

# DEPARTMENT OF EDUCATION

## OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(d) (14 Del.C. §122(d))  
14 DE Admin. Code 745

### PROPOSED

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

##### 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 745 Criminal Background Check for Public School Related Employment in order to include charter schools and to require a criminal background check when employees change school districts and or change between school districts and charter schools. The amendments also change the number of days that substitute teachers must work in one year to avoid additional criminal background checks from year to year.

##### C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses criminal background checks for public school employment not student achievement.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation addresses criminal background checks for public school employment not equitable education issues.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses criminal background checks for public school employment and that may help to ensure student safety.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses criminal background checks for public school employment not students' legal rights.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation will preserve the necessary authority and flexibility of decision making at the local board and school level.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation will not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels.

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision making authority and accountability for addressing the subject to be regulated will remain in the same entity.

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? The amended regulation will 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.

9. Is there a less burdensome method for addressing the purpose of the regulation? There is no less burdensome method for addressing the purpose of the regulation.

10. What is the cost to the State and to the local school boards of compliance with the regulation? The cost of additional criminal background checks will be supplemented by the State.

## 745 Criminal Background Check for Public School Related Employment

### 1.0 Applicability of Regulations

1.1 Effective July 1, 1994, the following "covered Personnel" shall be required to initiate the criminal background check process:

1.1.1 All final candidates for public school related employment for compensation;

1.1.2 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

1.1.3 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.

1.2 Notwithstanding the definition of "covered Personnel" in 1.1, the following persons are not subject to these regulations:

1.2.1 Instructors in adult corrections institutions;

1.2.2 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;

1.2.3 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

1.2.4 Substitute food service workers.

### 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.

**"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.

### 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~~ 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~~ Covered Personnel position, the individual shall present him/herself to State Bureau of Identification personnel at one of the Delaware State Police Troops processing 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 original of the completed criminal background check sent to one school district or charter school. A copy 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 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 ~~the~~ 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~~ 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.

### **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~~ Covered Personnel position, to initiate the criminal background check process prior to entering into the ~~covered personnel~~ 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 superintendent 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 superintendent 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~~ 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~~ 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~~ 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~~ 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.

#### **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~~" 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~~" 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, ~~or until sent to an employing school district or the Department of Education.~~

4.2 Each person who has been "~~continuously employed~~" Continuously Employed in a public school district or charter school shall be exempt from the screening provisions of 11 **Del.C.** §8571. ~~For the purpose of these regulations pertaining to Delaware school districts or charter schools, the term "continuously employed" "Continuously Employed", as used in 11 Del.C. §8570(3), shall apply to mean any person who has worked in a covered personnel position in the same public school district or charter school for at least fifteen (15) forty five working (45) days in the prior school year. At district or charter school option, a full time person may be exempt upon transfer between public school districts or charter schools if the person has:~~

4.2.1 ~~Submitted a criminal background check within the past five years;~~

4.2.2 ~~No break in service since the date of the check, and~~

4.2.3 ~~Requests that the records of that check are forwarded from the prior district to the new district prior to entering into a covered personnel position.~~

4.3 ~~Substitute teachers may be considered to be "continuously employed" when they work fifteen (15)~~

days in any combination of school districts, or ten (10) days in any one school district.

~~4.4~~ 4.3 A person not exempted in 4.2 or 4.3 who is placed in a covered personnel position by another Delaware school district A person who transfers between Delaware public school districts or charter schools and is placed in a Covered Personal 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.

## **5.0 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~~ Covered Personnel position, based upon the criminal history, the person shall have an opportunity to appeal for reconsideration as set forth in 5.2.1 through 5.2.3.

5.2.1 Appeal 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 within ten (10) working days of the receipt of written notice.

5.2.2 The appeal shall be reviewed by the district superintendent and the person shall be given the right to be heard by the district superintendent within ten (10) working days of the receipt of the letter of appeal.

5.2.3 A written decision shall be rendered by the district superintendent within ten (10) working days of the hearing. A decision made by the district superintendent under this appeal procedure are final, unless the district has made specific provisions for appeal to another entity within the district. The decision may not be appealed to the State Board of Education or to the Department of Education.

### 5.3 Appeal for Reconsideration

~~5.23.1~~ 5.3.1 Appeal 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~~ 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.

~~5.23.2~~ 5.3.2 The appeal shall be reviewed by the district superintendent or charter school director and the person appellant shall ~~be given~~ have the right to be heard by the district superintendent or charter school director ~~superintendent~~ 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.

~~5.23.3~~ 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 ~~are is~~ 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 ~~may not be appealed~~ shall not be appealable to the State Board of Education or to the Department of Education.

## **6.0 Confidentiality**

6.1 All 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 letter 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 and be required to sign an agreement to keep such information 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~~ Covered Personnel position.

## **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.

## **8.0 Subsequent Criminal History Information**

8.1 Subsequent criminal history on a person in a ~~covered personnel~~ Covered Personnel position ~~shall~~ 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~~ 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~~ 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. 253 (08/01/06) (Prop.)**