in order to obtain the deferred adjudication shall be presumed to exist and be true and correct.

The District may suspend or terminate the employment of any person convicted of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of the individual or directly relates to or adversely affects the mission of the District.

An employee under felony indictment that adversely affects the mission of the District shall be recommended for suspension without pay pending adjudication of his or her case.

After notification of a proposed suspension without pay or employment termination, a contract employee may request a hearing in accordance with the DF series.

District Supervision Prohibition

No person shall be assigned to a campus or department where a member of his or her own family who is related by blood (consanguinity) within the third degree or by marriage (affinity) within the second degree serves as an administrator. The provision of this policy shall apply prospectively. [See DBE(LEGAL) and (EXHIBIT)] Adopted or foster relationships shall be treated as natural relationships. For the purposes of this policy, the term "administrator" shall not mean counselor, librarian, or coordinator.

SBEC Notification

If a candidate for a position has a reported criminal history, and the candidate is certified by the State Board for Educator Certification (SBEC), the District shall report the criminal history to SBEC.

Credit History

The District shall obtain credit history information on a candidate for employment only when the credit history is related to the position for which the person is being considered. The District shall comply with the Fair Credit Reporting Act before obtaining a job-related credit history. [See DBAA(LEGAL)]