

Sec. 1. THE UNIVERSITY OF TEXAS AT TYLER

As employees of The University of Texas at Tyler, all personnel are subject to a criminal background checks as conducted by the university’s Human Resource Department under policies outlined in their Handbook of Operating Procedures (HOP) at <https://www.uttyler.edu/hop/>.

As employees of The University of Texas at Tyler’s charter school, the UT Tyler University Academy, employees are subject to additional requirements pertaining to fingerprinting, subscriptions to rap-back systems, and the reporting of criminal activity to the State Board for Educator Certification (the “SBEC”) as outlined in the following sections.

Sec. 2. DEFINITIONS

“Criminal history clearinghouse” (“Clearinghouse”) means the electronic clearinghouse and subscription service established by the Department of Public Safety (“DPS”) to provide criminal history record information to persons entitled to receive that information and to provide updates to such information. A person who is the subject of the criminal history record information requested must consent to the release of the information. *Gov’t Code 411.0845(a), (h)*.

“Criminal history record information” (the “CHRI”) means information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions. The term does not include:

- (A) Identification information, including fingerprint records, to the extent that the identification information does not indicate involvement of the person in the criminal justice system; or
- (B) Driving record information maintained by the department under Subchapter C, Chapter 521, Transportation Code.

Gov’t Code 411.082(2).

“National criminal history record information” (“NCHRI”) means criminal history record information obtained from DPS under Government Code Chapter 411, Subchapter F, and the Federal Bureau of Investigation (the “FBI”) under Government Code 411.087. *Education Code 22.081(2)*.

Sec. 3. CERTIFIED PERSONS

SBEC review the NCHRI of a person who has not previously submitted fingerprints to the department or been subject to a national criminal history record information review who is an applicant for or holder of a certificate and who is employed by or is an applicant for employment by UT Tyler University Academy. *Education Code 22.0831(b), (c)*.

Sec. 4. NONCERTIFIED EMPLOYEES

This section applies to a person who is not an applicant for or holder of a certificate from the SBEC and who, on or after January 1, 2008, is offered employment by:

1. UT Tyler University Academy; or
2. A shared services arrangement, if the employee's or applicant's duties are or will be performed on school property or at another location where students are regularly present.

For noncertified employees of UT Tyler University Academy or a shared services arrangement hired before January 1, 2008, see Section 7 (All Other Employees) below.

a) *Information to DPS and the Texas Education Agency (the "TEA")*

Before employing or contracting for services from a provider, UT Tyler University Academy shall send or ensure that the person sends to the DPS information that the DPS requires for obtaining NCHRI, which may include fingerprints and photographs.

UT Tyler University Academy shall provide the TEA with the name of a person to whom this section applies. The TEA shall examine the CHRI of the person and notify UT Tyler University Academy if the person may not be hired or must be discharged under Education Code 22.085.

b) *Employment Pending Review*

An offer of employment may be made in order to secure the information needed to submit for CHRI, but employment is conditional upon the review and acceptability of that person's CHRI by UT Tyler University Academy and by the TEA. If UT Tyler University Academy or the TEA makes a determination that the employee or applicant is ineligible for employment, the offer of employment will be revoked.

c) *Criminal History*

UT Tyler University Academy shall obtain all CHRI that relates to a person subject to this section through the Clearinghouse and shall subscribe to the CHRI of that person. UT Tyler University Academy may require the person to pay any fees related to obtaining the CHRI.

Education Code 22.0833; 19 TAC 153.1109(d).

Sec. 5. SUBSTITUTE TEACHERS

This section applies to a person who is a substitute teacher for UT Tyler University Academy or a shared services arrangement. For purposes of this policy, a "substitute teacher" is a teacher who is

on call or on a list of approved substitutes to replace a regular teacher and has no regular or guaranteed hours. A substitute teacher may be certified or noncertified.

a) *Information to DPS and TEA*

UT Tyler University Academy shall send or ensure that a person to whom this section applies sends to the DPS information required for obtaining NCHRI, which may include fingerprints and photographs.

UT Tyler University Academy shall provide the TEA with the name of a person to whom this section applies. The TEA shall examine the CHRI and certification records of the person and notify UT Tyler University Academy if the person:

1. May not be hired or must be discharged as provided by Education Code 22.085; or
2. May not be employed as a substitute teacher because the person's educator certification has been revoked or is suspended.

b) *Employment Pending Review*

An offer of employment may be made in order to secure the information needed to submit for CHRI, but employment is conditional upon the review and acceptability of that person's CHRI by UT Tyler University Academy and by the TEA. If UT Tyler University Academy or the TEA makes a determination that the employee or applicant is ineligible for employment, the offer of employment will be revoked.

c) *Criminal History*

UT Tyler University Academy shall obtain all CHRI that relates to a person to whom this section applies through the Clearinghouse. UT Tyler University Academy may require the person to pay any fees related to obtaining the CHRI.

Education Code 22.0836; 19 TAC 153.1101(5), 153.1111(d).

Sec. 6. STUDENT TEACHERS AND VOLUNTEERS

This section applies to:

1. A person participating in an internship consisting of student teaching to receive a teaching certificate; and
2. A volunteer or person who has indicated, in writing, an intention to serve as a volunteer with UT Tyler University Academy.

a) *Criminal History*

A person may not perform any student teaching or volunteer duties until:

1. The student teacher or volunteer has provided to UT Tyler University Academy a driver's license or another form of identification containing the person's photograph issued by an entity of the United States government; and
2. UT Tyler University Academy has obtained from the DPS all CHRI that relates to the student teacher or volunteer. UT Tyler University Academy may also obtain CHRI relating to a student teacher or volunteer from any other law enforcement agency, criminal justice agency, or private consumer reporting agency.

UT Tyler University Academy may require a student teacher or volunteer to pay any costs related to obtaining the CHRI.

b) *Exception*

The criminal history requirements above do not apply to a person who volunteers or is applying to volunteer with UT Tyler University Academy if the person:

1. Is the parent, guardian, or grandparent of a child who is enrolled in UT Tyler University Academy;
2. Will be accompanied by a UT Tyler University Academy employee while on a UT Tyler University Academy campus; or
3. Is volunteering for a single event on UT Tyler University Academy campus.

Education Code 22.0835.

Sec. 7. COORDINATION OF EFFORTS

UT Tyler University Academy may coordinate with the TEA, the SBEC, and a shared services arrangement as necessary to ensure that criminal history reviews are not unnecessarily duplicated.
Education Code 22.0833(h).

Sec. 8. ALL OTHER EMPLOYEES

UT Tyler University Academy shall obtain CHRI that relates to a person who is not subject to a NCHRI review and who is an employee of:

1. UT Tyler University Academy; or
2. A shared services arrangement, if the employee's duties are performed on school property or at another location where students are regularly present.

UT Tyler University Academy may obtain the CHRI from:

1. The DPS;
2. A law enforcement or criminal justice agency; or
3. A private consumer reporting agency.

Education Code 22.083(a), (a-1), (c); Gov't Code 411.097.

Sec. 9. CONFIDENTIALITY OF CRIMINAL HISTORY RECORDS

CHRI that UT Tyler University Academy obtains from the DPS, including any identification information that could reveal the identity of a person about whom the CHRI is requested and information that directly or indirectly indicates or implies involvement of a person in the criminal justice system:

1. Is for the exclusive use of UT Tyler University Academy; and
2. May be disclosed or used by UT Tyler University Academy only if, and only to the extent, disclosure is authorized or directed by a statute, rule, or order of a court of competent jurisdiction.

For purposes of these confidentiality provisions, “criminal history record” information does not refer to any specific document provided by the DPS, but to the information contained, wholly or partly, in a document’s original form or any subsequent form or use.

UT Tyler University Academy or an individual may not confirm the existence or non-existence of CHRI to any person who is not eligible to receive the information. *Gov't Code 411.084.*

CHRI obtained by UT Tyler University Academy, in the original form or any subsequent form, may not be released to any person except the individual who is the subject of the information, the TEA, the SBEC, or by court order. The CHRI is not subject to disclosure under Government Code Chapter 552 (Public Information Act).

A UT Tyler University Academy employee may request from the Human Resources Department a copy of any CHRI related to that employee that UT Tyler University Academy has obtained from the DPS. UT Tyler University Academy may charge a fee to provide the information, not to exceed the actual cost of copying the CHRI. *Gov't Code 411.097(d), (f).*

UT Tyler University Academy generally will not print out CHRI, unless necessary for conducting a review of records or if seeking legal advice concerning eligibility for employment following receipt of a CHRI report.

Any UT Tyler University Academy employee who violates confidentiality protocols concerning access to, review of, or confidentiality of CHRI is subject to discipline, up to and including termination.

a) *Destroying CHRI*

UT Tyler University Academy shall destroy CHRI obtained from the DPS on the earlier of:

1. The date the information is used for the authorized purpose; or
2. The first anniversary of the date the information was originally obtained.

Gov't Code 411.097(d)(3).

This process also applies if it is necessary to print out CHRI.

Sec. 10. CONFIDENTIALITY OF CHRI INFORMATION

UT Tyler University Academy may not release information collected about a person in order to obtain CHRI, including the person's name, address, phone number, social security number, driver's license number, other identification number, and fingerprint records, except:

1. To comply with Government Code Chapter 22, Subchapter C (criminal records);
2. By court order; or
3. With the consent of the person who is the subject of the information.

In addition, the information is not subject to disclosure under Government Code Chapter 522 (Public Information Act). UT Tyler University Academy shall destroy the information not later than the first anniversary of the date the information is received. *Education Code 22.08391.*

Sec. 11. SBEC NOTIFICATION

The Superintendent or designee shall promptly notify the SBEC in writing by filing a report with the TEA staff within seven calendar days of the date the Superintendent obtains or has knowledge of information indicating that an applicant for or holder of a certificate issued by the SBEC has a reported criminal history and UT Tyler University Academy obtained information about the educator's criminal record by a means other than by the DPS.

"Reported criminal history" means information concerning any formal criminal justice system charges and dispositions. The term includes arrests, detentions, indictments, criminal information, convictions, deferred adjudications, and probations in any state or federal jurisdiction. *Education Code 22.087; 19 TAC 249.14(d), .3(43).*

Sec. 12. DISCHARGE OF CONVICTED EMPLOYEES

a) *Discharge Under Education Code 22.085*

In accordance with Education Code 22.085, UT Tyler University Academy shall discharge or refuse to hire an employee or applicant for employment if UT Tyler University Academy obtains information through a CHRI review that the employee or applicant has been:

1. Convicted of or placed on deferred adjudication community supervision for an offense for which a defendant is required to register as a sex offender under Code of Criminal Procedure Chapter 62; or
2. Convicted of:
 - a. A felony offense under Title 5, Penal Code, if the victim of the offense was under 18 years of age at the time the offense was committed; or
 - b. An offense under the laws of another state or federal law that is equivalent to an offense under item 1 or item 2(a).

However, UT Tyler University Academy is not required to discharge or refuse to hire an employee or applicant if the person committed an offense under Title 5 Penal Code and:

1. The date of the offense is more than 30 years before:
 - a. June 15, 2007 in the case of a person employed by UT Tyler University Academy as of that date; or
 - b. The date the person's employment will begin, in the case of a person applying for employment with UT Tyler University Academy after June 15, 2007; and
2. The employee or applicant for employment satisfied all terms of the court order entered on conviction.

b) *Discharge Under Education Code 12.120 and 19 TAC 100.151*

Additionally, in accordance with Education Code 12.120 and 19 TAC 100.1151, an individual may not be employed by UT Tyler University Academy if he or she:

1. Has been convicted of any felony or a misdemeanor involving moral turpitude;
2. Has been convicted of any offense listed in Education Code section 37.007(a); or
3. Has been convicted of an offense listed in the Code of Criminal Procedure section 62.001(5).

c) *Exception*

Notwithstanding the foregoing, a person may be employed in any position by UT Tyler University Academy if a school district could employ the person in that position and the TEA approves of the employment pursuant to Education Code section 12.1059. *Education Code 12.120; 19 TAC 100.1151(b).*

d) *Certification to TEA*

Each school year, the Superintendent or designee shall certify to the Commissioner of Education that UT Tyler University Academy has complied with the above provisions.

e) *Optional Termination*

UT Tyler University Academy may discharge an employee if it obtains information of the employee's conviction of a felony or misdemeanor involving moral turpitude that the employee did not disclose to the SBEC or UT Tyler University Academy.

Sec. 13. NOTIFICATION OF ARRESTS, INDICTMENTS, CONVICTIONS, AND OTHER ADJUDICATIONS

A UT Tyler University Academy employee shall notify his or her Principal or immediate supervisor within three calendar days of any arrest, indictment, conviction, guilty or no contest plea, or other adjudication of the employee for any felony offense or misdemeanor offense involving moral turpitude and/or:

1. Crimes involving UT Tyler University Academy property or funds;
2. Crimes involving attempt by fraudulent or unauthorized means to obtain or alter any certificate or permit that would entitle any person to hold or obtain a position as an educator;
3. Crimes that occur wholly or in part on UT Tyler University Academy property or at a school-sponsored or school-related activity; or
4. Crimes involving moral turpitude, which include:
 - a. Dishonesty, fraud, deceit, theft, misrepresentation;
 - b. Deliberate violence;
 - c. Base, vile or depraved acts that are intended to arouse or gratify the sexual desire of the actor;
 - d. Acts constituting public intoxication, operating a motor vehicle while under the influence of alcohol, or disorderly conduct; or
 - e. Acts constituting abuse under the Texas Family Code.

Sec. 14. DISCRIMINATION BASED ON CRIMINAL HISTORY

Except as required by state or federal law, UT Tyler University Academy does not prohibit employment or refuse to consider an application for employment solely on the grounds that an applicant/employee has a prior criminal record. UT Tyler University Academy does not prohibit employment or refuse to consider an application for employment based solely on the grounds that the applicant/employee has been arrested. It is the policy of UT Tyler University Academy, prior to any exclusion of an applicant for employment or continued employment of an employee that has a criminal record, to conduct an individualized assessment of the criminal conduct at issue. In conducting such an assessment, UT Tyler University Academy shall carefully consider the

following in order to determine that any exclusion based on criminal conduct is job related to the position in question and consistent with the business necessity of UT Tyler University Academy:

- The nature and gravity of the offense or offenses;
- The time that has passed since the conviction and/or completion of the sentence;
- The nature of the job held or sought.

UT Tyler University Academy shall consider the additional information provided by the applicant/employee that demonstrates that the criminal conduct is not job related and is consistent with business necessity of UT Tyler University Academy prior to making any final determination. Such additional information may include:

- The facts or circumstances surrounding the offense or conduct;
- The number of offenses for which the individual was convicted;
- Age at the time of conviction, or release from prison;
- Evidence that the individual performed the same type of work, post-conviction, with the same or a different employer, with no known incidents of criminal conduct;
- The length and consistency of employment history before and after the offense;
- Rehabilitation efforts, e.g., education/training;
- Employment or character references regarding fitness for the particular position;
- Whether the individual is bonded under a federal, state or local bonding program.