

EMPLOYMENT REQUIREMENTS AND RESTRICTIONS
CRIMINAL HISTORY AND CREDIT REPORTS

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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.

Tex. 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.

Tex. 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 Tex. Government Code 411.087.

“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.

“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

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In accordance with the requirements of the Texas Education Code, the Texas School for the Deaf (TSD) will complete criminal history back- ground checks on all employees. Credit reports will be completed when appropriate to the position held.

CERTIFIED PERSONS

The State Board for Educator Certification (SBEC) will review the national criminal history record information (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 TSD. *Tex. Education Code 22.0831(c), 30.052(d)*

NONCERTIFIED EMPLOYEES

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. TSD; or
2. A shared services arrangement, if the employee's or applicant's du- ties are or will be performed on TSD property or at another location where students are regularly present.

[For noncertified employees or 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 per- son subject to this section, TSD will ensure that the person sends to DPS information that DPS requires for obtaining NCHRI, which may include fingerprints and photographs.

TSD will provide TEA with the name of a person to whom this section applies. TEA will examine the criminal history record information (CHRI) of the person and notify TSD if the person may not be hired or must be dis- charged under *Tex. Education Code 22.085*.

TSD will obtain all CHRI that relates to a person subject to this section through the Clearinghouse and will subscribe to the CHRI of that person. TSD will 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 TSD or in a shared services arrangement.

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

TSD will send to DPS information required for obtaining NCHRI, which may include fingerprints and photographs.

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

1. May not be hired or must be discharged as provided by Tex. 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 TEA and must be terminated if TEA decides that the employee or applicant is ineligible for employment.

CRIMINAL
HISTORY

TSD will obtain all CHRI that relates to a person to whom this section applies through the Clearinghouse. TSD may require the person to pay any fees related to obtaining the CHRI.

Tex. Education Code 22.0836, 30.052(d); 153.1111(d)

STUDENT
TEACHERS

This section applies to a person participating in an internship consisting of student teaching to receive a teaching certificate.

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A student teacher may not perform any student teaching until:

1. The student teacher has provided to TSD 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. TSD has obtained from DPS all CHRI that relates to a student teacher. TSD may also obtain CHRI relating to a student teacher from any other law enforcement agency, criminal justice agency, or private consumer reporting agency. TSD may require a student teacher to pay any costs related to obtaining the CHRI.

Education Code 22.0835, 30.052(d)

COORDINATION OF EFFORTS

TEA, SBEC, TSD and a shared services arrangement may coordinate as necessary to ensure that criminal history reviews authorized or required under Education Code Chapter 22, Subchapter C are not unnecessarily duplicated. *Tex. Education Code 22.0833(h), 30.052(d)*.

ALL OTHER EMPLOYEES

TSD will obtain CHRI that relates to a person who is not subject to an NCHRI review under Education Code Chapter 21, Subchapter C and who is an employee of:

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

TSD may obtain the CHRI from:

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

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[see CONSUMER CREDIT REPORTS,
below].

*Education Code 22.083(a), (a-1), (c), 30.052(d); Tex.
Gov't Code 411.097*

CONFIDENTIALITY OF
RECORD

CHRI that TSD obtains from DPS, including any identifying 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 TSD; and
2. May be disclosed or used by TSD 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.

TSD or an individual may not confirm the existence or nonexistence of CHRI to any person who is not eligible to receive the information.

Tex. Gov't Code 411.084

CHRI obtained by TSD, 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).

An employee of TSD may request a copy of any CHRI relating to that employee that TSD has obtained from DPS or the Federal Bureau of Investigation pursuant to Subchapter C, Chapter

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22 of the Education Code. TSD may charge a fee to provide the information, not to exceed the actual cost of copying the CHRI.

Tex. Gov't Code 411.097(d), (f)

Destruction of CHRI

TSD does not maintain copies of CHRI obtained from DPS. All CHRI records received or printed by TSD shall be destroyed 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.

CONFIDENTIALITY OF
INFORMATION OBTAINED
FROM APPLICANT OR
EMPLOYEE

TSD shall 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).

TSD shall destroy the information not later than the first anniversary of the date the information is received.

Tex. Education Code 22.08391

Unauthorized Disclosure of
CHRI

TSD employees who obtain, disclose or use CHRI in an unauthorized manner shall be subject to penalties as outlined in Gov't Code 4111.085

SBEC NOTIFICATION

TSD's superintendent will 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

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information indicating that an applicant for or holder of a certificate issued by SBEC has a reported criminal history obtained by means other than the criminal history clearinghouse.

Tex. Education Code 22.087; 19 TAC 249.14(d)(1)

Note: For provisions on employees of entities that contract with a TSD, see CIA

DISQUALIFYING OFFENSES

TSD will obtain criminal history record information on all final candidates for employment. All positions within TSD have the potential for contact with students. Persons whose criminal history indicates that the person poses a threat to students or employees shall be disqualified. Consistent with business necessity, TSD will also disqualify from employment a person whose criminal history is otherwise inconsistent with the job duties of the position for which they are being considered.

INDIVIDUALIZED ASSESSMENT

TSD will perform an individualized assessment of criminal history record information when determining a person's eligibility for employment in a specific position. A variety of factors will be considered, including:

1. The nature of the offense;
2. The age of the person when the crime was committed;
3. The date of the offense and how much time has elapsed;
4. The adjudication of the offense (e.g., whether the person was found guilty by a trier of fact, pled guilty, entered a no contest pleas, or received deferred adjudication);
5. The nature and responsibilities of the job sought;
6. The accuracy of the person's disclosure of his or her criminal history during the selection process;
7. The effect of the conduct on the overall educational environment; and

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8. Any further information provided by the person concerning his or her criminal history record.

DISCHARGE OF CONVICTED
EMPLOYEES/REFUSAL TO
HIRE

TSD will discharge or refuse to hire an employee or applicant for employment if TSD obtains information through a CHRI review that:

1. The employee or applicant has been convicted of:
 - a. A felony under Penal Code Title 5;
 - 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 TSD.

EXCEPTION

However, TSD is not required to discharge or refuse to hire an employee or applicant if the person committed an offense under Title 5, Penal Code and:

1. The date of the offense is more than 30 years before the person's employment will begin; or
2. The applicant for employment satisfied all the terms of the court order entered on conviction.

CERTIFICATION TO SBEC

Each school year, the superintendent will certify to the Commissioner that TSD 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

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record information review, that the employee or applicant has been convicted of an offense described above.

TERMINATION FOR
FAILURE TO DISCLOSE

TSD may discharge an employee if TSD obtains information of the employee's conviction of a felony or misdemeanor involving moral turpitude that the employee did not disclose to SBEC or to TSD. An employee so discharged is considered to have been discharged for misconduct for the purposes of Tex. Labor Code 207.044 (unemployment compensation).

Tex. Education Code 22.085 [See DF]

EMPLOYEE SELF
REPORTING

Each TSD employee must report to the Superintendent in writing within seven days of when the employee becomes aware of any arrest, indictment, conviction, no contest or guilty plea, or other adjudication of the employee for any 1) misdemeanor offense against the person or the family; and 2) any felony offense of which the employee has not previously notified TSD or the Superintendent through written notification, records or employment application. See Texas Penal Code, Title V and Title VI

CONSUMER
CREDIT REPORTS

TSD may not procure a consumer report for employment purposes unless:

1. TSD 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

In accordance with the Fair Credit Reporting Act (FCRA), as prescribed by the Federal Trade Commission, prior to taking any adverse action based on the consumer report, TSD will provide the applicant or employee with notification of the adverse action. The notification will include an explanation of how the information in the CHRI was used, the name and contact information of

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the consumer-reporting agency, and a written summary of the person's rights under the FCRA. *FCRA - 15 U.S.C. 1681b(b)(2)*.

DISPOSAL OF RECORDS TSD must properly dispose of a consumer report by taking reasonable measures to protect against unauthorized access to or use of the information.

TSD will destroy CHRI obtained from DPS on the earlier of: The date the information is used for the authorized purpose; or

The first anniversary of the date the information was originally obtained. Tex. Gov't Code 411.097(d)(3)

"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 C.F.R. 682.3

TEXAS SCHOOL FOR THE DEAF

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