

## **CONDITIONS OF EMPLOYMENT – BACKGROUND CHECKS**

The New Hanover County Board of Education believes that a safe and secure learning and working environment should be provided for all students and staff. The Board further believes that employees and independent contractors involved in our schools should be positive role models for students. Therefore, all information provided to the Division of Human Resources by an applicant for employment or by an employee must be true, accurate, and complete to the best of the applicant's or employee's knowledge. Presenting information to the school system which is intended to defraud, falsify, materially misrepresent or conceal the truth will be considered just cause for terminating the application process or grounds for disciplinary action up to and including dismissal of the employee.

### **Criminal Record Check Required**

In reviewing applications for employment with New Hanover County Schools, inquiry or investigation shall be made regarding an applicant's criminal history. All applicants for employment must grant the school system written permission to procure a criminal history report.

The criminal histories of an independent contractor's employees are also required to be checked by the contractor, as stipulated in the language of their contractual agreement with New Hanover County Schools and meet the criteria for employment as described in this Policy, before they are allowed to work on school premises or with students.

### **Employment Standards**

"Criminal history" as used in this Policy means a guilty plea, conviction, no contest plea, prayer for judgment continued, arrest without conviction, deferred prosecution, charge with no disposition or pending charge for a misdemeanor or felony.

Traffic offenses that are not felonies and are not related to and did not involve driving while intoxicated or under the influence of a drug or intoxicating beverage and offenses that have been "waived" will not be considered in making employment decisions except that traffic offenses will be considered if the person is applying for a position as a bus driver.

If the criminal history check or other information shows that the applicant has failed to disclose a guilty plea, conviction, no contest plea, prayer for judgment continued, or pending charge on his/her application, the applicant will not be offered employment, or if an offer has been made, the offer will be withdrawn or the employee's employment will be terminated.

If the criminal history check or other information shows that the applicant has been convicted, pled guilty, or pled no contest to a felony that is listed in NCGS §115C-332(a)(1), or to a comparable federal law felony or felony from another state, the applicant will not be offered employment, or if a conditional offer has been made, the offer will be withdrawn or the employee's employment will be terminated.

If the criminal history check or other information shows that the applicant has been convicted, pled guilty, or pled no contest to felonies other than those listed in NCGS §115C-332(a)(1), or to misdemeanors, the factors listed below will be considered in making the determination of

whether the nature of the offense or offenses indicates that the person may pose a threat to the safety of students or personnel or whether the offense or offenses indicate that the person may not have sufficient honesty, integrity, or morality to fulfill the duties of the position for which the person applied.

Factors that weigh against the applicant being hired or his/her employment being continued include:

- The victim of the offense was a child;
- There were drugs or narcotics involved in an offense;
- The offense was sexual in nature;
- The offense involved a violent act or the threat of violence against a person;
- The offense involved deception, dishonesty or fraud;
- There was a pattern of offenses or multiple offenses;
- The offense was a felony;
- The offense was within the last seven (7) years; or
- The applicant is a registered sex offender.

Factors that indicate that the applicant might be employed in spite of his or her criminal history check include:

- The applicant has had no convictions, guilty pleas, or pleas of no contest for at least seven (7) years;
- There was only one (1) offense;
- The applicant was less than 21 years old at the time of the offense;
- The offense was a misdemeanor not included in the articles listed in NCGS §115C-332(a)(1); and
- There is evidence of rehabilitation.

### **Pending Charges**

If the charge is for a felony listed in NCGS §115C-332(a)(1), the applicant shall not be hired, or his/her employment continued, until the charges are resolved. If the applicant is convicted, pleads guilty, pleads no contest, or receives a prayer for judgment the applicant will not be hired. If the applicant is found not guilty or the charges are dismissed, then the charge will not be considered when making the hiring decision, but evidence of the applicant's underlying behavior may be considered.

The applicant shall not be hired or employment continued if the charge is for an offense other than a felony listed in NCGS §115C-332(a)(1) unless the determination is made that, even if the applicant is guilty, the conviction would not indicate that the person poses a threat to the safety of students or personnel or that the person does not have sufficient honesty or integrity to perform the job duties of the position for which the person applied. If that determination is not made, the applicant shall not be hired, or employment continued, until the charges are resolved and, if the applicant is convicted, pleads guilty, pleads no contest, or receives a prayer for judgment the applicant will not be hired. If the applicant is found not guilty or the charges are dismissed, then the charges will not be considered when making the hiring decision, but evidence of the applicant's underlying behavior may be considered.

### **Notice Requirement**

If New Hanover County Schools receives any indication of a positive criminal history as a result of a criminal history check by a private contractor, the applicant will be notified and provided a copy of his/her criminal history in accordance with the Fair Credit Reporting Act listed in 15 USC §1601.

### **Offers of Employment**

All offers of employment are conditional until the results of the criminal history check, until any indicated additional investigation has been completed, and until any other stated conditions have been satisfied. Thus, no person has a contract of employment until these conditions are satisfied. A person who receives a conditional offer of employment may be rescinded without a hearing until all conditions are satisfied.

If an applicant has a verified positive criminal history, a final offer of employment may be made only with the approval of the Superintendent or designee.

### **Criminal History Check of Current Employees**

All employees must report to the Division of Human Resources any criminal arrests, misdemeanor or felony charges, convictions, guilty pleas, pleas of no contest, prayers for judgment continued, or deferred prosecutions, except for traffic offenses other than felony traffic offenses and DWI charges. The employee must make the report within five (5) business days after the employee receives notice of the charge or disposition.

Failure to make a timely disclosure of a criminal arrest, charge, or disposition that is later disclosed by the employee will result in discipline up to and including suspension without pay. If a verified criminal history check or another source shows that an employee has failed to disclose a criminal charge or disposition, then the employee's employment may be terminated.

The Division of Human Resources may conduct criminal history checks using private contractors on current employees if it is determined by the Assistant Superintendent for Human Resources or designee that cause exists to complete such a review.

### **Required Record Keeping**

If an applicant is denied employment based, in part, on the information contained in the applicant's criminal history, a written record shall be made of the reason(s) for the decision not to offer employment. The record shall be maintained for a minimum of three (3) years.

If an applicant is offered a position of employment and the applicant has a record of a conviction, a written record shall be made of the reason(s) for the decision to offer employment. The record shall be maintained for a minimum of three (3) years.

If the applicant has no record of convictions, no determination need be made but a copy of the criminal history report shall be maintained for a minimum of three (3) years.

Copies of criminal histories obtained by the New Hanover County Schools shall be provided to the State Board of Education as required by NCGS §115C-332(e) and State Board of Education Policy.

All criminal history information received by the New Hanover County Schools from the N. C. Department of Justice or a contracted reporting agency is considered privileged information and is not a public record. The school system may destroy the information after it is used for the purposes authorized by NCGS §115C-332.

### **Immunity from Suit**

Under the provisions of NCGS §115C-332 (g), there shall be no liability for negligence on the part of the Board or its employees arising out of any act taken or omission by any individual in carrying out the provisions of NCGS §115C-332. However, this immunity does not extend to or include gross negligence, wanton conduct, or intentional wrongdoing.

### **Non-Compliance**

Failure of an applicant to disclose records of conviction(s) or to provide a valid social security number shall be grounds for disqualification for employment consideration or for immediate dismissal in the event an individual is employed on a temporary basis contingent on the completion of the criminal records check.

In compliance with federal laws, New Hanover County Schools administers all educational programs, employment activities and admissions without discrimination because of race, religion, national or ethnic origin, color, age, military service, disability or gender, except where exemption is appropriate and allowed by law.

LEGAL REFS: NCGS §115C-332  
15 USC §1601

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