

**Recommended changes to SD122wn procedure 5:30-AP-2, prepared by District counsel
on September 16, 2013**

General Personnel

Administrative Procedure - Investigations

Immigration Investigation

All newly hired employees must complete section one of the Immigration and Naturalization Service Form I-9 no later than 3 business days following their first working day (Immigration Reform and Control Act, 8 U.S.C. §1324a, 8 C.F.R. §274a.2). If an individual is unable to provide the required documents to complete it, the individual may present a receipt for the application of the required documents within 3 days of the hire. The individual must then present the required documents within 90 days of the hire. The Superintendent or designee completes section two of the Form I-9 and confirms the employee's information.

If the Employment Eligibility Verification System (E-Verify) is used to complete Form I-9, the Superintendent or designee will review the Ill. Dept. of Labor's website and its E-Verify factsheet, available at: www.state.il.us/Agency/idol/Forms/PDFs/everify.pdf. See the Ill. Dept. of Labor Right to Privacy in the Workplace Act, 820 ILCS 55/12.

The completed Form I-9 shall be maintained in a file separate from other personnel records in order to prevent unauthorized review of personnel files. The Form I-9 shall be retained for a period of 3 years after the date of hire or one year after individual employment is terminated, whichever is later.

Criminal History Records Check

A complete criminal history records check pursuant to 105 ILCS 5/10-21.9, as amended, and 105 ILCS 5/21B-80, as amended consists of:

1. Fingerprint-based checks through (a) the Illinois State Police (ISP) for criminal history records information (CHRI) pursuant to the Uniform Conviction Information Act (20 ILCS 2635/1), and (b) the FBI national crime information databases pursuant to the Adam Walsh Child Protection and Safety Act (P.L. 109-248),
2. A check of the Illinois Sex Offender Registry (see the Sex Offender Community Notification Law (730 ILCS 152/101 *et seq.*), and
3. A check of the Murderer and Violent Offender Against Youth Registry (Murderer and Violent Offender Against Youth Community Notification Law (730 ILCS 154/75-105, as amended)).

See also policy 4:170, *Safety*, and administrative procedure 4:170-AP2, *Criminal Offender Notification Laws*. **Important:** 20 ILCS 2630/5(h)(2)(A) outlines how an individual may petition to have an arrest record expunged by the arresting authority and the records of the arrest sealed by the circuit court clerk. It also details offenses for which an individual cannot have his or her conviction sealed.

Note: The following criminal history records check guides are also available:

1. *Guide to Understanding Criminal Background Check Information* is available at: www.isp.state.il.us/docs/5-727.pdf.
2. ISBE's non-regulatory guidance document, *Criminal History Records Information (CHRI) Checks for Certified and Non-certified School Personnel*, at: www.isbe.net/pdf/guidance_chr.pdf.

The following individuals are responsible for the actions listed:

Applicant - Each applicant for employment in any position (except bus driver and substitute teacher) must provide a written authorization for a complete criminal history records check at the time he or she submits the application.

Applicant for Substitute Teacher - Each applicant for any substitute teacher position must provide his or her certificate of authorization from the Regional Superintendent of Schools or Suburban Cook County Intermediate Service Center (P.A. 96-893), whichever is appropriate, and/or submit to a complete criminal history records check by the District or appropriate regional office of education. See 105 ILCS 5/21-9(c), amended by HB 5863, eff. 1-1-2011.

Student Teacher - Each student teacher and each person who will be participating in a field or clinical experience (collectively referred to in this procedure as “student teachers”) must provide a written authorization for, and pay the costs of, his or her criminal history records check (including any applicable vendor’s fees) prior to participating in any student teaching, field experiences, or clinical experiences in the District. See 105 ILCS 5/10-21.9(g), as amended.

Applicant for Bus Driver - Each applicant for a bus driver position must complete the application required by the Secretary of State for a school bus driver permit (obtained from the District) and submit it to the District along with the necessary fingerprint submission as required by the Department of State Police to conduct a fingerprint-based criminal history records check. The Superintendent or designee will conduct a pre-employment interview with prospective school bus driver candidates, distribute school bus driver applications and medical forms, and submit the applicant’s fingerprint cards to the Department of State Police. The Superintendent or designee will certify in writing to the Secretary of State that all pre-employment conditions have been successfully completed, including the successful completion of a criminal history records check as required by State law. The applicant must present the certification to the Secretary of State at the time of submitting the school bus driver permit application. See 625 ILCS 5/6-106.1, as amended.

Superintendent or designee - Note: *Add any additional steps to efficiently receive a complete criminal history records check.*

1. Fingerprint-Based Criminal History Records Check:

The Superintendent or designee completes the required forms in order to request a fingerprint-based criminal history records check from an appropriate police or live scan agency. This may include submitting the applicant’s name, sex, race, date of birth, social security number, fingerprint images, and other identifiers to the ISP and FBI on the forms prescribed by each agency.

The Superintendent or designee will provide the applicant with a copy of the ISP and FBI reports. Required by 105 ILCS 5/10-21.9(b).

Note: For substitute teachers, superintendents will need to ensure that their districts perform these checks. Contact the board attorney and/or ISBE regarding the validity of a *certificate of authorization*, if a substitute teacher presents one. From Jan. 1, 2011 through July 1, 2011, the Regional Superintendent of Schools or Suburban Cook County Intermediate Service Center, whichever is appropriate, was allowed to issue *certificates of authorization* to substitute teachers (105 ILCS 5/21-9(c), amended by P.A. 96-1489 and deleted by P.A. 97-607). Issuance of a *certificate of authorization* was proof that the substitute teacher applicant had met all of the requirements to substitute teach in the educational service region; i.e., a fingerprint-based criminal history records check, a physical examination, and a negative tuberculin test. Because P.A. 97-607 deleted *certificates of authorization*, substitute teachers will no longer receive them because they no longer exist. For those substitute teachers who did receive them, there is not an answer to the question of whether their *certificates of authorization* are still valid. Attorneys in the field suggest looking for an expiration date on the *certificate of authorization*. If the document has no expiration date, it is likely invalid because the document no longer exists. If there is an expiration date, then the document is likely valid until the date listed.

For student teachers, the Superintendent or designee ensures that the student teacher completes the required forms, authorizations, and provides payment to the District for the costs of completing a complete criminal history records check prior to participating in a student teaching,

field, or clinical experience (105 ILCS 5/10-21.9(g), as amended and policy 5:260, *Student Teachers*). For more information, see also ISBE's non-regulatory guidance document, *Criminal History Records Information (CHRI) Checks for Certified and Non-certified School Personnel*, available at: www.isbe.net/pdf/guidance_chr.pdf.

2. Check of the Statewide offender databases. The Superintendent or designee performs a check for each applicant of:
 - a. The Statewide Sex Offender Registry), www.isp.state.il.us/sor, as authorized by the Sex Offender Community Notification Law (730 ILCS 152/101 et seq.), and
 - b. The Statewide Murderer and Violent Offender Against Youth Registry www.isp.state.il.us/cmvo/, as authorized by the Child Murderer and Violent Offender Against Youth Community Notification Law (730 ILCS 154/75-105, amended by P.A. 97-154).

The Superintendent or designee notifies an applicant if the applicant is identified in the database as a sex offender. Required by 105 ILCS 5/10-21.9 (a-5), (a-6), and (b).

State Police and FBI – The District's request, to the School Board President. **Note:** The ISP and FBI must “furnish, pursuant to a fingerprint-based criminal history records check, records of convictions, until expunged, to the president of the school board...”. See 105 ILCS 5/10-21.9(a) and (g), as amended. For a student teacher, the report shall be returned to the Superintendent or designee (see ISBE's non-regulatory guidance document, *Criminal History Records Information (CHRI) Checks for Certified and Non-certified School Personnel*, at: www.isbe.net/pdf/guidance_chr.pdf).

Board President - The School Code requires the Board President to keep a conviction record confidential. The information may only be shared between the Board President, the Superintendent or designee, Regional Superintendent (if the check was requested by the District), State Superintendent of Schools, State Educator Preparation and Licensure Board, any other person necessary to the hiring decision, or for clarification purposes, the Department of State Police and/or Statewide Sex Offender Registry. See 105 ILCS 5/10-21.9(b), and 105 ILCS 5/21B-10.

Regional Superintendent/Suburban Cook County Intermediate Service Center - The Superintendent or designee may require the applicant to authorize the Regional Superintendent or Suburban Cook County Intermediate Service Center, whichever is appropriate, to conduct the check when an applicant is (1) seeking employment in more than one District simultaneously as (a) a substitute teacher, (b) a concurrent part-time employee, and/or (c) educational support personnel, or (2) the employee works for a contractor holding contracts with more than one district. The Regional Superintendent or Suburban Cook County Intermediate Service Center, whichever is appropriate, also performs a check of the Statewide Sex Offender Registry, www.isp.state.il.us/sor, as authorized by the Sex Offender Community Notification Law (730 ILCS 152/115) and the Violent Offender Against Youth Registry, www.isp.state.il.us/cmvo/, as authorized by the Murderer and Violent Offender Against Youth Community Notification Law (730 ILCS 154/75-105, amended by P.A. 97-154). See 105 ILCS 5/10-21.9 (a-5), (a-6)(amended by P.A. 97-154), and (b).

Contractors - The above requirements for a complete criminal history records check apply to every employee or agent of any contractor if the employee or agent has any contact, direct or indirect, with students (105 ILCS 5/10-21.9(f) and (g), as amended). Every contractor with the District shall: (1) make every employee or agent available to the District to submit to a complete criminal history records check, (2) agree to a contract provision that it will make its employees available to the District for the criminal history records check, and (3) submit payment for the costs of the check(s) to the District.

Note: The provisions in 105 ILCS 5/10-21.9(f) and (g) as amended apply to employees of contractors who have “direct, daily contact with students.” To be comprehensive and to eliminate uncertainty, this procedure and policy 4:170, *Safety*, requires criminal history records checks on *all* contractor's employees who may work in any school building or on school property. Whether the District uses the comprehensive language or the direct language from the School Code, the District, not the contractor must perform the

criminal history records checks. Contractors are not authorized under any State or federal law to: (1) conduct the required criminal history records checks, or (2) see the employee's criminal history furnished by the ISP and the FBI. All contracts should also require the contractor to purchase insurance to cover misconduct by their employees and/or an indemnification clause. Additionally, the Superintendent or designee should check insurance coverage to determine whether employees of contractors are covered. See also policy 4:170, *Safety*, for the responsibilities of contractors. Last, if the District has received, within the last year, information that concerns the record of conviction and identification as a sex offender of any contractors' employees, the District must provide the information to another school, school district, community college district, or private school that requests it (105 ILCS 5/10-21.9(h), as amended. For more information, see ISBE's non-regulatory guidance document, *Criminal History Records Information (CHRI) Checks for Certified and Non-certified School Personnel*, available at: www.isbe.net/pdf/guidance_chr.pdf. Unless notified by the individual named in a criminal history records information (CHRI) request or by the ISP that the information furnished in a CHRI report is inaccurate or incomplete, the District cannot be liable for damages to any person to whom the CHRI pertains for actions it reasonably took in reliance on the accuracy and completeness of CHRI report (20 ILCS 2635/7(A)(3)).

District - The School District complies with 105 ILCS 5/10-21.9 (amended by P.A.s 97-154, 97-248, and 97-607) and 5/21B-80 (added by P.A. 97-607). It will not knowingly employ a person, or allow a person to work or student teach on school grounds, who:

1. Has been convicted of committing or attempting to commit any one or more of the following offenses:
 - a. Attempting to commit, conspiring to commit, soliciting, or committing first-degree murder or any Class X felony.
 - b. Sex offenses as defined in Sections 11-6 and 11-9 through 11-9.5, inclusive, Sections 11-14 through 11-21, inclusive, Sections 11-23 (if punished as a Class 3 felony), 11-24, 11-25, and 11-26, and Sections 12-4.9, 12-13, 12-14, 12-14.1, 12-15, 12-16, 12-32, and 12-33 of the Criminal Code of 1961.
 - c. Those defined in the Cannabis Control Act, 720 ILCS 550/, except 720 ILCS 550/4(a), 550/4(b), and 550/5(a).
 - d. Those defined in the Illinois Controlled Substances Act, 720 ILCS 570/100 *et seq.*
 - e. Those defined in the Methamphetamine Control and Community Protection Act, 720 ILCS 646/.
 - f. Any offense committed or attempted in any other state or against the laws of the United States, which if committed or attempted in Illinois, would have been punishable as one or more of the foregoing offenses.
2. Has been found to be the perpetrator of sexual or physical abuse of any minor less than 18 years of age pursuant to proceedings under Article II of the Juvenile Court Act of 1987.

Reporting New Hires

The Superintendent or designee shall timely file an IRS Form W-4 or IDES New Hire Reporting Form for each newly hired employee with the Illinois Department of Employment Security. See 820 ILCS 405/1801.1.

APPROVED: