

# DEPARTMENT OF EDUCATION

## OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))  
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 intends to amend 14 **DE Admin. Code** 745 Criminal Background Check for Public School Related Employment. This regulation is being amended to update regulation language due to changes in Titles 11, 16 and 31 of the Delaware Code related to Background Checks for Child Serving Entities.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on February 1, 2016, in the form hereto attached as Exhibit "A". One comment was received requesting that the definition of student teaching be expanded to include student teaching in higher education programs such as student nursing and student mental health counselors completing clinical experience in elementary or secondary schools. The Department notes that the definitions of employee, contractor and volunteer in the regulation encompasses these groups and therefore no change was made to this regulation.

#### 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 update regulation language due to changes in Titles 11, 16 and 31 of the Delaware Code related to Background Checks for Child Serving Entities.

#### 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 March 17, 2016. 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 17<sup>th</sup> day of March 2016.

Steven H. Godowsky, Secretary of Education

Approved this 17<sup>th</sup> day of March 2016

**745 Criminal Background Check for Public School Related Employment**

## 1.0 Purpose

This regulation shall apply to all individuals seeking pPublic sSchool related employment in a Delaware pPublic sSchool. ~~Refer to 14 DE 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.~~ A Criminal Background Check shall be completed for Employee, Contractors or Volunteers of a Child Serving Entity. It shall consist of a fingerprinted Delaware and national background check completed by the State Bureau of Identification (SBI) and the Federal Bureau of Investigation (FBI). Additionally, a Child Protection Registry Check shall be completed by the Department of Services for Children, Youth and Their Families (DSCYF). Refer to 14 **DE Admin. Code 746 Criminal Background Check for Student Teaching** for the requirements and procedures related to Criminal Background Checks for a Student Teaching Placement in a Delaware Public School.

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

## 42.0 Definitions

For purposes of this regulation, the following definitions apply:

**"Child Protection Registry Check"** means a computer search of the Child Protection Registry to determine if a person is a perpetrator in any substantiated cases of child abuse or neglect.

**"Child Serving Entity"** means Public Schools, including Employees of the Department of Education.

**"Continuously Employed"** means having worked in the same pPublic sSchool 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 Public Schools. Persons who have participated in a Student Teaching Assignment Placement and who have fulfilled the requirements of 14 **DE Admin. Code 746** shall be considered Continuously Employed if they participated for forty five (45) days in the prior school year in the school district or charter school where they are seeking pPublic sSchool related employment.

**"Contractor"** means a person, not an Employee, providing services within a Child Serving Entity and who has Direct Access to children.

**"Covered Personnel"** means ~~the following:~~ an "Employee," "Contractor," "Volunteer," as defined herein, or any person who is assigned to an extra duty position (also called Extra Pay for Extra Responsibility (EPER) position) in Public Schools whether the person receives compensation or not.

- ~~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.~~

**"Criminal Background Check"** means a fingerprinted Delaware and national background check completed by the SBI and the FBI. Additionally, a Child Protection Registry Check shall be completed by DSCYF.

**"Direct Access"** means, pursuant to this regulation, the opportunity to have personal contact with students receiving care or education during the course of one's assigned duties.

**"Employee"** means any person seeking employment for compensation with a Child Serving Entity, or any person who for any reason has Direct Access to students at a Child Serving Entity. This definition also includes any person seeking a Student Teaching Placement in a Public School.

**"Public School"** means any Public School and includes any board of education, school district, reorganized school district, special school district, charter school or charter school board and any person acting as an agent thereof.

**"Student Teaching Placement"** 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.

**"Superintendent"** means the chief school officer of any public school district or charter school, or the equivalent of a superintendent, or the superintendent's designee.

**"Volunteer"** means a person providing volunteer services within a Child Serving Entity and who has Direct Access to students.

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

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

### **23.0 Procedures for Candidates for Employment, ~~Contractors~~ or for Persons Providing Services Under a Contract Volunteers to Obtain a Criminal Background Check**

~~23.1~~ A final candidate for a Covered Personnel position, as defined in 42.0, in a ~~pPublic sSchool~~ shall be subject to the following procedures:

~~23.1.1~~ After notification by a ~~school district or charter school~~ Public School that he/she is a final candidate for a Covered Personnel position, the individual shall present him/herself to ~~State Bureau of Identification SBI~~ personnel at one of the Delaware State Police Troops that processes such ~~eCriminal bBackground eChecks~~ or at an on site appointment arranged by the ~~school district or charter school~~ Public School. ~~School districts and charter schools~~ Public Schools at their option may require an applicant to submit a ~~eCriminal bBackground eCheck~~ prior to becoming a final candidate.

~~23.1.2~~ The candidate shall cooperate in all respects with this ~~eCriminal bBackground eCheck~~ 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 SBI~~, which may be shown to ~~the~~ prospective placing ~~districts and charter schools~~ Public School 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 an original of the completed criminal background check sent to one school district or charter school. 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.

~~3.1.3~~ The candidate shall have an original of the completed Criminal Background Check sent to one Public School. An original of all information sent to the Public School shall be sent by SBI to the candidate.

~~23.1.4~~ As a part of the application for ~~pPublic sSchool~~ related employment, ~~or as a part of the contract for services, or the Volunteer agreement,~~ the candidate shall sign a Release for Criminal Background Check Information form approved by the Department of Education. The release will allow the ~~school district or charter school~~ Public School that was sent the original of the completed ~~eCriminal bBackground eCheck~~ to do the following:

~~23.1.4.1~~ Confirm the receipt of that original and disclose its contents to the ~~district~~ Public School sSuperintendents ~~or charter school director or district or charter school chief personnel officer of other Delaware school districts or charter schools~~ Public Schools considering the person as a candidate.

~~23.1.4.2~~ Send the original ~~eCriminal bBackground eCheck~~ to the placing ~~Public sSchool~~ Public sSchool ~~district or charter school if the candidate is hired, or placed under contract in another Delaware school district or charter~~ Public sSchool,

~~2.1.4.3~~ Send any subsequent criminal history information to the person's employing or contracting school district(s) or charter school(s).

~~3.1.4.3~~ Send any subsequent criminal history information to the person's employing or contracting Public School(s).

~~23.1.5~~ Each final candidate shall have a determination of suitability made by the ~~school district or charter school~~ Public 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 ~~56.0~~.

~~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;

~~3.1.6~~ 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:

~~23.1.6.1~~ The ~~eCriminal bBackground eCheck~~ shall have been conducted within the previous twelve (12) months and include a federal ~~eCriminal bBackground eCheck,~~

- 23.1.6.2 The ~~eCriminal bBackground eCheck~~ shall be sent directly from the ~~eCriminal bBackground eCheck~~ agency in the other state to a Delaware ~~school district or charter school~~ Public School;
- 23.1.6.3 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~~ Public School which was sent the original background check.
- 23.1.6.4 The out of state candidate shall sign a release to allow the ~~school district or charter school~~ Public School receiving the out of state ~~eCriminal bBackground eCheck~~ and the reference to confirm their receipt, disclose their contents and forward them, subject to the same disclosure regulations that apply to Delaware ~~eCriminal bBackground eChecks~~.
- 23.1.7 Except as described herein, all costs associated with obtaining a ~~eCriminal bBackground eCheck~~ shall be paid for by the person seeking a Covered Personnel position. ~~School districts or charter schools~~ Public Schools may use funds other than state funds to pay for ~~eCriminal bBackground eCheck~~ 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~~ Public School during the course of the school year.

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

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

### **34.0 Procedures for ~~School Districts and Charter~~ Public Schools for Criminal Background Checks on Candidates for Employment, ~~Contractors or Volunteers~~ 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.~~
- 4.1 Public Schools shall require all persons subject to the law and these regulations to complete a release as a part of the application process for employment, volunteering or to provide contracting services, 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.
- 34.2 The ~~school district or charter school~~ Public School ~~sent~~ sending the original of a completed ~~eCriminal bBackground eCheck~~ shall keep the information received in a confidential manner and shall:
  - 34.2.1 If requested by another Delaware ~~school district~~ Public School ~~sSuperintendent 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~~ Public School, confirm the receipt of that original and disclose its contents to the ~~sSuperintendent or director or the chief personnel officer~~ of the requesting Delaware ~~school district or charter school~~ Public School considering the person for hire, a contract, or a volunteer opportunity;
  - 34.2.2 If requested by another Delaware ~~school district~~ Public School ~~sSuperintendent 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~~ Public School, send the original ~~eCriminal bBackground eCheck~~ to the requesting Delaware ~~school district or charter school~~ Public 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.~~
  - 4.2.3 If sent any subsequent criminal history information on the person hired, placed under contract, or assuming an extra duty (EPER) or Volunteer position in another Public School, forward such information to the Public School.
  - 34.2.4 ~~School districts or charter schools~~ Public 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~~ Public 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 (EPER).
- 34.3 The ~~school district or charter school~~ Public School, in accordance with ~~11 Del.C. §8571(b), (d) and (e), 31 Del.C. §309(e)~~, shall make a determination of suitability ~~for employment as an Employee, Contractor or Volunteer~~ on each person it requested to initiate the ~~eCriminal bBackground eCheck~~ 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 ~~56.0~~.

- 34.4 When a candidate is finally placed in a Covered Personnel position the ~~district or charter school~~ Public School shall do the following if the original of the completed ~~eCriminal bBackground eCheck~~ 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.~~
  - 4.4.1 Make a written request to the Public School that received the original of the completed Criminal Background Check to forward the original copy to the placing Public School for placement in the Employee's, Contractor's, or Volunteer's file. As a part of the request, the placing Public School shall forward a copy of the release signed by the candidate.
  - 34.4.2 ~~Notify the State Bureau of Identification SBI that the candidate has become Covered Personnel in the district or charter school Public School and is no longer associated with the school district or charter school Public School that received the original of the completed eCriminal bBackground eCheck.~~
  - 34.5 ~~A school district or charter school Public School may place the candidate in a Covered Personnel position provisionally in accordance with 11 ~~Del.C. §8571(f)~~ 31 Del.C. §309(c)(7); however, the school district or charter school Public School shall require the candidate to comply with the provisions described in these regulations, including the requirement to initiate the eCriminal bBackground eCheck prior to being hired placed provisionally as an Employee, Contractor, or Volunteer.~~

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

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

- 45.1 A ~~eCriminal bBackground eCheck~~ 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~~ Public School within that period, the ~~district or charter school~~ Public School receiving the original ~~eCriminal bBackground eCheck~~ need not retain it beyond that time. If the person becomes Continuously Employed by a Delaware ~~school district or charter school~~ Public School, the original ~~eCriminal bBackground eCheck~~ shall be kept on file for a minimum of five (5) years.
- 45.2 Each person who has been Continuously Employed in a ~~pPublic sSchool~~ district or charter school shall be exempt from the screening provisions of 11 ~~Del.C. §8571~~ obtaining a Criminal Background Check.
- 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.~~
- 5.3 A person who transfers between Delaware Public Schools and is placed in a Covered Personnel position shall comply with 31 Del.C. §309 and these regulations before becoming an Employee, Contractor, or Volunteer. A Criminal Background Check performed within the previous twelve (12) months and held by another Public School or out of state school, and supplied under 3.0 and 4.0 of these regulations is one means of complying with 31 Del.C. §309, et seq., and these regulations.

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

**56.0 Determination of Suitability and Appeal Process**

- 56.1 A person covered by 11 ~~Del.C. §8570, et seq.~~ 31 Del.C. §309, and these regulations, shall have the opportunity to respond to a ~~school district or charter school~~ Public School regarding any criminal history information obtained prior to a determination of suitability for employment ~~as an Employee, Contractor, or Volunteer~~ being made. See 11 ~~Del.C. §8571(d)~~ 31 Del.C. §309(e)(1)(b). Such a response shall be made within ten (10) working days of the person's receipt of the ~~eCriminal bBackground eCheck~~ information from the ~~State Bureau of Identification SBI~~.
- 6.1.1 The determination of suitability for employment as an Employee, Contractor, or Volunteer shall be made by the ~~school district or charter school~~ Public School pursuant to the factors listed in 11 ~~Del.C. §8571(d)~~ 31 Del.C. §309(d) and any other criteria the Public School may establish.
- 56.2 ~~The school district or charter school Public 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 employment, 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~~ 6.3.

### **56.3 Appeal for Reconsideration**

- 56.3.1 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 employment~~, pursuant to 41 ~~Del.C. §8574~~ 31 Del.C. §309(e)(1)(b), by submitting a letter of appeal to the district Public School sSuperintendent or charter school director within ten (10) working days of the receipt of written notice.
- 56.3.2 The appeal shall be reviewed by the district Public School sSuperintendent or charter school director and the appellant shall have the right to be heard by the district Public School sSuperintendent or charter school director within ten (10) working days of the receipt of the letter of appeal.
- 56.3.2.1 ~~Local school districts and charter schools~~ Public 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.
- 56.3.3 A written decision shall be rendered by the district Public School sSuperintendent or charter school director within ten (10) working days of the hearing. A decision made by the district Public School sSuperintendent or charter school director under this appeal procedure is final, unless the district or charter school Public School has made specific provisions for appeal to another entity within the district or charter school Public 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)**

### **67.0 Confidentiality**

- 67.1 All information and records pertaining to eCriminal bBackground eChecks, pursuant to 41 ~~Del.C. §8570~~ 31 Del.C. §309, et seq., and these regulations, shall be maintained in a confidential manner including, but not limited to, the following:
- 67.1.1 Access to eCriminal bBackground eCheck records, and letters of reference accompanying out of state eCriminal bBackground eChecks, and determination of suitability shall be limited to the district Public School sSuperintendent or charter school director and the district or charter school chief personnel office and one person designated to assist in the processing of eCriminal bBackground eChecks, who will receive training in confidentiality, be required to sign an agreement to keep such information confidential and employ proper precautions to ensure that interoffice communications remain confidential.
- 67.1.2 All such records shall be kept in locked, fireproof cabinets;
- 67.1.3 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)**

### **78.0 Penalties**

The district Public School sSuperintendent 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 41 ~~Del.C. §8574~~ 31 Del.C. §311.

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

### **89.0 Subsequent Criminal History Information**

- 89.1 Subsequent criminal history on a person in a Covered Personnel position may be sent by the ~~State Bureau of Identification SBI~~ to the district Public School sSuperintendent or charter school director or district or charter school chief personnel office and shall be used by ~~district or charter school~~ the Public School in making a determination about the person's continued suitability for placement in a pPublic sSchool environment.
- 89.2 If subsequent criminal history information is mistakenly directed to a ~~district or charter school~~ Public School other than the current ~~district or charter school~~ Public School of Covered Personnel, the information shall be forwarded immediately to the employing ~~district or charter school~~ Public School by the receiving ~~district Public School sSuperintendent, charter school director or district or charter school chief personnel officer~~.
- 89.3 If a person is known to be in a Covered Personnel position in more than one ~~district or charter school~~ Public School, the ~~sSuperintendent, director or chief personnel officer~~ of the ~~district or charter school~~ Public School receiving the subsequent criminal history information on that person shall share the information received immediately with the ~~district Public School sSuperintendent, charter school director or district or charter school chief personnel officer~~ of the other ~~school district or charter school~~ Public School(s).

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

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

