



UNITED INDEPENDENT SCHOOL DISTRICT AGENDA ACTION ITEM

TOPIC: Discussion and Possible Action Regarding First and Final Reading of USD Board Policy

DC (LOCAL) Employment Practices

SUBMITTED BY: Juan Cruz / Jaime Garcia **OF:** School Attorney

APPROVED FOR TRANSMITTAL TO SCHOOL BOARD: _____

DATE ASSIGNED FOR BOARD CONSIDERATION: July 21, 2021

RECOMMENDATION: It is recommended that the United ISD Board of Trustees approve the First and Final Reading of Policy DC (LOCAL) Employment Practices

DH (LOCAL)

RATIONALE:

BUDGETARY INFORMATION:

POLICY REFERENCE & COMPLIANCE:

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.

Superintendent's Authority Regarding Transfers and Reassignments

In accordance with DK (LOCAL) and notwithstanding the below provisions on assignment and posting vacancies, the Superintendent may appoint an employee to fill any vacant position, whether newly-budgeted or currently existing, by a lateral transfer or reassignment when the employee's previous position held and the vacant position are of equal pay grade or level and require the same number of working days.

Posting Vacancies

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.

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)]

Contractual Vacancies

Subject to the provisions for campus-based administrative positions and Section 11.1513 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 website. 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 websites, 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.

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*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 11.1513 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, on the District's internet website, 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 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
Administrators*

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.

The process for final selection of classroom teachers shall be conducted as follows:

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1. An interview committee comprised of the campus principal, site-based decision-making (SBDM) committee representatives, and other appropriate persons shall interview from the District's pool of qualified applicants.
2. The interview committee shall recommend a list of finalists to the campus principal.
3. The principal shall make a recommendation to the Superintendent or designee.
4. If the vacancy is for the following academic year, the principal(s) shall be authorized to approve a teacher transfer to fill the vacant position pursuant to DK(LOCAL).

Summer School
Positions

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 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.

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.

[For information related to the evaluation of criminal history records, see DBAA.]

Applicant's Former Employment

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 are when an employer severed the employment relationship due to:

1. A reason not caused or attributed to any misconduct by the employee, which said reason shall be documented by the 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.
3. A reduction in force.
4. A termination that 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 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

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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.

Moral Turpitude

No one convicted of a felony or any misdemeanor involving moral turpitude in the past ten 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 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 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 shall not be considered reliable evidence that a person has actually committed a crime. 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. If the employee was convicted of a felony, 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 does not relate to the duties and responsibilities of the employee's position and was not for a non-reviewable offense. If a felony conviction 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 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 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 Misdemeanor** Class C misdemeanors are those offenses designated as such in the Texas Penal Code. The District shall 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 crime is 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.

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Nondisclosure	In accordance with state law, 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.
Juvenile Record	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.
Governing Criteria for Employment Decisions	In determining whether or not to recommend a waiver of the criminal history restrictions to employment, the legal review committee shall consider the following: <ol style="list-style-type: none">1. The relationship and seriousness of the crime.2. The nature of the crime.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 letters of recommendation from prosecutors, law enforcement or correctional officers involved in the prosecution, arrest, or custody of the person; law enforcement officers in the community where the person resides or any other persons in contact with the convicted person.11. The individual's patterns of habitual criminal activity.

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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.

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 arrest, criminal conviction, crime, deferred adjudication, or similar type of decree, or if he or she misrepresents any information regarding such arrest, criminal conviction, crime, 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 related to the employee's duties and responsibilities.

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.

Penalties for Failing to Disclose Criminal Information

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 or her 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's human resources office within three calendar days 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 human resources office. 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. 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 adversely affects the mission of the District shall be recommended for suspension without pay pending adjudication of his or her case.

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

**Employment of
Contractual
Personnel**

The Board retains final authority for employment of contractual personnel in the position of principal, director, or above.

The Board delegates to the Superintendent final authority for employment of all other contractual personnel. If the Board rejects the Superintendent's recommendation for contractual personnel, the Superintendent shall make alternative recommendations for the Board's consideration at the next regular Board meeting, unless otherwise directed by the Board.

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[See DCA, DCB, DCC, and DCE as appropriate]

**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]

**Employment
Assistance
Prohibited**

No District employee shall assist another employee of the District or of any school district in obtaining a new job if the employee knows, or has probable cause to believe, that the other employee engaged in sexual misconduct regarding a minor or student in violation of the law. Routine transmission of an administrative or personnel file does not violate this prohibition. [See CJ for prohibitions relating to contractors and agents and DH(EXHIBIT) for the Educators' Code of Ethics.]

**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] Adopted or foster relationships shall be treated as natural relationships. For the purposes of this policy, the term "administrator" shall not mean school 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.