

# DEPARTMENT OF EDUCATION

## OFFICE OF THE SECRETARY

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

### FINAL

#### REGULATORY IMPLEMENTING ORDER

##### 746 Criminal Background Check for Student Teaching

##### I. Summary of the Evidence and Information Submitted

The Secretary of Education seeks to adopt a new regulation 14 **DE Admin. Code** 746 Criminal Background Check for Student Teaching. This new regulation requires student teachers to have criminal background checks prior to placement in a school setting. In the December 1, 2007 *Register of Regulations* amendments were made to 14 **DE Admin. Code** 745 Criminal Background Checks to address student teaching criminal background checks. Based on comments, the Secretary is establishing a new regulation that addresses criminal background checks for student teaching separate from the requirement for criminal background checks for public school employment. The authority to promulgate this new regulation is based in 14 **Del.C.** 122(a) which vests the DOE with broad authority to adopt rules and regulations "for the maintenance, administration and supervision throughout this state of a general and efficient system of free public schools and 122(b)(22) which vests the DOE with the authority to prescribe rules and regulations relating to the public school teacher preparation, recruitment and retention. In addition, 122(b)(2) mandates that the DOE adopt regulations governing the "protection of the health and physical welfare of public school students in this state." The effective date for this requirement will be July 1, 2009 to allow time for the higher education institutions, districts, charter schools, and State Police to institute any procedural changes.

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 determination for a student teaching placement to either the local school board or State Board of Education. The regulation does provide for an appeal process at the higher education institution. The appeal is not to the local school board or charter school board level because the higher education institution is the overseeing entity and responsible for placing students. Local school boards and charter school boards should not be burdened with reviewing student teacher appeals. In addition, 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. A comment was received related to the issue of how non-Delaware student teachers are regulated related to criminal background checks. The Department appreciates the observation and has taken this comment under advisement for future revision. Other minor edits were made in response to the Councils' comments.

##### II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 746 Criminal Background Check for Student Teaching in order to provide for a process for criminal background checks for student teaching assignments.

### III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 746 Criminal Background Check for Student Teaching. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 746 Criminal Background Check for Student Teaching attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 746 Criminal Background Check for Student Teaching 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** 746 Criminal Background Check for Student Teaching amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 746 Criminal Background Check for Student Teaching 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 19<sup>th</sup> day of August 2008.

#### DEPARTMENT OF EDUCATION

Valerie A. Woodruff, Secretary of Education

#### 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 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 July 1, 2009, any ~~[person in 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 have an original of the completed criminal background check sent to the higher education institution. An original of all information sent to the higher education institution shall be sent by the State Bureau of Identification to the candidate. 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.

### **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.