

**Definitions**

***Authorized Persons:*** Individuals determined by the Superintendent of the Bon Homme School District who need access to, or need to view, criminal history record information in their official capacity with the school system. In this instance, the Superintendent appoints the school's Business Manager and Administrative Secretary.

***Criminal History Record Information (CHRI):*** A criminal history of an individual obtained through the South Dakota Division of Criminal Investigation (SDDCI) and/or the Federal Bureau of Investigation (FBI) utilizing the individual's fingerprints. CHRI includes information on the arrest, detention, complaint, indictment or former criminal charge of an individual as well as the disposition of any charges. The FBI rules differ from the DCI rules regarding the disclosure of criminal history record information.

***Criminal Justice Information Services (CJIS):*** The FBI's Criminal Justice Information Services Division, or CJIS, provides a range of state-of-the-art tools and services to law enforcement, national security and intelligence community partners, and the general public. Its purpose is to equip law enforcement, national security, and intelligence community partners with the criminal justice information required to protect the United States and the public. The CJIS Division was established in 1992 to serve as the focal point and central repository for criminal justice information services in the FBI. It is the largest division in the FBI.

***Local Agency Service Officer (LASO):*** liaison with SDDCI to ensure the agency is in compliance with security procedures. The LASO shall (1) maintain a list of users who have access to CHRI, (2) Identify and maintain a list of persons who are authorized to use the approved hardware, software and firmware to access CHRI and ensure no unauthorized individuals have access to this technology, (3) identify and document how the equipment is connected to the state system, (4) ensure that personnel security screening procedures are being followed, (5) ensure that approved and appropriate security measures are in place and working as expected, (6) promptly notify the MSHP of any security incidents, and (7) support any district security audits. The LASO for the Bon Homme School District is its Business Manager.

***Non-Criminal Agency Coordinator (NAC):*** The Business Manager is the primary contact for the Bon Homme School District who serves as the liaison between the district and the SD Division of Criminal Investigation, responsible for notifying SDDCI when a new employee starts or an employee leaves so SDDCI can maintain CJIS Security training records current and such other duties as required.

***Point of Contact (POC):*** The Bon Homme School District Business Manager is the POC when SDDCI sends out audit information, and is the contact person (along with the Administrative Secretary, when an onsite audit is conducted.

***Security Incident:*** An act of violating an explicit or implied security policy regarding CHRI including, but not limited to (1) attempts (either failed or successful) to gain unauthorized access to a system or its data, (2) unwanted disruption or denial of service, (3) the unauthorized use of a system for the processing or storage of data, and (4) changes to system hardware, firmware or software characteristics without Bon Homme School District's knowledge, instruction or consent.

**Policy Statement**

The Bon Homme School District is committed to providing a safe learning and working environment. As part of this effort, and in accordance with state and federal law, regulations, and policies, the school district will require each person over eighteen years of age hired by the district, who is a volunteer two or more times during the school year, or is employed by an entity which provides the Bon Homme district direct or indirect student services shall be required to submit to a criminal background investigation, or by means of fingerprint checks by the Division of Criminal Investigation and the

Federal Bureau of Investigation. The district and its employees, officers and agents will only obtain CHRI when authorized by law and will only use CHRI, or the personally identifiable information first obtained by the district in CHRI, for the purposes of determining whether a person should be employed by the Bon Homme School District.

In accordance with law and to protect the school district's students, criminal background checks on persons who are employed in the district, who volunteer two or more times during the school year, or are employed by an entity which provides the district direct or indirect student services shall be required. The criminal background investigation shall be done by means of fingerprint checks by the Division of Criminal Investigation. If no disqualifying record is identified at the state level, the fingerprints shall be forwarded by the DCI to the FBI for a national criminal history check. The Bon Homme School district and employees will comply with state and federal law, rules, procedures and policies regarding the receipt, use and dissemination of criminal history record information of any individual.

### **Designations**

- A. The Business Manager, as the Agency Representative, is responsible for signing the SDDCI User Agreement on behalf of the Bon Homme School District.
- B. The Business Manager shall be the district's Point of Contact (POC) and Noncriminal Agency Coordinator (NAC) to act as the primary contact person for the district, shall service as the liaison between the district and SDDCI, and will fulfill all responsibilities of the POC/NAC, including but not limited to being the contact person when SDDCI sends out audit information, shall be the contact person when an onsite audit is scheduled, and will be responsible for notifying SDDCI when a new employee starts or an employee leaves so SDDCI can keep CJIS security training records current.
- C. The Business Manager is designated to be the LASO to act as liaison with SDDCI to ensure the agency is in compliance with security procedures. The LASO shall be knowledgeable in CHRI, policies and mandated rules and regulations as well as maintain knowledge of IT security procedures. The LASO shall actively represent the Bon Homme School District in all matters pertaining to information security, dissemination of information security alerts and other material within the Bon Homme School District, and responsible for contacting SDDCI if there has been misuse of CHRI.

### **Criminal Background Checks**

- A. Each person over eighteen years of age hired by the Bon Homme School District, who is a volunteer on a regular basis during the school year, or is employed by an entity which provides the district direct or indirect services shall be required to submit to a criminal background investigation.
- B. The Bon Homme School District shall submit completed fingerprint cards to the DCI before the prospective new employee or volunteer enters into service
- C. The Bon Homme School District shall pay any fees charged for the purpose of fingerprinting or the criminal background investigation for any person whose employment with the district or status as a volunteer is subject to the requirements of this section.
- D. Any person hired to officiate, judge, adjudicate, or referee a public event sponsored by the Bon Homme School District is NOT required to submit to a criminal background investigation.
- E. Any person whose employment or status as a volunteer is subject to the requirements of this section may enter into service on a temporary basis pending receipt of results of the criminal background investigation. The district may, without liability, withdraw its offer of employment or terminate the temporary employment or status as a volunteer without notice of the report reveals a disqualifying record.
- F. The criminal investigation required by this section with respect to a student teacher completing requirements for teacher certification shall be conducted by the Bon Homme School District, and the district may rely upon the results of that investigation for employment of that person as an employee of the district. Results of a criminal background investigation conducted by another South Dakota public school district of a student teacher, hired by the district, may be relied upon by the district.

- G. A Bon Homme School District employee who is employed simultaneously with another school district is only required to obtain one criminal background investigation, if the background investigation was conducted less than five years before the person was employed by the district.
- H. The Bon Homme School District shall run a background check on employees of, or applicants for, employment with a contractor that does business with the district if the person will be working on school property. The contractor shall be responsible for the cost of the criminal background check.
- I. No person may be employed by the Bon Homme School District, either directly or by contract, and no person employed by contract provider and who would have direct student responsibilities may provide direct student services, if the person is convicted has been convicted of a crime of violence (murder, manslaughter, rape, aggravated assault, riot, robbery, burglary in the first degree, arson, kidnapping, felony sexual assault, felony child abuse, or any other felony in the commission of which the perpetrator used force, or was armed with a dangerous weapon, or used any explosive or destructive device) sex crimes (including but not limited to, rape, felony sexual contact with a minor under sixteen, sexual contact with a person incapable of consenting, possessing manufacturing, or distributing child pornography, and sexual exploitation of a minor), or distribution of trafficking in controlled substances or distribution of marijuana.
  - 1. The Bon Homme School District may also refuse to employ a person who has been convicted of a crime involving moral turpitude. "Moral turpitude" is defined as "an act done contrary to justice, honesty, principle, or good morals, as well as an act of baseness, vileness, or depravity in the private social duties which a person owes to his fellow man or society in general.
  - 2. The Bon Homme School District may consider any criminal conviction in making a hiring decision. The district has the sole and absolute discretion to determine whether the results of a criminal investigation disqualify a person from employment within the district.
  - 3. For the purposes of this policy, the term conviction means a plea or verdict of guilty or a conviction following a plea of nolo contendere (no contest) in this state or any other state.
- J. The Bon Homme School District's employment application form shall inform applicants that if no SD statutorily disqualifying conviction is identified as the state level the fingerprints will be forwarded by the SDDCI to the FBI for a national criminal history record check.
- K. Should an applicant be disqualified from employment due to the results of the criminal background check, the Bon Homme School District shall inform the applicant that the criminal background check results prohibit the district from employing the person. The district will not delay the employment hiring decision solely because the applicant seeks to correct his/her FBI criminal history record information (CHRI).
- L. Before a person's conditional employment is terminated as a result of the person's CHRI, the Bon Homme School District shall inform the person whose conditional employment is subject to termination that the criminal background report reveals a conviction which prohibits the district from employing the person, and inform the person of his/her right to appeal the accuracy or completeness of the CHRI to the SDDCI or FBI. Employees shall be afforded procedural due process consistent with their employment status (i.e. whether the person is an employee-at-will, a school-year employee, or a ten month or twelve month employee) should termination of conditional employment be a possibility following the district's receipt of the CHRI.
- M. All employees and other persons required to submit to a criminal background check pursuant to this policy must notify the Bon Homme School District in writing if they are convicted of any offense of domestic violence, child abuse, sex offense, drug (including marijuana) or any felony offense. This notification must be made as soon as possible, but no later than five business days after the event.
- N. The Bon Homme School District reserves the right to require any employee or volunteer to submit to additional background checks at the district's expense. The district reserves the right to require any employee of an entity which provides the district direct or indirect student services to submit to additional criminal background checks which shall be at the entity's or person's expense.
- O. As required by state law, SDCL 13-10-15, if, as the result of a criminal conviction the School Board suspends an employee without pay, or any employee resigns, or an employee is terminated, the Superintendent shall within ten days of the date of the suspension or the date the employment is severed, report the circumstances and the name of the employee to the South Dakota Department of Education.

## **Training**

The Bon Homme School District shall ensure that all employees who have access to CHRI shall be trained by SDDCI on the rules and responsibilities for the confidentiality, receipt, use and dissemination of the CHRI.

## **Confidentiality**

- A. Before requesting CHRI on any individual, the district will provide the individual written notification that his or her fingerprints will be used to obtain the CHRI of the individual, and the Bon Homme School District will provide the individual a copy of the statement “Noncriminal Justice Applicant’s Privacy Rights.” [See GCDB-E (1)].
- B. Information received by the Bon Homme School District pursuant to a criminal background check is confidential. Only authorized persons within the district may access, view or use CHRI. Authorized persons may not share or otherwise disclose information contained in CHRI to unauthorized persons unless explicitly allowed for this procedure.
- C. Unless otherwise allowed by the law, the Bon Homme School District will only use this information for the district’s internal purposes in determining the suitability of an applicant, employee, or other worker on district property. The district will note in an employee’s or applicant’s personnel file that the background check was completed and if the person was disqualified by the CHRI for employment or assignment. The district will keep the CHRI in a separate file in a location that is only accessible to persons who need to know the information to carry out their responsibilities to the district.
- D. Individuals that have access to CHRI will receive CJIS security training provide by SDDCI. Once the individual has completed the CJIS online training and has taken the test each individual will receive and acknowledge in writing the receipt of the following: (1) User Rules of Behavior Acknowledgement form, (2) CHRI Disciplinary Policy, and (3) Acknowledgement Statement of Misuse. The Bon Homme School District will maintain the copy of the signed documents in each individual’s personnel file.

## **Access and Retention**

- A. The Bon Homme School District may print or electronically share records when necessary to determine whether the person is authorized to work for the district. In those situations, the physical or electronic copy will be destroyed immediately after the decision is made.
- B. If the Bon Homme School District runs a background check on employees of a contractor that does business with the district, the system will not provide the CHRI to the contractor. Instead, the district will provide a clearance letter notifying the contractor whether the employee is cleared to provide services to the district.
- C. The Bon Homme School will not distribute CHRI across state lines.
- D. Upon request, the Bon Homme School District will provide a copy of the SDDCI CHRI to the person who is the subject of the background check. The SDDCI CHRI will only be released to the individual and not to relatives, spouses or friends. The district will note in the dissemination log that a copy was provided to the individual.
- E. FBI rules prohibit the Bon Homme School District from providing a copy of the FBI CHRI to the person who is the subject of the criminal background check.
- F. The results of the background investigation done by the Bon Homme School District shall be transferred to another South Dakota Public School District if the other public district, or current district employee, submits a written request to the district that the results be transferred to the other public school district. The district employee who was the subject of the criminal background investigation must sign a written release authorizing the transfer. The information will be sent by U.S. Mail or encrypted email.

## **Recordkeeping**

A Secondary Dissemination Log shall be maintained in which all authorized disseminations of FBI and State DCI criminal background check results are recorded. The following shall be recorded in this log:

- A. The name of school district.
- B. The name of person subject to the criminal background check review.
- C. The date of birth of person subject to the criminal background check review.
- D. The SD public school districts requesting FBI and DCI criminal background check results and person/title requesting on behalf of the SD public school district.
- E. A written request signed by the person subject to the criminal background check review for a copy of the SDDCI criminal background check results, attached to the Secondary Dissemination Log. NOTE: FBI CHRI cannot be released to the person who is the subject of the criminal background check.
- F. The date of the release of the criminal background check results.
- G. A description of the record that was shared.
- H. How the record was either sent or received.
- I. The person to whom the criminal background check results were disseminated.
- J. The signature of the district employee disseminating the criminal background check review pursuant to a valid request.

This log will be maintained until the onsite audit is complete and the district receives written notice of a successful Policy Compliance Review.

### **Security**

The Bon Homme School District will provide for the security of any CHRI received, including the appropriate administrative, technical and physical safeguards to provide for the security and confidentiality of the information. This includes, but is not limited to, the following:

- A. The LASO shall maintain a list of the Bon Homme School District personnel who have access to CHRI.
- B. In those cases when the Bon Homme School District has physical copies of CHRI, the district will restrict access to authorized persons only. Physical copies of CHRI, if any, will be maintained in a controlled, secured environment, such as a locked cabinet in a room that is free from public or unauthorized access. The room or the locked cabinet will include an “Authorized Personnel Only” sign.
- C. The Bon Homme School District will not routinely maintain electronic copies of CHRI; however, in the rare instance where the district has electronic copies of CHRI, the district will restrict access to authorized persons only. Electronic data will be protected with encryption as designated by the state or federal government or will only be accessible by individual password. Computers, printers and monitors used to access CHRI must be situated to prevent unauthorized viewing of the information. CHRI cannot be accessed using computers available to the general public or personal devices. CHRI will not be stored on a server that is unprotected or accessible by an unauthorized entity.
- D. CHRI will not be relocated, transmitted or transported outside the secure location unless encrypted according FBI standards or transported in a locked container or in folders where the information is not visible to the public. A log must be kept if electronic information systems, such as a laptop, flash drive or CD with CHRI information on it, leaves the secured area.
- E. The Bon Homme School District will dispose of records securely. Physical records will be cross-shredded or incinerated. If the district contracts out for record destruction, the destruction must be supervised. The district shall notify SDDCI of the entity with whom the district contracts for records destruction and must receive SDDCI approval to use the contractor for purposes of disposing of CHRI. Electronic records will be deleted and overwritten as required by SDDCI or FBI.
- F. The Bon Homme School District will not provide auditor’s access to CHRI unless the auditor is authorized by the SDDCI or the FBI.

### **Security Incident Response Plan**

All Bon Homme School District employees will immediately report to the LASO information security incidents such as the theft or loss of physical records or the hacking or failure of electronic systems or suspicions that an incident has or will take place. The LASO will document receipt of all reports,

investigate incidents and report incidents to SDDCI. LASO documentation will include: (1) date of security incident; (2) location of security incident; (3) systems affected; (4) method of detection; (5) nature of security incident; (6) description of security incident; (7) actions taken/resolution; (8) current date; and, (9) contact information for LASO.

### **Consequences**

Bon Homme School District employees who fail to keep background check results confidential or fail to follow this policy or any laws or rules regarding the access, receipt, use or dissemination of CHRI as required by law will be subject to disciplinary action up to and including termination. Unauthorized requests, receipts, release, interception, dissemination or discussion of CHRI may result in criminal prosecution.

Policy References: Legal references indicate the basis or authority for the board to enact this policy, and policy cross-references identify additional policies related to the subject matter of the above policy.

### **STATE REFERENCES:**

SD Division of Criminal Investigation	<i>Guide for Noncriminal Justice Agency</i>
SD Division of Criminal Investigation	<i>Noncriminal Justice Agency User Agreement</i>
SDCL 13-10-12	<i>Criminal background investigation</i>
SDCL 13-10-13	<i>Criminal conviction as factor in hiring decision</i>
SDCL 13-10-14	<i>Persons continuously employed exempt</i>
SDCL 13-10-15	<i>Suspension/resignation for criminal conviction</i>
SDCL 13-10-16	<i>“Conviction” defined</i>
SDCL 22-1-2 (25)	<i>“Moral turpitude” defined</i>
SDCL 22-1-2 (9)	<i>“Crime of violence defined</i>
SDCL 22-24 B-1	<i>“Sex crimes” defined</i>

### **FEDERAL REFERENCES:**

CFR Title 28 16.34	<i>Procedure to obtain, change, correction or Updating identification record</i>
CFR Title 28 50.32	<i>Exchange of FBI identification records</i>

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