Definitions

"Criminal history clearinghouse" (Clearinghouse) means the electronic clearinghouse and subscription service established by the Department of Public Safety (DPS) to provide criminal history record information to persons entitled to receive that information and to provide updates to such information. A person who is the subject of the criminal history record information requested must consent to the release of the information. Gov't Code 411.0845(a), (h).

"Criminal history record information" (CHRI) means information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, information, and other formal criminal charges and their dispositions. Gov't Code 411.082(2).

"National criminal history record information" (NCHRI) means criminal history record information obtained from DPS under Government Code Chapter 411, Subchapter F, and the Federal Bureau of Investigation (FBI) under Government Code 411.087. Education Code 22.081(2).

Certified Persons

The State Board for Educator Certification (SBEC) shall review the NCHRI of a person who is an applicant for or holder of a certificate and who is employed by or is an applicant for employment by the School. Education Code 22.0831(c).

Noncertified Employees

Applicability

This section applies to a person who is not an applicant for or holder of a certificate from SBEC and who, on or after January 1, 2008, is offered employment by:

1. The School; or
2. A shared services arrangement, if the employee's or applicant's duties are or will be performed on school property or at another location where students are regularly present.

[For noncertified employees of the School or a shared services arrangement hired before January 1, 2008, see ALL OTHER EMPLOYEES, below.]

Information to DPS and TEA

Before or immediately after employing or securing the services of a person subject to this section, the School shall send or ensure that the person sends to DPS information

that DPS requires for obtaining NCHRI, which may include fingerprints and photographs.

The School shall provide TEA with the name of a person to whom this section applies. TEA shall examine the CHRI of the person and notify the School if the person may not be hired or must be discharged under Education Code 22.085.

Employment Pending Review
After the required information is submitted, the person may begin employment, but that employment is conditional upon the review and acceptability of that person's CHRI by the School and by the TEA. If the School or TEA makes a determination that the employee or applicant is ineligible for employment, the employee must be terminated.

Criminal History
The School shall obtain all CHRI that relates to a person subject to this section through the Clearinghouse and shall subscribe to the CHRI of that person. The School may require the person to pay any fees related to obtaining the CHRI. Education Code 22.0833; 19 TAC 153.1109(d).

Substitute Teachers
This section applies to a person who is a substitute teacher for the School or a shared services arrangement.

Applicability
For purposes of the CHRI review requirements, a "substitute teacher" is a teacher who is on call or on a list of approved substitutes to replace a regular teacher and has no regular or guaranteed hours. A substitute teacher may be certified or noncertified.

Information to DPS and TEA
The School shall send or ensure that a person to whom this section applies sends to DPS information required for obtaining NCHRI, which may include fingerprints and photographs.

The School shall provide TEA with the name of a person to whom this section applies. TEA shall examine the CHRI and certification records of the person and notify the School if the person:

1. May not be hired or must be discharged as provided by Education Code 22.085; or

2. May not be employed as a substitute teacher because the person's educator certification has been revoked or is suspended.

Employment Pending Review
After the required information is submitted, the person may begin employment, but that employment is conditional upon the review of that person's CHRI by the School and by the TEA. If the School or TEA makes a determination that the employee or applicant is ineligible for employment, the employee must be terminated.

Criminal History
The School shall obtain all CHRI that relates to a person to whom this section applies through the Clearinghouse. The School may require the person to pay any fees related to obtaining the CHRI. Education Code 22.0836; 19 TAC 153.1101(5), 153.1111(d).

<u>Student Teachers and Volunteers</u>

Applicability
This section applies to:

1. A person participating in an internship consisting of student teaching to receive a teaching certificate; and
2. A volunteer or person who has indicated, in writing, an intention to serve as a volunteer with the School.

Criminal History
A person may not perform any student teaching or volunteer duties until:

1. The student teacher or volunteer has provided to the School a driver's license or another form of identification containing the person's photograph issued by an entity of the United States government; and
2. The School has obtained from DPS all CHRI that relates to the student teacher or volunteer. The School may also obtain CHRI relating to a student teacher or volunteer from any other law enforcement agency, criminal justice agency, or private consumer reporting agency.

The School may require a student teacher or volunteer to pay any costs related to obtaining the CHRI.

Exception
The criminal history requirements above do not apply to a person who volunteers or is applying to volunteer with the School if the person:

1. Is the parent, guardian, or grandparent of a child who is enrolled in the School;
2. Will be accompanied by a School employee while on a School campus; or
3. Is volunteering for a single event on the School campus.

Education Code 22.0835.

Coordination of Efforts
The School may coordinate with TEA, SBEC, and a shared services arrangement as necessary to ensure that criminal history reviews are not unnecessarily duplicated. Education Code 22.0833(h).

All Other Employees
The School shall obtain CHRI that relates to a person who is not subject to an NCHRI review and who is an employee of:

1. The School; or
2. A shared services arrangement, if the employee's duties are performed on school property or at another location where students are regularly present.

The School may obtain the CHRI from:

1. DPS;
2. A law enforcement or criminal justice agency; or
3. A private consumer reporting agency.

Education Code 22.083(a), (a-1), (c); Gov't Code 411.097.

Confidentiality of Records
CHRI that the School obtains from DPS, including any identification information that could reveal the identity of a person about whom CHRI is requested and information that directly or indirectly indicates or implies involvement of a person in the criminal justice system:

1. Is for the exclusive use of the School; and
2. May be disclosed or used by the School only if, and only to the extent, disclosure is authorized or directed by a statute, rule, or order of a court of competent jurisdiction.

For purposes of these confidentiality provisions, "criminal history record" information does not refer to any specific document provided by DPS, but to the information contained, wholly or partly, in a document's original form or any subsequent form or use.

The School or an individual may not confirm the existence or non-existence of CHRI to any person who is not eligible to receive the information. Gov't Code 411.084.

CHRI obtained by the School, in the original form or any subsequent form, may not be released to any person except the individual who is the subject of the information, TEA, or SBEC, or by court order. The CHRI is not subject to disclosure under Government Code Chapter 552 (Public Information Act).

A School employee may request from the Human Resources Department a copy of any CHRI related to that employee that the School has obtained from DPS. The School may charge a fee to provide the information, not to exceed the actual cost of copying the CHRI. Gov't Code 411.097(d), (f).

Destruction of CHRI

The School shall destroy CHRI obtained from DPS on the earlier of:

1. The date the information is used for the authorized purpose; or
2. The first anniversary of the date the information was originally obtained.

Gov't Code 411.097(d)(3).

Confidentiality of Information Obtained from Applicant or Employee

The School may not release information collected about a person in order to obtain CHRI, including the person's name, address, phone number, social security number, driver's license number, other identification number, and fingerprint records, except:

1. To comply with Government Code Chapter 22, Subchapter C (criminal records);
2. By court order; or
3. With the consent of the person who is the subject of the information.

In addition, the information is not subject to disclosure under Government Code Chapter 522 (Public Information Act).

The School shall destroy the information not later than the first anniversary of the date the information is received. Education Code 22.08391.

SBEC Notification

The Superintendent or designee shall promptly notify SBEC in writing by filing a report with the TEA staff within seven calendar days of the date the Superintendent obtains or has knowledge of information indicating that an applicant for or holder of a certificate issued by SBEC has a reported criminal history. Education Code 22.087; 19 TAC 249.14(d)(1).

Discharge of Convicted Employees

The School shall discharge or refuse to hire an employee or applicant for employment if the School obtains information through a CHRI review that:

1. The employee or applicant has been convicted of:
   a. Any felony offense or a misdemeanor involving moral turpitude
   b. An offense requiring registration as a sex offender under Code of Criminal Procedure Chapter 62; or
   c. An offense under the laws of another state or federal law that is equivalent to an offense under paragraphs a or b; and
2. At the time the offense occurred, the victim of the offense was under 18 years of age or was enrolled in a public school.

Certification to TEA

Each school year, the Superintendent or designee shall certify to the Commissioner that the School has complied with the above provisions.

Sanctions

SBEC may impose a sanction on an educator who does not discharge an employee or refuse to hire an applicant if the educator knows or should have known, through a criminal history record information review, that the employee or applicant has been convicted of an offense described above.

Consumer Credit Reports

Definitions

"Adverse action" includes a denial of employment or any other decision for employment purposes that adversely affects any current or prospective employee.

"Consumer report" includes any information from a consumer reporting agency that is used or expected to be used as a factor in establishing the person's eligibility for employment.

"Consumer reporting agency" is an agency that, for monetary fees, dues, or on a cooperative nonprofit basis, regularly assembles or evaluates consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties.

"Employment purposes" when used in connection with a consumer report means a report used for the purpose of evaluating a person for employment, promotion, reassignment, or retention as an employee.

15 U.S.C. 1681a

Obtaining Reports
The School may not procure a consumer report for employment purposes unless:

1. The School has provided the applicant or employee a written disclosure that a consumer report may be obtained for employment purposes; and
2. The applicant or employee has authorized in writing the procurement of the consumer report.

Adverse Action
Before taking any adverse action based on the consumer report, the School shall provide the applicant or employee a copy of the consumer report and a written description of the person's rights under the Fair Credit Reporting Act, as prescribed by the Federal Trade Commission. 15 U.S.C. 1681b(b)(2).

Address Discrepancies
The Superintendent shall develop and implement reasonable policies and procedures designed to enable the School, when it receives a notice of address discrepancy, to form a reasonable belief that a consumer report relates to the consumer about whom it has requested the report. The Superintendent shall also develop and implement reasonable policies and procedures for furnishing an address for the consumer, which the School has reasonably confirmed is accurate, to the consumer reporting agency. 16 CFR 641.1.

Disposal of Records
The School must properly dispose of a consumer report by taking reasonable measures to protect against unauthorized access to or use of the information. "Dispose" includes discarding or abandoning the consumer report, or selling, donating, or transferring any medium, including computer equipment, upon which the consumer report is stored.

Examples of reasonable measures include:

1. Burning, pulverizing, or shredding papers containing a consumer report so the information cannot practicably be read or reconstructed;
2. Destroying or erasing electronic media containing a consumer report so that the information cannot practicably be read or reconstructed; or
3. After due diligence, entering into and monitoring compliance with a contract with another party engaged in the business of record destruction to dispose of the consumer report.

16 CFR 682.3.