

# G-23: Administrative Procedures

## Background Check and Employee Self-Reporting Requirements



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### REFERENCES

[Board Policy G-23](#)

[Utah Code Ann. §53-10-108 et seq., Criminal Investigations and Technical Services Act](#)

[Utah Code Ann. §53G-11-401 et seq., Background Checks](#)

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### PROCEDURES FOR IMPLEMENTATION

#### I. Registered Sex Offenders

- A. In accordance with state law, the district is prohibited from hiring any individual who is a registered sex offender.
- B. State law only allows registered sex offenders to be on school property to perform necessary parental responsibilities. Accordingly, the district does not allow registered sex offenders to volunteer within the district in any capacity.

#### II. Application/Employment/On-boarding Process

- A. Employment applicants who are candidates for a position must:
  - 1. Present the district's human resource services (HRS) department with the applicant's U.S. passport. If a passport is not available, the candidate must present two other legal forms of identification. One of the two pieces of identification must include a photo of the candidate, such as a legally issued state driver's license; examples of the other form of identification include a certified copy of a birth certificate issued in a state or territory of the U.S., a social security card, etc; and
  - 2. If the individual is 18 years old or older:
    - a. Agree to pay a \$25.00 background check processing fee;
    - b. complete the consent form provided at time of fingerprinting, in which the applicant consents to:
      - i. performance of an initial fingerprint-based background check through the Federal Bureau of Investigation (FBI); and
      - ii. district retention of personal identifying information and ongoing monitoring through registration with the Bureau of Criminal Identification (BCI) system; and
      - iii. disclosure of any criminal history to HRS personnel.
- B. Duly elected/qualified school board members must:
  - 1. Present HRS with the board member's U.S. passport. If a passport is not available, the board member must present two other legal forms of identification. One of the two pieces of identification must include a photo of the board member, such as a legally issued state driver's license, and the other form of identification could be a certified copy of a birth certificate issued in a state or territory of the U.S., a social security card, etc;
  - 2. Complete the consent form provided at time of fingerprinting, in which the board member consents to:
    - a. performance of an initial fingerprint-based background check through the FBI; and
    - b. district retention of personal identifying information and ongoing monitoring through registration with the BCI system; and
    - c. disclosure of any criminal history to HRS personnel.
- C. Contractors who have been awarded a contract and are required by law to complete a background check before performing any services for the district, must:
  - 1. present HRS staff with a legally issued photo identification document, issued in a state or territory of the U.S.
  - 2. pay background check processing fee in the amount of \$33.25 at the time of fingerprinting;
  - 3. complete the consent form provided at time of fingerprinting, in which the contractor consents to:
    - a. performance of an initial fingerprint-based background check through the FBI; and
    - b. district retention of personal identifying information on an ongoing monitoring through registration with the BCI system; and
    - c. disclosure of any criminal history information to HRS personnel.

- D. Volunteers who have unsupervised access to students, must:
  - 1. present the business administration department staff with a legally issued photo identification document, issued in a state or territory of the U.S.;
  - 2. if 18 years old or older:
    - a. complete the consent form provided at time of fingerprinting, in which the volunteer consents to:
      - i. performance of an initial fingerprint-based background check with the FBI; and
      - ii. district retention of personal identifying information on an ongoing monitoring through registration with the BCI system; and
      - iii. disclosure of any criminal history to the business administration department.

**III. Processing the Background Check**

- A. The district will submit the collected personal identifying documents to the BCI for the purpose of:
  - 1. performing an initial fingerprint-based check by the FBI and BCI; and
  - 2. ensuring the individual is registered in the ongoing monitoring system.

**IV. Electronic Storage of Background Information**

- A. The HRS department will retain and review reports/notifications from BCI's ongoing monitoring system for current board members, employees, contractors, and volunteers.
- B. For employees and contractors, five business days after cessation of the employment or contractual relationship, the HRS department will relinquish the district's retention of the electronic BCI record of the employee or contractor, and the district will no longer have access to the individual's background information.
- C. For volunteers who have not been an active volunteer in the past school year, HRS will relinquish the district's retention of the electronic BCI record of the volunteer and will no longer have access to the individual's background information.

**V. HRS Review Process of a BCI Flag/Notification:**

- A. HRS will evaluate the criminal history and BCI flags on an individual's background check including, but not limited to:
  - 1. any conviction, including pleas in abeyance;
  - 2. any matters involving a felony; and
  - 3. any matters involving an alleged:
    - a. sexual offense;
    - b. class A misdemeanor drug offense;
    - c. offense against the person under Utah Code Ann. §76-5-101 et seq.;
    - d. class A misdemeanor property offense that is alleged to have occurred within the previous three years; and/or
    - e. any other type of criminal offense, if more than one occurrence of the same type of offense is alleged to have occurred within the previous eight years.
- B. The district will make an individualized determination as to whether the criminal history and/or BCI flags affect the individual's ability to perform services for the district. These case-by-case decisions will take into account the nature of the services to be performed, how recently the criminal activity occurred, the likelihood that the individual will interact with minors, and any other pertinent information.
- C. In the district's sole discretion, the district may choose to not hire an individual, allow an volunteer to have unsupervised access to students, or contract with an individual, if that individual has a criminal history which includes a charge, conviction, or plea in abeyance for any of the following:
  - 1. felony offense;
  - 2. drug related offense for possession with intent to distribute;
  - 3. sexual offense, if the offense involves force and/or minors;
  - 4. violent offense;
  - 5. impaired driving offense, when driving is an essential component of the individual's role;
  - 6. financial crimes, when performing financial transactions is an essential component of the individual's role; and/or
  - 7. any conviction that would impact or prohibit an individual from successfully fulfilling the essential functions of his/her role.

**VI. Employee Self-Reporting of Arrests, Citations, Charges, and Convictions**

- A. An employee who is arrested, cited or charged with the following alleged offenses shall report the arrest, citation, or charge within 48 hours or as soon as possible to the district superintendent and the executive director of HRS
  - 1. any matters involving an alleged sex offense;

2. any matters involving an alleged drug-related offense;
  3. any matters involving an alleged alcohol-related offense;
  4. any matters involving an alleged offense against the person under Utah Code, Title 76, Chapter 5, Offenses Against the Person;
  5. any matters involving an alleged felony offense under Utah Code, Title 76, Chapter 6, Offenses Against Property;
  6. any matters involving an alleged crime of domestic violence under Title 77, Chapter 36, Cohabitant Abuse Procedures Act; and
  7. any matters involving an alleged crime under federal law or the laws of another state comparable to the violations listed in Subsections A.1 through A.6 above.
- B. An employee shall report any conviction or plea in abeyance for a felony or misdemeanor offense to the executive director of HRS within 48 hours, or as soon as possible thereafter.
- C. The district superintendent or executive director of HRS shall report conviction, arrest, or offense information received from a licensed educator to the State Superintendent of Public Instruction within 48 hours of receipt of information from an educator.
- D. An employee shall report for work following an arrest and provide the notice described above unless directed not to report for work by the educator's supervisor.
- E. If a volunteer or non-licensed employee:
1. Is alleged to have committed a sex offense or any other offense which may endanger students, the individual must be immediately suspended from all student supervisory responsibilities during the period of investigation.
  2. Is alleged to have committed an offense involving alcohol or drugs, the individual must be suspended from transporting students, or operating or maintaining public education vehicles during the period of investigation.

#### **VII. Due Process**

- A. In the event of an arrest or criminal history or a BCI flag:
1. The HRS department will send notification to the individual regarding any reported arrest or flag that appears on the individual's background check.
    - a. The notice will have the following information:
      - i. date of charge;
      - ii. charge;
      - iii. agency;
      - iv. case number; and
      - v. disposition
  2. The individual will be given an opportunity to provide a written response to the information contained in the criminal history report. The individual must respond to HRS within the timeframe provided in the notification.
  3. Depending on the nature of the flag or arrest, the HRS department has sole discretion to place an employee on administrative leave pending a final decision.

#### **VIII. Final and Binding Decision**

- A. HRS will review the criminal history/arrest, response, and the role of the individual within the district and will provide a written determination to the individual identifying one of the following:
1. approval to proceed with employment, contract or volunteer service;
  2. disqualification of employment, contract, or volunteer status; or
  3. plan of action related to ongoing court matters or agreements.
- B. The district will review the information and make employment or appointment decisions that protect both the safety of students and the confidentiality and due process rights of employees.
- C. Individuals who have arrests or criminal backgrounds that are incompatible with any employment opportunity in the district will be given a Not Eligible to Re-hire (NER) status.
- D. In the event that an individual's employment, contract or volunteer service is marked disqualified, the individual will be given rights of review as follows:
1. Within 10 calendar days of the date on the written notice, the individual may submit a written request to the executive director of HRS to review the following information:
    - a. information received from BCI;
    - b. the reason for disqualification; and
    - c. any further information provided by the individual.
- E. After a thorough review of the documentation provided, the executive director of HRS will issue a written decision within 20 calendar days.

F. The determination of the executive director of HRS or designee is final and binding.

**IX. District's Duty to Report Educator Misconduct to UPPAC.**

- A. The district shall notify UPPAC if an educator is determined pursuant to a judicial or administrative proceeding, or internal district investigation, to have violated the educator standards described in Utah Admin. Code R277-217-2 or R277-217-3.
- B. Upon submitting a notification under Section A, the district may make a recommendation to UPPAC concerning whether an investigation by UPPAC would be appropriate under the circumstances, taking into account any employment action taken by the district.
- C. If no related criminal charge is filed, the district is not responsible to notify UPPAC of an allegation if the district's internal investigation establishes that the allegation is unsupported.

No district employee or student shall be subjected to discrimination in employment or any district program or activity on the basis of age, color, disability, gender, gender identity, genetic information, national origin, pregnancy, race, religion, sex, sexual orientation, or veteran status. The district is committed to providing equal access and equal opportunity in its programs, services and employment including its policies, complaint processes, program accessibility, district facility use, accommodations and other Equal Employment Opportunity matters. The district also provides equal access to district facilities for all youth groups listed in Title 36 of the United States Code, including scouting groups. The following person has been designated to handle inquiries and complaints regarding unlawful discrimination, harassment, and retaliation: Tina Hatch, Compliance and Investigations/Title IX Coordinator, 440 East 100 South, Salt Lake City, Utah 84111, (801) 578-8388. You may also contact the Office for Civil Rights, Denver, CO, (303) 844-5695.