

**SCHOOL EMPLOYEE BACKGROUND
INVESTIGATION, INCLUDING A CRIMINAL
HISTORY RECORDS CHECK****GBCD-R
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The purpose of this Technical Assistance Advisory is to provide clear and concise requirements for school administrative units (hereinafter, the “SAU”), school districts, charter schools, public academies, and non-public schools with respect to a school employee background investigation, including a criminal history records check, for each selected applicant regularly in contact with students in the performance of his/her duties.

Definitions The following definitions shall apply:

- (a) “Background investigation” means an investigation into the past employment and other background of a selected applicant in a SAU, school district, charter school, public academy, or non-public schools or an employee or employees of a contractor which contracts with a SAU, school district, charter school, public academy, or non-public school with the intent of determining whether:
- (1) The applicant is qualified for the position for which he or she has applied, and
 - (2) The applicant has been found guilty of any criminal activity or conduct that would make him/ her ineligible for employment.
- (b) “Conditional offer of employment” means an offer of employment extended to a selected applicant subject to a successfully completed criminal history record check which is satisfactory to the SAU, school district, charter school, public academy, or non-public school.
- (c) “Contractor” means a private business or agency or an employee or employees of the contractor which contracts with a SAU, school district, charter school, public academy, or non-public school to provide services including but not limited to:
- (1) cafeteria workers,
 - (2) school bus drivers,
 - (3) custodial personnel,
 - (4) any other direct service or services to students of the district, charter school, public academy, or non-public school
- (d) “Criminal history records check” means a criminal history records inquiry conducted by the New Hampshire State Police through its records and through the Federal Bureau of Investigation (hereinafter, the “FBI”).

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- (e) “Persons regularly in contact with students” means a person or persons who in the performance of his or her duties:
- (1) Comes in direct contact with students on a daily basis for any period of time;
 - (2) Meets regularly, once or twice a week, with students, including but not limited to an art, music, or physical education teacher; or
 - (3) A substitute teacher who comes in direct contact with students on a limited basis.
 - (4) Designated volunteers are categories of volunteers that designated by the governing bodies of SAU, school districts, charter schools, public academies, or non-public schools to have criminal history records checks performed.
- (f) “School employee” means an employee in any position in a SAU, school district, charter school, public academy, or non-public school.
- (g) “Selected applicant” means a person selected for employment who has provided a SAU, school district, charter school, public academy, or non-public school with:
- (1) A signed notarized criminal history records release form, and
 - (2) A complete set of fingerprints taken by a qualified law enforcement agency or an authorized employee of a SAU, school district, charter school, public academy, or non-public school which have been submitted by a SAU, school district, charter school, public academy, or non-public school to the New Hampshire State Police for a criminal history record check.
- (h) “Subcontractor” means a private business or agency or an employee or employees of a contractor that contracts with a contractor to provide services.

Employee Background Investigation

Each SAU, school district, charter school, public academy, or non-public school, as part of the employment process, shall conduct an employee background investigation for each selected applicant for employment. SAU’s, school districts, charter schools, public academies, or non-public schools are not liable in any lawsuit for negligence or deficiencies, if the SAU, school district, charter school, public academy, or non-public school satisfies the requirements of RSA 189:13-a, I.

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Criminal Records Check

- (a) For each selected applicant the SAU, school district, charter school, public academy, or non-public school shall submit, with appropriate fees, a notarized criminal history records release form provided by the state police, and a complete set of fingerprints on a FBI Applicant Fingerprint Card to the New Hampshire State Police so that the State Police can conduct a criminal history record inquiry through the state repository and through the FBI.
- (b) No selected applicant may be extended a conditional offer of employment unless the SAU, school district, charter school, public academy, or non-public school has initiated a criminal history records check.
- (c) A criminal history record check shall be prepared in compliance with RSA 189:13-a and with New Hampshire Department of Safety requirements included in this advisory.
- (d) The Department of Safety, Division of State Police shall notify, in writing, to the Superintendent/CEO whether the selected applicant does or does not have any convictions under RSA 189:13-a, V or a submitted list of other felonies.
- (1) The SAU, school district, charter school, public academy, or non-public school will immediately destroy a “does not have any convictions” notification received from the state police.
- (2) The SAU, school district, charter school, public academy, or non-public school has 30 days to destroy a “does have a conviction” notification received from the state police.
- (3) Under no circumstances shall the criminal history records notification be kept by the SAU, school district, charter school, public academy, or non-public school.
- (e) No selected applicant shall be extended a final offer of employment if such person has been convicted of:
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|-----------------|-------------------------------------|
| (1) RSA 630:1 | Capital Murder |
| (2) RSA 630:1-a | First Degree Murder |
| (3) RSA 630:1-b | Second Degree Murder |
| (4) RSA 630:2 | Manslaughter |
| (5) RSA 632-A:2 | Aggravated Felonious Sexual Assault |
| (6) RSA 632-A:3 | Felonious Sexual Assault |
| (7) RSA 632-A:4 | Sexual Assault |
| (8) RSA 633:1 | Kidnapping |

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| (9) RSA 639:2 | Incest |
| (10) RSA 639:3 | Endangering Welfare of Child or Incompetent |
| (11) RSA 645:1, II or III | Indecent Exposure and Lewdness |
| (12) RSA 645:2 | Prostitution and Related Offenses |
| (13) RSA 649-A:3 | Child Pornography |
| (14) RSA 649-A:3-a | Possession of Child Sexual Abuse Images |
| (15) RSA 649-A:3-b | Possession of Child Sexual Abuse Images |
| (16) RSA 649-B:3 | Computer Pornography and Child Exploitation Prevention |
| (17) RSA 649-B:4 | Certain Uses of Computer Services Prohibited |
| (18) RSA 650:2 | Obscene Matter Offenses |

- (f) A SAU, school board, or charter school board of trustees may deny a selected applicant a final offer of employment if such person has been convicted of a felony in addition to (e) above as determined by the SAU, school district, or charter school.

Criminal Records Check Through the Division of State Police, Department of Safety

- (a) The law (RSA 189:13-a) requires that a SAU, school district, charter school, public academy, or non-public school must submit to the State Police a complete set of fingerprints and a notarized release form for each individual covered by the law. The state police must conduct a New Hampshire criminal records check, and will forward the fingerprints to the FBI for a national records check. The FBI will not conduct that check without a proper set of fingerprints.
- (b) The state police will provide to each SAU, school district, charter school, public academy, or non-public school a set of records release forms and fingerprints cards. The records release forms and the fingerprint cards, provided by the state police, will be the only types of forms that will be accepted. However each SAU, school district, charter school, public academy, or non-public school may produce the release form as is necessary.
- (c) The selected applicant will complete the release form, have it notarized and bring the fingerprint card to a person qualified to take fingerprints. Depending on arrangements that have been made by the district, this may be a local law enforcement agency or a trained individual employed by the SAU, school district, charter school, public academy, or non-public school.
- (d) The SAU, school district, charter school, public academy, or non-public school will then forward the release form and the fingerprints to the state police. The submission of the release form and the fingerprints must be accompanied by the proper fees, which cover the cost of both the state and federal records check. Inadequate fees will delay the process. The fees are as follows:

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Selected Applicants	\$49.75
Designated Volunteer	\$23.50

- (e) The criminal history record check conducted by the FBI may take up to two weeks. The FBI will forward the results to the state police and the state police will send a notification to the Superintendent/CEO indicating the presence or absence of a criminal conviction. If there is no criminal history record, the FBI will destroy the fingerprint card once the check has been completed. Similarly, no copy of the fingerprints will be kept by the state police.
- (f) The results of the completed criminal history records checks by the state police will be sent separately from the completed criminal history records checks by the FBI. The average time to receive a notification for a New Hampshire criminal history records check is two weeks.

Criminal History Records Check by the State Police for Persons Seeking to Work for Several School Districts

- (a) Because criminal history record information must be destroyed by the SAU, school district, charter school, public academy, or non-public school, there is no record information to share with another SAU, school district, charter school, public academy, or non-public school.
- (b) Substitute teachers, student teachers, student interns, and other educational staff are permitted to apply to work or volunteer in multiple schools, but pay only once for the education criminal history records check process. The results of the records check will be shared with any other schools identified at the time of initiating the records check process.
- (c) Applicants seeking to apply to multiple SAUs, school districts, charter schools, public academies, or non-public schools will apply at one SAU, school district, charter school, public academy, or non-public school and then contact the Criminal Records Unit via a completed Application to Multiple Schools form (supplied to applicant by the SAU, school district, charter school, public academy, or non-public school). The form will have the name of the submitting SAU, school district, charter school, public academy, or non-public school and the identity of any other education locations the applicant seeks to work.

The applicant's submitting SAU, school district, charter school, public academy, or non-public school will forward the NH CHRI authorization form and the applicant's ten print card to the state police.

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- (d) Upon request, in person or in writing to the state police, the substitute teacher applicant will receive a copy of their criminal history record notification.
- (e) The substitute teacher applicant will show the state police notification to the other SAU's, school districts, charter schools, public academies, or non-public schools, and this will satisfy the statutory requirements for the criminal history records check.
- (f) This copy of the substitute's criminal history record notification will be valid for 30 days from the date of the notification. After this time period the criminal history records check process must be reinitiated.

Fingerprints

- (a) The overriding issues with respect to the fingerprints are that they be taken properly on the FBI Applicant Fingerprint Card supplied by the State Police.
- (b) The law allows this to be done by a qualified law enforcement agency, an employee of the Department of Safety, or an authorized person employed by the SAU, school district, charter school, public academy, or non-public school
- (c) If, after two attempts a set of fingerprints is invalid, a SAU, school district, charter school, public academy, or non-public school may, in lieu of fingerprints, accept clearances from every city, town or county where an applicant has lived during the past five years.
- (d) To assure that completed criminal history records checks are returned to the correct SAU's, school districts, charter schools, public academies, or non-public schools, the SAU, school district, charter school, public academy, or non-public school must place the name, address and identification number in Employer and Address section and the OCA section of the FBI Applicant Fingerprint Card.

Conditional Offer of Employment

- (a) A SAU, school district, charter school, public academy, or non-public school may extend a conditional offer of employment to a selected applicant, with a final offer of employment subject to a successfully completed records check including a criminal history records check.
- (b) A selected applicant extended a conditional offer of employment shall be eligible for the same salary and fringe benefits as if he/she were provided a final offer of employment.

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- (c) A conditional offer of employment may continue during the time the SAU, school district, charter school, public academy, or non-public school is awaiting receipt of a completed criminal history records notifications.
- (d) In the event that the first set of fingerprints is invalid and a second set of fingerprints is necessary in order to complete the criminal history records check, the conditional offer of employment shall remain in effect.
- (e) No selected applicant may be extended a final offer of employment unless the SAU or school district has completed a criminal history check.

Final Offer of Employment

- (a) A SAU, school district, charter school, public academy, or non-public school may extend a final offer of employment to a selected applicant, who has a conditional offer of employment, if the selected applicant receives a successfully completed records check including a criminal history records check.
- (b) If a selected applicant is extended a final offer of employment, the individual shall be entitled to membership in the collective bargaining unit subject to the requirements of RSA 273-A and shall immediately be covered by the terms and conditions of the collective bargaining agreement.

Records Retention

Under no circumstances shall the actual criminal records be released to the SAU, school district, charter school, public academy, or non-public school. Under no circumstances shall a criminal history records notification be kept more than thirty days.

Contractors or Subcontractor Responsibility

- (a) An employee background investigation including a criminal history records check shall be conducted by a contractor or subcontractor for each employee in regular contact with students in accordance with this policy.
- (b) The cost of such investigation, including criminal history records checks for employees or selected applicants for employment with such contractors, shall be borne by the contractor or subcontractor.
- (c) The contractor or subcontractor shall submit to the SAU, school district, charter school, public academy, or non-public school, a written verification that a criminal history records check has been done for each employee of the contractor or subcontractor who is regularly in contact with students.

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- (d) In the event that services performed by a SAU, school district, charter school, public academy, or non-public school are now provided by a contractor, an employee criminal history records check shall not be required for a school employee who becomes an employee of the contractor.

Unsuccessful Criminal History Records Notification

If a SAU, school district, charter school, public academy, or non-public school receives a criminal history records notification which states “has been charged pending disposition for or does have a conviction” for crimes listed in RSA 189:13-a V, or a conviction of identified felony offenses submitted by that agency’s governing authority for a selected applicant the SAU, school district, charter school, public academy, or non-public school shall immediately, within 24 hours of receipt of such report, excluding Saturday, Sunday, or a holiday, dismiss the selected applicant.

Cost of an Employee Background Investigation, Including Criminal History Records Check

The cost of a criminal history records check or any other relevant records check shall be borne by the selected applicant unless otherwise determined by a SAU, school board, charter school, public academy, or non-public school.

EMPLOYEE INITIATION OF A CRIMINAL RECORDS HISTORY CHECK

*(The new employee must initiate the Criminal Records Check at the Superintendent’s Office **before** she or he can be issued a conditional employment contract.)*

1. Arrange to have your fingerprints taken by making an appointment with the Human Resources/Personnel Department at the SAU office.
2. Once the completed forms have been logged and sent to the NH Department of Safety, you will be issued an employment contract. Sign two copies of the conditional employment contracts. Retain one copy and send the other copy to the Superintendent's office. Pursuant to RSA 198:13-a, this conditional employment contract entitles you to the same salary and economic benefits as you would otherwise receive under a final offer of employment, except that you are not covered by the terms and conditions of any applicable collective bargaining agreement while conditionally employed.

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3. The Superintendent's office will send your Criminal Records Release Authorization form, fingerprints card, and payment to the New Hampshire Department of Safety, Division of State Police, Central Reporting for Criminal Records, 10 Hazen Drive, Concord.
4. The State Police will conduct a New Hampshire Criminal Records Check and will forward your fingerprints to the FBI for a National Criminal Records Check. The check done by the FBI will take a minimum of 7 days. The FBI will destroy your fingerprint card once the check has completed. No copy of the fingerprint card will be kept by the State Police.
5. The results of the completed Criminal Records Check conducted by the State Police will be sent to the Superintendent/CEO separately from the completed Records Check conducted by the FBI. Your two-part Criminal Records Report shall be kept confidential, and only the Superintendent/CEO shall have access to it. The Department of Education establishes its own confidentiality procedure.

Final Offer of Employment

The District will automatically convert your conditional employment to a final employment contract if you have not been found guilty of a criminal activity or of any other contract if you have not been found guilty of any Criminal Records Check, then state law requires that you be dismissed from employment within 24 hours of our receipt of the report, excluding Saturday, Sunday or holidays.

Law Reference:

Appendix Reference: GBCD

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