Administrative Procedure ~~/~~ - General Personnel - Investigations

Immigration Investigation~~s~~

All newly hired employees must complete section one of the U.S. Citizenship and Immigration Services Form I-9 (Form I-9) no later than three business days following their first working day (Immigration Reform and Control Act, 8 U.S.C. §1324a, 8 C.F.R. §274a.2). See: www.uscis.gov/i-9. 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 three 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: https://labor.illinois.gov/content/dam/soi/en/web/idol/laws-rules/legal/documents/e-verification-facts-poster.pdf. If the District contends that there is a discrepancy in an employee's employment verification information, follow the procedures required by the Right to Privacy in the Workplace Act, 820 ILCS 55/14,~~2, amended~~ added by P.A. ~~103-879~~104-455.~~, and 55/13, added by P.A. 103-879, eff. 1-1-25.~~

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 three years after the date of hire or one year after individual employment is terminated, whichever is later.

Fingerprint-based Criminal History Records Information (CHRI) Check (105 ILCS 5/10-21.9, amended by P.A.103-154)~~2-702)~~

A fingerprint-based criminal history records information check must be initiated prior to employment, but the District may permit the individual to be hired and begin employment pending its outcome. ~~See *Criminal History Information (CHRI) Checks for Certified and Non-certified School Personnel* at: www.isbe.net/Documents/guidance_chr.pdf.~~ See Administrative Procedure 5.30-AP4, *Fingerprint-Based Criminal History Record Information*, for procedures regarding the handling of sensitive CHRI provided through the Federal Bureau of Investigation's national databases.

A *complete criminal history records check* pursuant to 105 ILCS 5/10-21.9, amended by P.A. 103-154, consists of:

1. Fingerprint-based checks through (a) the Ill. State Police (ISP) for ~~criminal history records information (~~CHRI~~)~~ pursuant to the Ill. Uniform Conviction Information Act (20 ILCS 2635/), and (b) the Federal Bureau of Investigation (FBI) national crime information databases pursuant to the Adam Walsh Child Protection and Safety Act (Pub .L. 109-248),

2. *A check of the Ill. Sex Offender Registry (see the Sex Offender Community Notification Law, 730 ILCS 152/ et seq.), and

3. *A check of the Murderer and Violent Offender Against Youth Registry (see the Murderer and Violent Offender Against Youth Registration Act, 730 ILCS 154/75 - 154/105).

*These checks must be conducted by the District once every five years that an individual remains employed by the District. 105 ILCS 5/10-21.9(a-5), (a-6).~~, amended by P.A.102-552.~~

See also Board Policy 4.175, *Convicted Child Sex Offender; Screening; Notifications*, and Administrative Procedure 4.175-AP1*, Criminal Offender Notification Laws; Screening*. **Important**: 20 ILCS 2630/5.2 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 ~~is~~are ~~also~~ available:

Guide to Understanding Criminal History Record Check Information is available at: https://dph.illinois.gov/content/dam/soi/en/web/idph/files/forms/background-check-guide-071817.pdf.

~~1. Ill. State Board of Education non-regulatory guidance document, Criminal History Records Information (CHRI) Checks for Certified and Non-certified School Personnel, at: www.isbe.net/Documents/guidance_chr.pdf.~~

The following individuals are responsible for the actions listed:

Applicant - Each applicant for employment in any position (except bus drivers employed by a private student transportation contractor) must provide a written authorization for a complete criminal history records check at the time the applicant~~he or she~~ submits the application.

Individual Student Teaching or beginning a required internship - Each individual student teaching or beginning a required internship must provide written authorization for, and pay the costs of, the student's ~~his or her criminal~~ history records check (including any applicable vendor's fees) prior to participating in any field experiences in the District. See 105 ILCS 5/10-21.9(g).

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

1. Fingerprint-Based Criminal History Records Check:

    a. For all applicants, the Superintendent or designee completes the required forms to request the criminal history records checks from an appropriate ISP or LiveScan vendor. When the applicant is a successful superintendent candidate who has been offered employment by the Board, the ~~School~~ Board President shall ensure that these checks are completed. 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.

    b. The Superintendent or designee, or when the applicant is a successful superintendent candidate who has been offered employment by the Board, the Board President, will provide the applicant with a copy of the ISP and FBI reports. Required by 105 ILCS 5/10-21.9(b) and 20 ILCS 2635/7. The applicant has the obligation and responsibility to notify the District within seven (7) working days if information in the report furnished by the ISP is inaccurate or incomplete. Id.

    c. The Superintendent or designee notifies the State Superintendent of Education in writing within 15 business days when a CHRI returns a *conviction* of a crime set forth in 105 ILCS 5/21B-80. 105 ILCS 5/10-21.9(e)~~., and:~~ The Superintendent or designee also:

i. Makes a preliminary determination that the applicant will be disqualified based on a *conviction record* when: (1) the District is prohibited by 105 ILCS 5/10-21.9, amended by P.A. 103-154, from employing the individual because the conviction is an offense listed in 105 ILCS 5/21B-80~~, amended by P.A. 102-552~~; (2) there is a *substantial relationship* between one or more of the previous criminal offenses and the employment sought or held; or (3) the employment would involve an *unreasonable risk* to property or to the safety or welfare of specific individuals or the general public.

Conviction record means information indicating that a person has been convicted of a felony, misdemeanor or other criminal offense, placed on probation, fined, imprisoned, or paroled pursuant to any law enforcement or military authority. 775 ILCS 5/1-103(G-5). It includes the results of a *complete criminal history records check* conducted pursuant to 105 ILCS 5/10-21.9, amended by P.A. 103-154.

Substantial relationship means a consideration of whether a job position offers the opportunity for the same or a similar offense to occur and whether the circumstances leading to the conduct for which the person was convicted will recur in the position. 775 ILCS 5/2-103.1(A).

To determine whether an applicant is disqualified based on a *substantial relationship* or *unreasonable risk*, considers the following factors: (1) length of time since the conviction; (2) number of convictions that appear on the conviction record; (3) nature and severity of the conviction and its relationship to the safety and security of others; (4) the facts or circumstances surrounding the conviction; (5) the age of the employee at the time of the conviction; and (6) evidence of rehabilitation efforts. 775 ILCS 5/2-103.1(B). See also Ill. Dept. of Human Rights (IDHR) *Conviction Record Protection – Frequently Asked Questions* (March 2021), at: https://dhr.illinois.gov/conviction-record-protection-frequently-asked-questions.html.

ii. When the applicant's conviction record disqualifies ~~him/her/them~~the applicant, notifies the applicant of the preliminary decision in writing. The written notice shall contain: (1) the disqualifying convictions that are the basis for the preliminary decision and the District's reasoning for the disqualification; (2) a copy of the *complete criminal history records check* conducted pursuant to 105 ILCS 5/10-21.9, amended by P.A. 103-154; and (3) an explanation of the applicant's right to submit evidence challenging the accuracy of the conviction record that is the basis for the disqualification within seven (7) working days of the applicant's receipt of the copy of the conviction record if the applicant wishes to dispute the accuracy of the conviction record and/or submit evidence in mitigation, such as rehabilitation. 775 ILCS 5/2-103.1(C)(1) and (2). See Exhibit 5.30-AP2, E1, *Notice of Preliminary Hiring Decision Based on Conviction Record*, for a sample letter template.

Note: Evidence of rehabilitation may include education, training, stable employment, family and community involvement, and recovery from substance abuse. For more information, see *EEOC Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decision under Title VII of the Civil Rights Act*, at: www.eeoc.gov/laws/guidance/enforcement-guidance-consideration-arrest-and-conviction-records-employment-decisions.

iii. When the final decision disqualifies the applicant based on the conviction record, provides a second written notice to the applicant that contains: (1) notice of the disqualifying conviction(s) that are the basis for the final decision and the District's reasoning for the disqualification; (2) any existing procedure the employer has for the applicant to challenge the decision or request reconsideration (this is not required); and (3) the right to file a charge with the IDHR. 775 ILCS 5/2-103.1(C)(3). See Exhibit 5.30-AP2, E2, *Notice of Final Hiring Decision Based on Conviction Record*, for a sample letter template.

d. The Superintendent or designee, or as applicable the entity that provides background checks for public schools, notifies the State Superintendent of education in writing within 10 business days after receiving information of a *pending* criminal charge for an offense set forth in 105 ILCS 5/21B-80. Required by 105 ILCS 5/10-21.9(e).

Note: For substitute teachers, the Superintendent will need to ensure that the~~ir~~ District performs these checks. Contact the Attorney for the District and/or ISBE regarding the validity of a *certificate of authorization*, if a substitute teacher presents one.~~ From 1-1-11 through 7-1-11, the Regional Superintendent was allowed to issue *certificates of authorization* to substitute teachers. 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 no longer receive them because they no longer exist.~~

e. For individuals student teaching or beginning a required internship, the Superintendent or designee ensures that the individual completes the required forms, authorizations, and provides payment to the District for the costs of completing a complete criminal history records check prior to student teaching or beginning a required internship (105 ILCS 5/10-21.9(g), and Board P~~p~~olicy 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/Documents/guidance_chr.pdf.~~

2. Screen of the Statewide offender databases upon hire and every five years thereafter that an individual remains employed by the District. 105 ILCS 5/10-21.9(a-5), (a-6).~~, amended by P.A.s 102-552.~~ The Superintendent or designee, or when the applicant is a successful superintendent candidate who has been offered employment by the Board, the Board President, performs a screen for each applicant of:

   a. The Statewide Sex Offender Registry, https://sor.isp.illinois.gov/sorpublic/, ~~https://isp.illinois.gov/SOR/Disclaimer,~~ as authorized by the Sex Offender Community Notification Law (730 ILCS 152/ et seq.), and

   b. The Statewide Child Murderer and Violent Offender Against Youth Registry https://sor.isp.illinois.gov/sorpublic/, ~~https://isp.illinois.gov/MVOAY/Disclaimer,~~ as authorized by the Child Murderer and Violent Offender Against Youth Registration Act (730 ILCS 154/75-154/105).

   The Superintendent or designee, or when the applicant is a successful superintendent candidate who has been offered employment by the Board, the Board President, notifies

the individual if they are ~~he or she is~~ identified in the database as a sex offender. Required by 105 ILCS 5/10-21.9 (a-5), (a-6), and (b). The Superintendent or designee notifies the State Superintendent of Education in writing within 15 business days, when a database screen finds a *registration* for an individual licensed by ISBE. 105 ILCS 5/10-21.9(e).

ISP and FBI - The ISP and FBI furnish records of convictions (until expunged), pursuant to the District's request, to the 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 Board…". See 105 ILCS 5/10-21.9(a) and (g), 20 ILCS 2630/3.3, establishes authority for the ISP to collect fees from the District if the Board wishes to participate in a Federal *Rap Back Service*. Rap Back Service is a capability of the FBI's Next Generation Identification (NGI) system that provides authorized agencies notification of criminal activity and, in limited cases, of civil activity, that occurs after the initial processing and retention of criminal or civil transactions, e.g., an initial fingerprint-based criminal history records check. The Board may determine that it wants to participate. Participation includes ISP submitting fingerprints that the District orders to the FBI Rap Back Service to be retained for the purpose of being searched by future submissions to the FBI Rap Back Service. 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/Documents/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 Education, State Educator Preparation and Licensure Board, any other person necessary to the hiring decision, the ISP and/or Statewide Sex Offender Registry for clarification purposes, or the Teachers' Retirement System of the State of Illinois (TRS) when the Board learns that a teacher has been convicted of a felony. See 105 ILCS 5/10-21.9(b), 105 ILCS 5/21B-10, amended by P.A. 104-128, and 105 ILCS 5/21B-85, amended by P.A. 103-51.~~2 552.~~

Regional Superintendent - The Superintendent or designee may require the applicant to authorize the Regional Superintendent 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 d~~D~~istrict. The Regional Superintendent also performs a check of the Statewide Sex Offender Registry, https://sor.isp.illinois.gov/sorpublic/, ~~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, https://sor.isp.illinois.gov/sorpublic/, ~~www.isp.state.il.us/cmvo/,~~ as authorized by the Murderer and Violent Offender Against Youth Registry Act ~~Community Notification Law~~ (730 ILCS 154/7 - 154-105). See 105 ILCS 5/10-21.9 (a-5), (a-6), and (b). ~~, amended by P.A.s 101-72 and 102-552.~~

Contractors - The above requirements for a *complete criminal history records check* apply to all employees and agents of contractors who have direct, daily contact with students. 105 ILCS 5/10-21.9(f). Every contractor with the District shall: ~~-~~ (1) make every employee or agent who will have direct, daily contact with students submit to a complete criminal history records check, (2) confirm that it will make those 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)~~,~~ apply to employees of contractors who have "direct, daily contact" with students. To be comprehensive and to eliminate uncertainty, this Procedure and Board Policy 4.175, *Convicted Child Sex Offender; Screening; Notifications*, may require a criminal history records check on *all* employees of contractors 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 background checks. Contractors are not authorized under any State or federal law to: (1) conduct the required criminal history background 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 its own insurance coverage to determine whether employees of contractors are covered. See also Board Policy 4.175, *Convicted Child Sex Offender; Screening; Notifications*, and Administrative Procedure 4.60-AP3, *Criminal History Records Check of Contractor Employees*, 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 or school district that requests it. ~~(~~ 105 ILCS 5/10-21.9(f-5)~~)~~. ~~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/Documents/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 the CHRI report. 20 ILCS 2635/7(A)(3).

District - The District complies with 105 ILCS 5/10-21.9, amended by P.A.103-154,~~2-552 and 102-702,~~ and 5/21B-80~~., amended by P.A. 102-552.~~ It will not knowingly employ a person, or allow a person to work or student teach/complete a required internship (105 ILCS 5/10-21.9(g)) on school grounds, who:

1. Has been convicted of any one or more of the following offenses, until seven years following the end of the sentence for the criminal offense:

    a. Those defined in the Cannabis Control Act, 720 ILCS 550/, except 720 ILCS 550/4(a), 550/4(b), 550/4(c), 550/5(a), 550/5(b), and any offense for which the holder of a license is placed on probation under the provisions of 550/10 provided that if the terms and conditions of probation required by the court are not fulfilled, the offense is not eligible for this exception.

    b. Those defined in the Ill. Controlled Substances Act, 720 ILCS 570/100 et seq., amended by P.A. 103-881, except: any offense for which the holder of a license is placed on probation under the provisions of 570/410, amended by P.A.s 103-702, 103-881, and 104-417, provided that if the terms and conditions of probation required by the court are not fulfilled, the offense is not eligible for this exception.

    c. Those defined in the Methamphetamine Control and Community Protection Act, 720 ILCS 646/, except: any offense for which the holder of a license is placed on probation under the provisions of 646/70, amended by P.A. 103-702, provided that if the terms and conditions of probation required by the court are not fulfilled, the offense is not eligible for this exception.

    d. Any attempt to commit any of the offenses listed in (a)-(c) of this section.

    e. Any offense committed or attempted in any other State or against the laws of the United States that, if committed or attempted in Illinois, would have been punishable as one or more of the offenses listed in (a)-(d) of this section.

2. Has been convicted of attempting to commit, conspiring to commit, soliciting, or 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. ~~Attempting to commit, conspiring to commit, soliciting, or committing~~ any offense defined in Article 9 (Homicide) of the Criminal Code of 1961 or the Criminal Code of 2012.

   c. ~~Attempting to commit, conspiring to commit, soliciting, or committing~~ any *sex offense*. Sex offense means any offense defined in:

      i. Sections 11-6 and 11-9 through 11-9.5, inclusive, and 11-30 (if punished as a Class 4 felony) of the Criminal Code of 1961 or the Criminal Code of 2012;

      ii. Sections 11-14.1 through 11-21, inclusive, of the Criminal Code of 1961 or the Criminal Code of 2012;

      iii. Sections 11-23 (if punished as a Class 3 felony), 11-24, 11-25, and 11-26 of the Criminal Code of 1961 or the Criminal Code of 2012; and

      iv. Sections 11-1.20, 11-1.30, 11-1.40, 11-1.50, 11-1.60, 12-4.9, 12-13, 12-14, 12-14.1, 12-15, 12-16, 12-32, 12-33, 12C-45, and 26-4 (if punished pursuant to 26-4(d)(4) or (5)) of the Criminal Code of 1961 or the Criminal Code of 2012.

   c. 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.

3. 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 Ill. Department of Employment Security. See 820 ILCS 405/1801.1, amended by P.A. 103-343. When the applicant is a successful superintendent candidate who has been offered employment by the Board, the Board President shall ensure either the retiring Superintendent or designee performs the task.