



# UNITED INDEPENDENT SCHOOL DISTRICT AGENDA ACTION ITEM

**TOPIC** \_\_\_\_\_ Second Reading of Policy DC (LOCAL) – Employment Practices \_\_\_\_\_

**SUBMITTED BY:** \_\_\_\_\_ Juan J. Cruz \_\_\_\_\_ **OF:** \_\_\_\_\_ School Attorney \_\_\_\_\_

**APPROVED FOR TRANSMITTAL TO SCHOOL BOARD:** \_\_\_\_\_ September 19, 2012 \_\_\_\_\_

**RECOMMENDATION:**

It is recommended that the United ISD Board of Trustees approve Second Reading of Policy DC (LOCAL) – Employment Practices.

**RATIONALE:**

**BUDGETARY INFORMATION:**

**BOARD POLICY REFERENCE AND COMPLIANCE:**

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PERSONNEL DUTIES	The Superintendent shall define the qualifications, duties, and responsibilities of all positions and shall ensure that job descriptions are current and accessible to employees and supervisors.
POSTING VACANCIES	<p>The guidelines that follow for advertising employment opportunities and posting notices of vacancies shall advance the Board's commitment to equal opportunity employment and to recruiting well-qualified candidates. Current District employees are eligible to apply for any vacancy.</p> <p>The continuing need to improve the educational quality of the District makes it imperative that the best qualified person, as determined by the District, fill each position. [See DC(LEGAL)]</p>
APPLICATIONS	All applicants shall complete the application form supplied by the District. Information in applications for contractual positions shall be verified before a contract is offered, and information in applications for noncontractual positions shall be verified before hiring.
EMPLOYMENT OF CONTRACTUAL PERSONNEL	<p>The Superintendent has sole authority to make recommendations to the Board regarding the selection of contractual personnel. If the Board rejects the Superintendent's recommendation, the Superintendent shall make alternative recommendations for the Board's consideration at the next regular Board meeting, unless otherwise directed by the Board.</p> <p>The Board retains final authority for employment of contractual personnel who shall hold the position of principal, director, or above.</p> <p>The Board delegates to the Superintendent final authority to hire all other contractual professional employees. [See DCA, DCB, DCC, and DCE as appropriate]</p>
EMPLOYMENT OF NONCONTRACTUAL PERSONNEL	The Board delegates to the Superintendent final authority to employ and dismiss noncontractual employees on an at-will basis. [See DCD]
APPLICANT'S FORMER EMPLOYMENT	<p>An applicant seeking employment shall not be considered for employment by the District if he or she has been terminated or non-renewed by any former employer, was asked to resign, resigned due to employee misconduct, has negative references or has a "do not hire" recommendation from a prior employer or supervisor. The only exceptions that the District may take into consideration <del>and hire an applicant who has been terminated</del> are in circumstances <del>when</del> in which an employer severed the employment relationship due to:</p> <ol style="list-style-type: none"><li>1. A reason not caused or attributed to any misconduct by the employee, which said reason shall be documented by the</li></ol>

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previous employer, in writing. In the event that the previous employer does not provide documentation, then third-party documentation (Texas Workforce Commission documentation) shall be considered. Documentation must be provided to the District prior to interviewing/hiring;

2. Lay-off due to the employer's economic conditions; or
3. A reduction in force; or
4. **A termination which occurred prior to the age of 18.**

CRIMINAL HISTORY  
RECORD CHECK —  
APPLICANTS

Under authority of the Education Code, the District shall obtain the criminal history record for each applicant for employment with the District who, in the opinion of the District, is a serious candidate and who may be offered a position.

The District may obtain the information from any law enforcement agency or other background agency, including, but not limited to, a police department, the Department of Public Safety, or the Texas Department of Corrections.

The District shall not issue any applicant a written contract of employment until it has obtained a criminal history record and reviewed it under the guidelines of this policy.

For the purposes of this policy, "conviction" shall include probation, deferred adjudication, a finding of guilt, or acceptance by the court of a plea of guilty or *nolo contendere*.

A person shall not be denied employment solely on the basis of the deferred adjudication. Rather, the underlying facts that led to the deferred adjudication shall be examined prior to any recommendation to employ.

CONFIDENTIALITY  
REQUIREMENT

Criminal history information is privileged and for the use of the District and the State Board for Educator Certification. No District employee shall release or disclose such information to a person other than the applicant, the legal review committee, or the Superintendent or designee, under penalty of law and/or discharge.

CRIMINAL HISTORY  
RESTRICTIONS

~~If a person has been charged with a criminal offense that has been dismissed through deferred adjudication, that person shall be considered for employment with the District except when the charge was for criminal homicide; capital murder; attempted murder; murder; voluntary manslaughter; involuntary manslaughter; unlawful transport; false imprisonment; trafficking of persons; improper relationship between educator and student; public lewdness involving a child or student; indecent exposure with a child or student; prohibited sexual conduct; sexual assault; rape; child abuse; abandon-~~

~~ing or endangering a child; sale or purchase of a child; arson; indecency with a child; any felony theft offense; injury to a child, the elderly, or a person with a disability; kidnapping; aggravated kidnapping; aggravated sexual assault of a child; robbery; aggravated robbery; prostitution or solicitation of prostitution; child pornography; sexual solicitation of a child; obscenity; any felony where a deadly weapon was used or exhibited; any felony related to the manufacture, delivery, or possession of marijuana, a controlled substance, or dangerous drug; or any other crime that adversely affects the mission of the District.~~

MORAL TURPITUDE

No one convicted of a felony or any misdemeanor involving moral turpitude **in the past ten (10) years** shall be considered for employment in the District **if the nature of the crime is directly related to the duties and responsibilities of the projected position.** Moral turpitude is an act of baseness, vileness, or depravity in the private or social duties outside the accepted standards of decency that shocks the conscience of an ordinary person.

~~No one charged with any felony or misdemeanor involving moral turpitude shall be considered for employment in the District until there is a final disposition of the charge, except as may be allowed by the legal review committee, in accordance with the provisions below. [See DH(LOCAL)]~~

Examples of moral turpitude include, but are not limited to:

1. Public lewdness.
2. ~~Prostitution.~~
3. Theft.
4. Fraud.

No one currently on probation, including deferred adjudication probation, for any offense shall be considered for employment, unless allowed by the legal review committee, in accordance with provisions below.

ARRESTS,  
INDICTMENTS,  
CONVICTIONS, AND  
OTHER  
ADJUDICATIONS

Conviction records shall constitute reliable evidence that a person engaged in the conduct alleged because the criminal justice system requires the highest degree of proof ("beyond a reasonable doubt") for a conviction. Therefore, excluding extraordinary circumstances, the District shall treat a conviction as proof of guilt.

Arrest records standing alone, are may not be reliable evidence that a person has actually committed a crime. ~~To justify the use of arrest records as proof of misconduct, additional inquiries shall be made.~~ **However, an arrest record may trigger an inquiry into**

**whether the conduct underlying the arrest occurred and justifies denial of employment or an adverse employment action.**

The review committee shall examine the surrounding circumstances, offer the employee an opportunity to explain, and, if the employee denies engaging in the conduct, make the follow-up inquiries necessary to evaluate his or her credibility. The review committee is not required to conduct an informal trial or an extensive investigation to determine the employee's guilt or innocence. However, the review committee shall make simple inquiries that could shed light on the likelihood of the individual's guilt in committing the underlying offense.

Deferred adjudication involves an individual entering a plea of guilty or no contest, which the court finds to be substantiated by evidence of guilt. A grant of deferred adjudication shall be viewed as more indicative of a conviction. The review committee shall make inquiries into evidence substantiating guilt similar to the inquiries made when an arrest is reported.

Not guilty adjudications and withdrawn or dismissed charges indicate that a court, a jury, or a law enforcement authority did not have sufficient proof beyond a reasonable doubt, which may or may not be indicative of guilt. The employee shall be asked to explain, in writing, the circumstances and must provide a certified copy of the court paperwork showing the final disposition of every charge. The review committee may make additional inquiries into evidence substantiating guilt.

FELONY

A felony is an offense designated as such in the Texas Penal Code. ~~The District shall not employ anyone with a felony conviction occurring during the past ten years.~~ If the employee was convicted of a felony ~~more than ten years prior to employment,~~ the District must determine if the underlying offense relates to the duties and responsibilities of the position or if the conviction was for a non-reviewable felony. An employee may continue to be eligible for employment in the District if a felony conviction ~~over ten years old~~ does not relate to the duties and responsibilities of the employee's position and was not for a nonreviewable offense. If a felony conviction ~~over ten years old~~ does relate to the duties and responsibilities of the employee's position, then the review committee must consider the likelihood of recurrence of the employee's criminal behavior. A determination by the review committee that the employee's behavior shall not recur makes the employee eligible for continued employment; a finding to the contrary makes the employee ineligible for continued employment.

CLASS A AND CLASS B  
MISDEMEANORS

Class A and Class B misdemeanors are those offenses designated as such in the Texas Penal Code. An employee may be eligible for

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continued employment if the conviction for a Class A or Class B misdemeanor is not related to duties and responsibilities of the employee's position. If the conviction ~~occurred in the past five years and~~ does relate to the duties and responsibilities of the employee's position, the employee is ineligible for continued employment in the District if the review committee determines there is a high degree of likelihood for the recurrence of the behavior.

CLASS C  
MISDEMEANORS

Class C misdemeanors are those offenses designated as such in the Texas Penal Code. The District shall **may** not employ anyone convicted of a Class C misdemeanor involving moral turpitude, **if the nature of the crime is directly related to the duties and responsibilities of the projected position.** If convicted of a Class C misdemeanor that does not involve moral turpitude, the employee is ineligible for continued employment in the District if the review committee determines there is a high degree of likelihood for recurrence of the behavior, **and if the nature of the crime is directly related to the duties and responsibilities of the projected position.**

MULTIPLE  
OFFENSES

An employee with multiple offenses that individually do not make him or her ineligible for employment may be deemed ineligible for continued employment when repetitious criminal behavior indicates a high degree of likelihood for recurrence of the behavior, **and if the nature of the crimes are directly related to the duties and responsibilities of the projected position.**

UNLISTED CRIMINAL  
HISTORY

If a criminal history record does not list an event reported by the employee, he or she shall be asked to explain, in writing, the circumstances for each reported incident. A certified copy of pertinent court paperwork showing final disposition of the charge must be included. The review committee may make additional inquiries.

NONDISCLOSURE

An employee who has successfully completed a deferred adjudication and who has succeeded in having the criminal court grant an order of nondisclosure may thereafter deny the occurrence of the arrest and prosecution. *Texas Gov't Code 552.142.*

JUVENILE RECORDS

An employee shall not be asked to disclose the contents of confidential juvenile records unless the employee was adjudicated as an adult.

LEGAL REVIEW  
COMMITTEE

The application of a person who has a criminal record that would preclude employment with the District using the criteria listed above shall be reviewed by the legal review committee as established by the District's human resources department. The school attorney shall serve in an advisory capacity.

The committee shall assess the records of potential employees. The legal review committee shall not review applications of **em-  
ploy** persons whose criminal record includes, **within the past ten  
(10) years**, a conviction, deferred adjudication, or plea of guilt, or *nolo contendere* for the offense of **criminal homicide**; capital murder; attempted murder; murder; **voluntary manslaughter**; **im-  
proper relationship between educator and student**; **public  
lewdness involving a child or student**; **indecent exposure with  
a child or student**; **prohibited sexual conduct**; **child abuse**; **abandoning or endangering a child**; **sale or purchase of a  
child**; **child pornography**; **sexual solicitation of a child**; **ob-  
scenity**; indecency with a child; injury to a child, an elderly person or disabled individual; ~~aggravated kidnapping~~; ~~aggravated sexual assault~~; ~~rape~~; ~~sexual assault of a child~~; ~~aggravated robbery~~; any felony where a deadly weapon was used or exhibited; or any felony related to the manufacture, delivery, or possession of marijuana, a controlled substance, or a dangerous drug, **if such crimes relate to the projected position.**

GOVERNING  
CRITERIA FOR  
EMPLOYMENT  
DECISIONS

The following criteria shall be used by the legal review committee in determining whether or **not an applicant's criminal history bars him or her from** ~~to recommend a waiver of the criminal history restrictions to employment:~~

1. The relationship and seriousness of the crime.
2. The nature of the crime ~~to the purpose of the District.~~
3. **The nature of the job position**
4. The extent to which employment might offer an opportunity to engage in further criminal activity of the same type as that in which the person had previously been involved.
5. The relationship of the crime to the ability, capacity, or fitness required to perform the duties and the responsibilities of the position with the District.
6. The age of the person at the time of the commission of the crime.
7. The time elapsed since the person's last criminal activity.
8. The evidence of the person's rehabilitation or rehabilitative effort while incarcerated or following release.
9. If the person holds a professional license, the results of any action taken by the licensing authority.
10. The other evidence of the person's present fitness, including letter(s) of recommendation from:

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- a. Prosecutors or law enforcement or correctional officers involved in the prosecution, arrest, or custody of the person.
  - b. The law enforcement officers in the community where the person resides.
  - c. Any other persons in contact with the convicted person.
11. The individual's patterns of habitual criminal activity.
  12. The publicity surrounding the actual crime.
  13. The person's clear and present danger to other staff, students, or the general public.
  14. Probable guilt or innocence.
  15. The accuracy of the information the employee provided to the District.
  16. The potential impact of the conduct on the educational environment.
  17. Any extenuating circumstances.

LEGAL REVIEW  
COMMITTEE  
RECOMMENDATION

If, after applying the criteria outlined above, the legal review committee believes that the applicant should be considered for employment, the committee shall jointly sign a recommendation to the Superintendent or designee that such applicant is eligible for hire.

SUPERINTENDENT'S  
DECISION

If the Superintendent approves the recommendation, the applicant shall be considered eligible for hire.

FAILURE TO DISCLOSE  
INFORMATION ON  
APPLICATION

An applicant shall not be employed by the District if he or she fails to disclose information on the employment application or during questioning regarding any criminal conviction, crime, deferred adjudication, or similar type of decree, or if he or she misrepresents any information regarding such conviction, crime, or deferred adjudication, or similar type of decree.

CRIMINAL HISTORY  
BACKGROUND CHECK  
— EMPLOYEES

At least once annually, the District shall obtain criminal history records of ~~Webb County and the counties contiguous to Webb County.~~ The District may obtain this information from any other county when it has reason to believe that an employee has been convicted of a crime **that is related to the employee's duties and responsibilities** in such county or from a police department, the Department of Public Safety, or the Texas Department of Corrections.

The District may suspend or terminate the employment of any person convicted of a felony or misdemeanor if the crime directly re-



PENALTIES FOR  
FAILING TO  
DISCLOSE  
CRIMINAL  
INFORMATION

lates to the duties and responsibilities of the individual ~~or directly relates to, or adversely affects, the mission of the District.~~

The legal review committee shall assess the records of employees found to have criminal records that would bar them from employment with the District. The committee shall use the following guidelines to determine if an employee should be recommended for termination based on his or her criminal record:

1. The omission by the employee to not disclose a prior criminal conviction **that would bar him from employment** when requested at the time of employment shall be presumed to be intentional. The District however, shall have the burden of proof.
2. If the employee was not asked to divulge any previous convictions as a prerequisite to employment, a recommendation for termination shall be based on the same criteria as required for applicants.
3. If a conviction involving a felony or misdemeanor involving moral turpitude is discovered subsequent to employment, a recommendation for termination shall be based on the same criteria as required for applicants as found above.

An employee shall notify the District within three workdays if he or she is arrested, indicted, convicted, pleads no contest, enters a guilty plea, or is granted other adjudication for any criminal offense. This notification shall be made in writing to the employee's immediate supervisor or principal. Failure to make such notification may result in termination of employment.

Any employee placed on deferred adjudication may be recommended for termination based upon the underlying facts that led to the deferred adjudication, **if the facts are related to the employee's duties and responsibilities**. For the purposes of any termination hearing, the facts to which the individual pleaded in order to obtain the deferred adjudication shall be presumed to exist and be true and correct.

The District may suspend or terminate the employment of any person convicted of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of the individual ~~or directly relates to or adversely affects the mission of the District.~~

An employee under felony indictment that **relates to the employee's duties and responsibilities** ~~adversely affects the mission of the District~~ shall be recommended for suspension without pay pending adjudication of his or her case.

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After notification of a proposed suspension without pay or employment termination, a contract employee may request a hearing in accordance with the DF series.

CONTRACTUAL  
VACANCIES

Subject to the provisions for campus-based administrative positions and Section 11.163 of the Texas Education Code, notice of vacancies for contractual positions shall be advertised by posting public notices for not fewer than ten school days. Posting shall be at the District's administrative offices, at each school campus, and on the District's Internet Web site. Each principal/director shall further ensure posting in locations available to employees. For purposes of retaining and promoting current employees, employment opportunities for all professional vacancies for principal/director and above shall be advertised in the District's human resources department, local and regional Web sites, and the District's administrative offices and school campuses.

The posting of vacancies for contractual positions shall include a current copy of the job description for the posted position. Any changes made to current job descriptions prior to posting must be approved by the Superintendent.

School employees shall be permitted to apply for any vacancy; however, the needs of the District, as determined by the District, shall prevail over any assignment or reassignment.

Interested candidates shall complete an application provided by the District and file it with appropriate documents in the office of human resources no later than the posted closing date in the announcement.

ADMINISTRATIVE  
VACANCIES:  
PRINCIPAL,  
DIRECTOR, AND  
ABOVE

The following procedures shall be followed for administrative vacancies for principal, director, and above:

1. All applications shall be reviewed by the human resources department to ensure that all required materials have been submitted. Subject to the provisions for campus-based administrative positions and Section 11.163 of the Texas Education Code, notice of vacancies for contractual positions shall be advertised by posting public notices for not fewer than ten school days. Posting shall be at the District's administrative offices, at each school campus, and the District's Internet Web site, and with local and out-of-town news media as necessary. Each principal/director shall further ensure posting in locations available to employees.
2. Selection of finalists: A committee comprised of central office and/or campus personnel shall prescreen qualified personnel. Once the applications have been prescreened, the committee

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shall interview selected candidates, and a list of finalists shall be established for the appropriate central office supervisor.

3. Final selection: The appropriate central office supervisor shall conduct the interviews of finalists and make a recommendation to the Superintendent.
4. The Superintendent shall make recommendations to the Board until a recommendation is accepted.
5. Any exception to these provisions in employment must be specifically approved by the Board.

CAMPUS-BASED  
VACANCIES

The Superintendent shall develop an administrative regulation for the hiring of campus-based administrators and shall annually inform the Board of such procedure.

CLASSROOM  
TEACHER  
VACANCIES

The following procedures shall be followed for classroom teacher vacancies:

1. All applications shall be reviewed by the human resources department to ensure that the applicant meets the District's criteria.
2. Once the applicant meets the criteria, he or she shall become part of the District's pool of qualified applicants.
3. Final selection shall be conducted as follows:
  - a. An interview committee comprised of the campus principal, SBDM committee representatives, and other appropriate persons shall interview from the District's pool of qualified applicants.
  - b. The interview committee shall recommend a list of finalists to the campus principal.
  - c. The principal shall make a recommendation to the Superintendent or designee.
  - d. If the vacancy is for the following academic year, the principal may approve a teacher transfer (intra- or inter-campus) to fill the vacant position pursuant to DK(LOCAL).
4. When a teaching vacancy occurs for summer school classroom teaching positions, the human resources department shall review and determine the pool of qualified applicants from current District teachers for the specific vacancy. From the pool of qualified applicants, the campus or summer school principal may proceed to interview candidates from the pool. If the principal chooses not to make a recommendation from

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the pool of qualified applicants, the vacancy shall be advertised according to established procedures, and a selection shall be made as detailed in this paragraph.

PARAPROFESSIONAL /  
AUXILIARY POSITIONS

Notice of vacancies for all paraprofessional/auxiliary positions shall be advertised for five working days by posting a public notice in the District's administrative offices and school campuses. Each principal/director shall further ensure posting in locations available to employees. When necessary, all employment opportunities shall periodically be advertised through local and out-of-town news media.

Current employees shall be permitted to apply for a vacancy; however, the needs of the District, as determined by the District, shall prevail over any assignment or reassignment.

Interested candidates shall complete an application provided by the District and file it with appropriate documents in the office of human resources no later than the posted closing date.

The following procedures shall be followed for paraprofessional/auxiliary vacancies:

1. All applications shall be reviewed by the human resources department to ensure that the applicants meet the District's criteria.
2. Applicants who meet the District's criteria shall become part of the District's pool of qualified applicants.
3. The campus principals and/or central office administrators shall interview from the District's pool of qualified applicants and make a recommendation to the human resources department.

DISTRICT  
SUPERVISION  
PROHIBITION

No person shall be assigned to a campus or department where a member of his or her own family who is related by blood (consanguinity) within the third degree, or by marriage (affinity) within the second degree serves as an administrator. The provision of this policy shall apply prospectively. [See DBE(LEGAL) and (EXHIBIT)] Adopted or foster relationships shall be treated as natural relationships. For the purposes of this policy, the term "administrator" shall not mean counselor, librarian, or coordinator.

EXIT INTERVIEWS AND  
EXIT REPORTS

An exit interview shall be conducted, if possible, and an exit report shall be prepared for every employee who leaves employment with the District.