

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))
14 DE Admin. Code 746

PROPOSED

Education Impact Analysis Pursuant To 14 Del.C. Section 122(d)

746 Criminal Background Check for Student Teaching

A. Type of Regulatory Action Required

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education intends to amend 14 DE Admin. Code 746 Criminal Background Check for Student Teaching to delay the implementation date. The date is being changed because current state law does not enable the Delaware State Bureau of Identification to submit a request for a federal background check (28 CFR 50.12A and 28 CFR 20.33A3). The Department will pursue a legislative change to accommodate the federal requirement. The Department continues to work with the district personnel directors, Delaware's higher education institutions, the State Police and State Bureau of Identification to ensure consistent implementation of this new requirement.

Currently nine school districts are requiring criminal background checks of student teachers voluntarily. By imposing the January 2011 date, this will allow legislation to be introduced and discussed, and to provide the time for the higher education institutions to establish implementation procedures. Depending on the timing of legislative action, the Department will work with the higher education institutions and districts/charter schools to move up the implementation date.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before November 2, 2009 to Susan Haberstroh, Education Associate, Regulation Review, Department of Education, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? This regulation is related to criminal background checks for student teachers and does not directly affect the student achievement as measured against state achievement standards.

2. Will the amended regulation help ensure that all students receive an equitable education? This regulation is related to criminal background checks for student teachers and does not directly ensure whether students receive an equitable education.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? This regulation is related to criminal background checks for student teachers and will help ensure students' health and safety is better protected.

4. Will the amended regulation help to ensure that all students' legal rights are respected? This regulation is related to criminal background checks for student teachers and does not directly affect that students' legal rights are respected.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? This regulation is related to criminal background checks for student teachers and preserves the necessary authority and flexibility of decision making at the local board and school levels.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The regulation is related to criminal background checks for student teachers and makes changes so as not to place unnecessary reporting or administrative requirements or mandates on decision makers at the local board or school levels.

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed

in the same entity? The regulation is related to criminal background checks for student teachers and allows the higher education institutions to make the first level to determine suitability for placement in a public school to reduce administrative requirements at the district or school level.

8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? This regulation is related to criminal background checks for student teachers and is consistent with the implementation of other state educational policies.

9. Is there a less burdensome method for addressing the purpose of the regulation? The regulation has been proposed with input from the higher education institutions, districts, State Police and State Bureau of Identification to help ensure this process is as efficient and less burdensome as possible.

10. What is the cost to the State and to the local school boards of compliance with the regulation? There is not a cost to the state or local school boards for compliance with this regulation.

746 Criminal Background Check for Student Teaching

This regulation shall apply to candidates for a Student Teaching Assignment in a Delaware public school. Refer to 14 **DE Admin. Code** 745 Criminal Background Check for Public School Related Employment for the requirements and procedures related to criminal background checks for public school related employment in a Delaware public school.

1.0 Definitions

“Higher Education Institution” means the Delaware college or university that has a teacher preparation program that places candidates into Student Teaching Positions in a Delaware public school district or charter school.

“Student Teaching Position” 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.

2.0 Criminal Background Check Requirements and Procedures for Student Teaching Position

Candidates

- 2.1 Effective January 1, ~~2010~~ 2011, any candidate for a Student Teaching Position in a public school district or charter school shall be required to have a criminal background check as prescribed through this regulation.
- 2.2 The higher education institution where candidates for Student Teaching Positions are enrolled shall require all candidates to complete a Release for Criminal Background Check Information form approved by the Department of Education as a part of the assignment process for a Student Teaching Position in a Delaware public school district or charter school.
- 2.3 The candidate for a Student Teaching Position in a Delaware public school district or charter school shall be subject to the following procedures:
 - 2.3.1 After notification by the higher education institution that he/she is a candidate for a Student Teaching Position, the candidate shall present him/herself to State Bureau of Identification personnel at one of the Delaware State Police Troops that processes such criminal background checks or at an on site appointment arranged by the higher education institution.
 - 2.3.2 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 State Bureau of Identification, which may be shown to the candidate’s placing higher education institution as proof that the candidate has completed the procedure. The candidate should retain the Verification Form of Processing for his/her records.

- 2.3.3 The candidate shall request the State Bureau of Identification send original versions of the criminal background check to both the candidate and higher education institution.
- 2.4 All costs associated with obtaining a criminal background check shall be paid for by the person seeking a student teaching position placement.

12 DE Reg. 1306 (04/01/09)

3.0 Procedures for Higher Education Institutions, Public School Districts and Charter Schools for the Determination of Suitability for Candidates in Student Teaching Positions.

- 3.1 The higher education institution where the candidate is enrolled and that was sent an original copy of the completed criminal background check shall make the initial determination for suitability for student teaching placement. The criteria for determining the suitability for student teaching placement shall be at the discretion of the higher education institution and may vary among the various higher education institutions in Delaware.
 - 3.1.1 If a determination is made to deny a candidate placement into a student teaching position based upon the higher education institution's review of the criminal history, the higher education institution may provide for an appeal process.
- 3.2 Upon the initial determination for suitability for the candidate to be placed in a public school, the higher education institution liaison responsible for overseeing Student Teaching Position placements shall confirm the receipt of the original complete criminal background check and send a copy of such to the district superintendent or charter school director of the Delaware school district or charter school considering the person as a candidate for a Student Teaching Position.
- 3.3 Each school district and charter school shall make the final determination of suitability for placement of a candidate in a Student Teaching Position in its school.
 - 3.3.1 Each school district and charter school shall establish the process and criteria for determining suitability for placement of a candidate in a Student Teaching Position in its school(s).
 - 3.3.2 The criteria for determining the suitability and subsequent placement of a candidate in a student teaching position may vary among the districts and charter schools. In addition, a school district or charter school may have criteria for student teaching placement that differs from the criteria for public school employment.
 - 3.3.3 The school district or charter school shall provide the candidate's higher education institution the decision to place or deny a candidate in a Student Teaching Position placement in writing.
- 3.4 Candidates for student teaching may have criminal background checks from other states accepted, if all of the following conditions are met;
 - 3.4.1 The criminal background check shall have been conducted within the previous twelve (12) months and include a federal criminal background check;
 - 3.4.2 The criminal background check shall be sent directly from the criminal background check agency in the other state to the higher education institution;
 - 3.4.3 The out of state candidate shall sign a release to allow the higher education institution 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.

4.0 Procedures for Maintaining Criminal Background Check Information

- 4.1 All information and records pertaining to criminal background checks and this regulation shall be maintained in a confidential manner including, but not limited to, the following:
 - 4.1.1 Access to criminal background check records, letters of reference accompanying out of state criminal background checks, and determination of suitability shall be limited to the higher education institution officer responsible for student teacher assignments and one person designated to assist in the processing of criminal background checks; and the district superintendent or charter school director and the district or charter school chief personnel officer responsible for the determination of suitability in the placing district or charter school. These

- persons shall be required to sign an agreement to keep such information confidential and employ proper precautions to insure that interoffice communications remain confidential;
- 4.1.2 All such records shall be kept in locked, fireproof cabinets;
 - 4.1.3 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 Student Teaching Position.
- 4.2 The higher education institution may dispose of the criminal background check in a secure manner no earlier than six (6) months after the student graduates from the higher education institution.

5.0 Penalties

The higher education institution officer responsible for student teacher assignments 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 this regulation.

6.0 Subsequent Criminal History Information

- 6.1 Subsequent criminal history on a person in a Student Teaching Position may be sent by the State Bureau of Identification to the higher education institution.
- 6.2 The higher education institution where the candidate is enrolled shall be required to send any subsequent criminal history information received to the school district or charter school where the candidate is engaged in student teaching activities.
- 6.3 The district or charter school where the person is in a Student Teaching Position may consider any subsequent criminal history received for the person's continued suitability for the Student Teaching Position.

12 DE Reg. 329 (09/01/08)

12 DE Reg. 1306 (04/01/09)

13 DE Reg. 445 (10/01/09) (Prop.)