

No. _____



UNITED INDEPENDENT SCHOOL DISTRICT AGENDA ACTION ITEM

TOPIC: First and Final Reading of Policy DC (LOCAL): Employment Practices

SUBMITTED BY: Mr. David Garcia **OF** Asst. Supt. for Human Resources

APPROVED FOR TRANSMITTAL TO SCHOOL BOARD: March 10, 2009

RECOMMENDATION:

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

RATIONALE:

BUDGETARY INFORMATION:

BOARD POLICY REFERENCE AND COMPLIANCE:

EMPLOYMENT PRACTICES

DC
(LOCAL)

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	<p>The Board delegates to the Superintendent final authority to employ and dismiss noncontractual employees on an at-will basis. [See DCD]</p>
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.</p> <p>The only exceptions that the District may take into consideration and hire an applicant who has been terminated are in circumstances when an employer severed the employment relationship due to:</p>

- 1. Improper or unlawful termination;**

2. **Lay-off due to the employer's economic conditions;
or**
3. **A reduction in force.**

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 **or arrest**. Rather, the underlying facts that led to the **arrest or** 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, abandoning 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 shall be considered for employment in the District. 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. Swindling.

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 will 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 will treat a conviction as proof of guilt.

Arrest records 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 will be made. The review committee will 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/her credibility. The review committee is not required to conduct an informal trial or an extensive investigation to determine the em-

ployee's guilt or innocence. However, the review committee will 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 should be viewed as more indicative of a conviction. The review committee will 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 will 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 will 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 nonreviewable 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 non-reviewable 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 will 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 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 will not employ anyone convicted of a Class C misdemeanor involving moral turpitude. 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.

**MULTIPLE
OFFENSES**

An employee with multiple offenses that individually do not make him/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.

**UNLISTED CRIMINAL
HISTORY**

If a criminal history record does not list an event reported by the employee he/she will 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.

**CLAIM OF ERROR IN
RECORDS**

An employee who claims that the reported criminal history record is erroneous may be provided a copy of the record so that he/she can undertake efforts to correct the record.

JUVENILE RECORDS

An employee will 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 made up of the criminal history check officer, assistant superintendent for human resources or designee, and director of employee relations 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 per-

sons whose criminal record includes a conviction, deferred adjudication, or plea of guilt, or *nolo contendere* for the offense of **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, abandoning 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.

GOVERNING
CRITERIA FOR
EMPLOYMENT
DECISIONS

The following criteria shall be used by the legal review committee in determining whether or not 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 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.
4. 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.

5. The age of the person at the time of the commission of the crime.
6. The time elapsed since the person's last criminal activity.
7. The evidence of the person's rehabilitation or rehabilitative effort while incarcerated or following release.
8. If the person holds a professional license, the results of any action taken by the licensing authority.
9. 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.
10. The individual's patterns of habitual criminal activity.
 11. The publicity surrounding the actual crime.
 12. The person's clear and present danger to other staff, students, or the general public.
 13. **Probable guilt or innocence.**
 14. **The accuracy of the information the employee provided to the District.**
 15. **The potential impact of the conduct on the educational environment.**
 16. 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 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 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 charged with, convicted of, granted deferred adjudication, or if he or she has entered a plea of *nolo contendere* for any ~~felony or any misdemeanor involving moral turpitude~~ **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. 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 felony or misdemeanor if the crime directly relates to the duties and responsibilities of the individual or directly relate 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.

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CONTRACTUAL
VACANCIES

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

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 becomes 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 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 applicant meets 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.

PROCEDURES FOR
HIRING RETIREES

An employee planning to retire from the District shall contact the Teacher Retirement System of Texas (TRS) for all information on retirement benefits, including the effect on such benefits of returning to employment.

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ELIGIBILITY FOR
REHIRE

No person shall be hired under this policy for either a full-time or part-time position until the former employee has been officially re-tired for at least one full calendar month.

Effective with the adoption of this policy, a person who has retired from the District under TRS shall not be eligible to be rehired by the District on either a full-time or part-time basis unless the person is to be hired in one of the following:

1. A position determined by the Board to be an "acute teacher shortage area" for the school year in which the retiree would be employed;
2. A substitute or temporary position;
3. A position in an area the Superintendent, at his or her discretion, has identified as a shortage area for the District; or
4. A position that a certified applicant who is not a retiree is unable to fill based upon the qualifications of the applicants.

Any retired employee seeking to return to employment in the District must complete the application process to be considered for a position. In accordance with Government Code section 824.602(a)(m)(3), in considering applicants for professional educator positions, the District must give preference to certified applicants who are not retirees.

The Board shall annually review the list of acute teacher shortage areas in which retired teachers or administrators may be hired and shall authorize the Superintendent to make such additions or deletions to the list as may be necessary in accordance with applicable law.

A retiree who is rehired by the District shall:

CONTRACT

1. If hired as a full-time employee beginning with the 2009-10 school year, be entitled to a probationary contract as a classroom teacher. Any contract entered into with a District retiree following adoption of this policy shall be limited to one year. At the end of the one-year contract, the retiree may reapply subject to the requirements stated above at ELIGIBILITY FOR REHIRE.
2. Neither have his or her contract, which was effective prior to the adoption of this policy, renewed, nor be issued a new contract unless the retiree was employed by the District at the time of retirement and the employee is to be rehired in accordance with the criteria listed above.

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| | 3. | Agree to and sign the District's retire-rehire addendum as a condition of employment. Failure to agree to and sign such addendum after employment has begun shall constitute breach of the employee's contract with the District and shall constitute good cause for the termination of employment. |
| SALARY | 4. | Be paid according to the state minimum teacher salary schedule. |
| BENEFITS | 5. | Be entitled to participate in the District's group health coverage. |
| | 6. | Be eligible for, if meeting the applicable statutory requirements, state personal leave, state assault leave, and temporary disability leave as provided by the Texas Education Code and the Family Medical Leave Act. |
| | 7. | Not be eligible for local leave. |
| APPRAISAL | 8. | Be subject to the same appraisal requirements as other District employees. |
| 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. |