

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(b) and 154(e)
(14 **Del.C.** §122(b) and §154(e))
14 **DE Admin. Code** 745

FINAL

REGULATORY IMPLEMENTING ORDER

745 Criminal Background Check for Public School Related Employment

I. Summary of the Evidence and Information Submitted

The Secretary of Education seeks to amend 14 **DE Admin. Code** 745 Criminal Background Check for Public School Related Employment. The new amendments make a cross reference to a new regulation 14 **DE Admin. Code** 746 Criminal Background Check for Student Teaching. The authority for the Secretary of Education to promulgate this amended regulation is based in 11 **Del.C.**, Subchapter VI. This regulation was originally in the December 1, 2007 *Register of Regulations* to address criminal background checks for student teaching. Because of comments, the Department is proposing a separate regulation to address criminal background checks for student teaching. There are additional minor edits to this regulation that provide for how the process for criminal background checks for public school related employment relates to the criminal background check for student teaching assignments.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on Thursday, July 3, 2008, in the form hereto attached as Exhibit "A". Comments were received from both the Governor's Advisory Council for Exceptional Children and the State Council for Persons with Disabilities. One of the concerns was that the bifurcation of the regulations for the public school related employment and the student teaching was confusing. In an earlier draft, the Department had combined the two processes into one regulation and it was decided the bifurcation was needed. The Department did however add clarifying language to both regulations that provides for a cross reference as to how the two regulations work in tandem. A comment was received related to the ability to appeal a criminal background suitability for employment decision to the State Board of Education. Because criminal background suitability determinations are typically made by the chief personnel officer or chief school administrator and not the local school board, these decisions would not be appealable to the State Board of Education.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 745 Criminal Background Check for Public School Related Employment in order to provide for a new regulation related to criminal background checks for student teaching assignments. This regulation is to work in tandem with the new 14 **DE Admin. Code** 746 Criminal Background Check for Student Teaching.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 745 Criminal Background Check for Public School Related Employment. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 745 Criminal Background Check for Public School Related Employment attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 745 Criminal Background Check for Public School Related Employment hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text and Citation

The text of 14 **DE Admin. Code** 745 Criminal Background Check for Public School Related Employment amended hereby shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 745 Criminal Background Check for Public School Related Employment in the Administrative Code of Regulations for the Department of Education.

V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on August 19, 2008. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 19th day of August 2008.

DEPARTMENT OF EDUCATION

Valerie A. Woodruff, Secretary of Education

745 Criminal Background Check for Public School Related Employment

[This regulation shall apply to all individuals seeking public school related employment in a Delaware public school. Refer to 14 Admin. Code 746 Criminal Background Check for Student Teaching for the requirements and procedures related to criminal background checks for a Student Teaching Assignments in a Delaware public school.]

1.0 Definitions

“Continuously Employed” means having worked in the same public school district or charter 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 school districts or charter schools. Persons ~~[participating who have participated]~~ in a Student Teaching Assignment [and who have fulfilled the requirements of 14 DE Admin. Code 746] shall be considered Continuously Employed [when they have if they] participated for forty five (45) days in the prior school year in ~~[any combination of Delaware school districts or charter schools as a student teacher]~~ the school district or charter school they are seeking public school related employment].

“Covered Personnel” means the following:

- All final candidates for public school related employment for compensation;
- All those persons who supply contracted services directly to students of a public school, or those who supply contracted services to a public school which results in regular direct access to children in or through a public school; and
- All those persons who have regular direct access to children in or through an extra duty position (also called Extra Pay for Extra Responsibility (EPER position) in public schools whether the person receives compensation or not.

Notwithstanding the above definition of Covered Personnel the following persons are not subject to these regulations:

- Instructors in adult corrections institutions;
- Instructors in adult education programs involving Apprenticeship, Trade Extension, or a vocational general interest programs, or instructors in Adult Basic Education and GED programs who do not service students under age 18;

- Directly supervised professional artists sponsored by the Division of the Arts, Arts in Education Program, Very Special Arts and the Delaware Institute for the Arts in Education; and
- Substitute food service workers.

~~["Student Teaching Assignment" 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. Refer to 14 DE Admin. Code 746 Criminal Background Check for Student Teaching for requirements and procedures related to criminal background checks for Student Teaching Assignments.]~~

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

2.0 Procedures for Candidates for Employment or for Persons Providing Services Under a Contract to Obtain a Criminal Background Check

- 2.1 A final candidate for a Covered Personnel position, as defined in 1.0, in a public school shall be subject to the following procedures:
 - 2.1.1 After notification by a school district or charter school that he/she is a final candidate for a Covered Personnel position, the individual shall present him/herself to State Bureau of Identification personnel at one of the Delaware State Police Troops ~~processing that~~ **[possess processes]** such criminal background checks or at an on site appointment arranged by the school district or charter school. School districts and charter schools at their option may require an applicant to submit a criminal background check prior to becoming a final candidate.
 - 2.1.2 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 State Bureau of Identification, which may be shown to prospective placing districts and charter schools as proof that the candidate has completed the procedure. The candidate should retain the Verification Form of Processing for his/her records.
 - 2.1.3 The candidate shall have ~~the~~ an original of the completed criminal background check sent to one school district or charter school. ~~A copy~~ An original of all information sent to the school district or charter school shall be sent by the State Bureau of Identification to the candidate.
 - 2.1.4 As a part of the application for public school related employment or as a part of the contract for services, the candidate shall sign a ~~release~~ Release for Criminal Background Check Information form approved by the Department of Education. The release will allow the school district or charter school that was sent the original of the completed criminal background check to do the following:
 - 2.1.4.1 Confirm the receipt of that original and disclose its contents to the district superintendent or charter school director or district or charter school chief personnel officer of other Delaware school districts or charter schools considering the person as a candidate.
 - 2.1.4.2 Send the original criminal background check to the placing school district or charter school if the candidate is hired or placed under contract in another Delaware school district or charter school,
 - 2.1.4.3 Send any subsequent criminal history information to the person's employing or contracting school district(s) or charter school(s).
 - 2.1.5 Each final candidate shall have a determination of suitability made by the school district or charter 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 5.0.
 - 2.1.6 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;
 - 2.1.6.1 The criminal background check shall have been conducted within the previous twelve (12) months and include a federal criminal background check;

- 2.1.6.2 The criminal background check shall be sent directly from the criminal background check agency in the other state to a Delaware school district or charter school;
- 2.1.6.3 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 school district or charter school which was sent the original background check.
- 2.1.6.4 The out of state candidate shall sign a release to allow the school district or charter 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.
- 2.1.7 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. School districts or charter 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 school district or charter school during the course of the school year.

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

3.0 Procedures for School Districts and Charter Schools for Criminal Background Checks on Candidates for Employment or for Persons Providing Services Under a Contract

- 3.1 School districts and charter schools shall require all persons subject to the law and these regulations to complete a release as a part of the application or contract submissions process 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.
- 3.2 The school district or charter school sent the original of a completed criminal background check shall keep the information received in a confidential manner and shall:
 - 3.2.1 If requested by another Delaware school district superintendent or charter school director or school district or charter school chief personnel officer and assured that a signed release is on file in the requesting district or charter school, confirm the receipt of that original and disclose its contents to the superintendent or director or the chief personnel officer of the requesting Delaware school district or charter school considering the person for hire;
 - 3.2.2 If requested by another Delaware school district superintendent or charter school director or school district or charter school chief personnel officer and sent a copy of the signed release on file in the requesting district or charter school, send the original criminal background check to the requesting Delaware school district or charter school if the candidate is placed in a Covered Personnel position; and
 - 3.2.3 If sent any subsequent criminal history information on the person hired, placed under contract or assuming an extra duty position in another district or charter school, forward such information to the school district or charter school.
 - 3.2.4 School districts or charter schools may also share and forward the above information with the Delaware Department of Education under the same conditions applicable to school districts or charter 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.
- 3.3 The school district or charter school, in accordance with 11 **Del.C.** §8571(b), (d) and (e), shall make a determination of suitability for employment 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 5.0.
- 3.4 When a candidate is finally placed in a Covered Personnel position the district or charter school shall do the following if the original of the completed criminal background check is not yet in its possession:

- 3.4.1 Make a written request to the school district or charter school that received the original of the completed criminal background check to forward the original copy to the placing district or charter school for placement in the employee's or contractor's file. As a part of the request, the placing district or charter school shall forward a copy of the release signed by the candidate.
- 3.4.2 Notify the State Bureau of Identification that the candidate has become Covered Personnel in the district or charter school and is no longer associated with the school district or charter school that received the original of the completed criminal background check.
- 3.5 A school district or charter school may place the candidate in a Covered Personnel position provisionally in accordance with 11 **Del.C.** §8571(f); however, the school district or charter 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 hired provisionally.

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

- 4.1 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 school district or charter school within that period, the district or charter school receiving the original criminal background check need not retain it beyond that time. If the person becomes Continuously Employed by a Delaware school district or charter school, the original criminal background check shall be kept on file for a minimum of five (5) years.
- 4.2 Each person who has been Continuously Employed in a public school district or charter school shall be exempt from the screening provisions of 11 **Del.C.** §8571.
- 4.3 A person who transfers between Delaware public school districts or charter schools and is placed in a Covered Personnel position shall comply with 11 **Del.C.** §8570, et seq., and these regulations before being hired or providing contracted services. A criminal background check performed within the previous twelve (12) months and held by another school district, charter school or out of state school, and supplied under 2.0 and 3.0 of these regulations is one means of complying with 11 **Del.C.** §8570, et seq., and these regulations.

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

5.0 Determination of Suitability and Appeal Process

- 5.1 A person covered by 11 **Del.C.** §8570, et seq., and these regulations, shall have the opportunity to respond to a school district or charter school regarding any criminal history information obtained prior to a determination of suitability for employment being made. See 11 **Del.C.** §8571(d). Such a response shall be made within ten (10) working days of the person's receipt of the criminal background check information from the State Bureau of Identification. The determination of suitability for employment shall be made by the school district or charter school pursuant to the factors listed in 11 **Del.C.** §8571(d).
- 5.2 The school district or charter 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 placement in a Covered Personnel position, based upon the criminal history, the person shall have an opportunity to appeal for reconsideration as set forth in 5.3.1 through 5.3.3.
- 5.3 Appeal for Reconsideration
 - 5.3.1 An appeal for reconsideration shall be initiated by a person notified that he/she is being denied or being terminated from placement in a Covered Personnel position, pursuant to 11 **Del.C.** §8571, by submitting a letter of appeal to the district superintendent or charter school director within ten (10) working days of the receipt of written notice.
 - 5.3.2 The appeal shall be reviewed by the district superintendent or charter school director and the appellant shall have the right to be heard by the district superintendent or charter school director within ten (10) working days of the receipt of the letter of appeal.

5.3.2.1 Local school districts and charter 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.

5.3.3 A written decision shall be rendered by the district superintendent or charter school director within ten (10) working days of the hearing. A decision made by the district superintendent or charter school director under this appeal procedure is final, unless the district or charter school has made specific provisions for appeal to another entity within the district or charter 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)

6.0 Confidentiality

6.1 All information and records pertaining to criminal background checks, pursuant to 11 **Del.C.** §8570, et seq., and these regulations, shall be maintained in a confidential manner including, but not limited to, the following:

6.1.1 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 district superintendent or charter school director and the district or charter school chief personnel office 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 insure that interoffice communications remain confidential.

6.1.2 All such records shall be kept in locked, fireproof cabinets;

6.1.3 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)

7.0 Penalties

The district superintendent or charter school director or the district or charter school chief personnel officer 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 11 **Del.C.** §8571.

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

8.0 Subsequent Criminal History Information

8.1 Subsequent criminal history on a person in a Covered Personnel position may be sent by the State Bureau of Identification to the district superintendent or charter school director or district or charter school chief personnel office and shall be used by district or charter school in making a determination about the person's continued suitability for placement in a public school environment.

8.2 If subsequent criminal history information is mistakenly directed to a district or charter school other than the current district or charter school of Covered Personnel, the information shall be forwarded immediately to the employing district or charter school by the receiving district superintendent, charter school director or district or charter school chief personnel officer.

8.3 If a person is known to be in a Covered Personnel position in more than one district or charter school, the superintendent, director or chief personnel officer of the district or charter school receiving the subsequent criminal history information on that person shall share the information received immediately with the district superintendent, charter school director or district or charter school chief personnel officer of the other school district or charter school.

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

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

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