

**CRIMINAL HISTORY
REVIEWS
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)*

“Request for CHRI” is the processing and entry of a person’s complete set of fingerprints in DPS’s tenprint database and the comparison of those prints to DPS’s latent print database and if authorized the entry into FBI’s tenprint and comparison to the FBI’s latent print database. *37 TAC 27.172*

**PARTICIPATION IN
THE CRIMINAL
HISTORY
CLEARINGHOUSE**

Texas School for the Deaf (TSD) is authorized to participate in the clearinghouse which provides:

- Texas and FBI fingerprint-based criminal history results.
- Subscription and notification service to disseminate updated criminal history information.

The School shall only submit a request for Criminal History Record Information (CHRI) on persons who have authorized the School to access their information.

The School shall maintain subscriptions for CHRI for all employees and shall unsubscribe when the individual is no longer an employee of the School.

The Human Resources Director shall validate all subscription in accordance with DPS policies annually to ensure that the School is only subscribed to CHRI of current employees.

The School shall ensure its compliance with the FBI Criminal Justice Information Services Security Policy. The School shall allow DPS and the FBI to conduct audits of all clearinghouse accounts to prevent any unauthorized access, use or dissemination of CHRI.

37 TAC 27.171, .172(8), .174

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

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 shared services arrangement hired before January 1, 2008, see All Other Employees, below.]

INFORMATION TO
DPS AND TEA

Prior to 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 the Texas Education Agency (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 with the School, but that employment is conditional upon the review of that person’s CHRI by TEA and must be terminated if TEA makes a determination that the employee or applicant is ineligible for employment.
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.
SUBSTITUTE TEACHERS	This section applies to a person who is a substitute teacher for the School or 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	<p>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.</p> <p>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:</p> <ol style="list-style-type: none"> 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 with the School, but that employment is conditional upon the review of that person’s CHRI by TEA and must be terminated if TEA makes a determination that the employee or applicant is ineligible for employment.
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), .1111(d)

STUDENT
TEACHERS
APPLICABILITY
CRIMINAL
HISTORY

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

A student teacher may not perform any student teaching until:

1. The student teacher 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 a student teacher. The School may also obtain CHRI relating to a student teacher from any other law enforcement agency, criminal justice agency, or private consumer reporting agency. The School may require a student teacher to pay any costs related to obtaining the CHRI.

Education Code 22.0835

COORDINATION
OF EFFORTS

TEA, SBEC, the School, 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. *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 under Education Code Chapter 21, Subchapter C 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 [see Consumer Credit Reports, below].

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

Note: For criminal history record provisions regarding volunteers, see GKG. For provisions on employees of entities that contract with the School, see CJA.

CONFIDENTIALITY OF RECORD

CHRI that the School obtains from DPS, including any identification information that could reveal the individual's identity 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 nonexistence 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 is not subject to disclosure under Government Code Chapter 552 (Public Information Act) and may not be released to any person except the individual who is the subject of the information, TEA, or SBEC, or by court order.

An employee of the School may request 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)

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).

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.

Education Code 22.08391

UNAUTHORIZED
DISCLOSURE OF
CHRI

A person commits a Class B misdemeanor if the person knowingly or intentionally:

1. Obtains CHRI in an unauthorized manner, uses the information for an unauthorized purpose, or discloses the information to a person who is not entitled to the information; or
2. Violates a DPS rule adopted under Government Code Chapter 411, Subchapter F.

A person commits a second-degree felony if the person:

1. Obtains, uses, or discloses CHRI for remuneration or for the promise of remuneration; or
2. Employs another person to obtain, use, or disclose CHRI for remuneration or for the promise of remuneration.

Gov't Code 411.085

**DISQUALIFYING
OFFENSES**

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

**INDIVIDUALIZED
ASSESSMENT**

The School shall perform an individualized assessment of criminal history record information when determining a person's eligibility for employment in a specific position. The School shall take into account a variety of factors, including the following:

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

ARRESTS

The fact of an arrest alone does not establish that criminal conduct has occurred, and the School shall not disqualify a person based solely on an arrest. The School may make an employment decision based on the conduct underlying the arrest if the conduct makes the person unfit for the position in question.

REFUSAL TO
HIRE CONVICTED
APPLICANTS

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

1. Convicted of or placed on deferred adjudication community supervision for an offense requiring registration as a sex offender under Code of Criminal Procedure Chapter 62; or
2. Convicted of:
 - a. A felony under Title 5, Penal Code, if the victim of the offense was under 18 years of age at the time the offense was committed; or
 - b. An offense under the laws of another state or federal law that is equivalent to an offense under item 1 or 2a, above.

EXCEPTION

However, the School is not required to refuse to hire an applicant if the person committed an offense under Title 5, Penal Code; and the date of the offense is more than 30 years before the date the person's employment will begin; and the applicant for employment satisfied all terms of the court order entered on conviction.

CERTIFICATION
TO
COMMISSIONER

Each school year, the Superintendent 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 refuse to hire an applicant for employment if the educator knew that the applicant had been adjudicated for or convicted of having an inappropriate relationship with a minor in accordance with Education Code 21.009(e), or knew or should have known, through a CHRI review, that the applicant has been convicted of or placed on deferred adjudication community supervision for an offense described above.

SBEC may impose a sanction on a superintendent who falsely or inaccurately certified to the Commissioner that the School had complied with Education Code 22.085. [See Certification to Commissioner, above]

TERMINATION
FOR FAILURE TO
DISCLOSE

The School may discharge an employee if the School obtains information that the employee was conviction of a felony or misdemeanor involving moral turpitude and the

employee did not disclose the information to SBEC or to the School. An employee so discharged is considered to have been discharged for misconduct for the purposes of Labor Code 207.044 (unemployment compensation).

Education Code 22.085; 19 TAC 249.15(b)(12), (14) [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

PRE-EMPLOYMENT
AFFIDAVIT

An applicant for a position with the School must submit, using a form adopted by TEA, a pre-employment affidavit disclosing whether the applicant has ever been charged with, adjudicated for, or convicted of having an inappropriate relationship with a minor.

An applicant who answers affirmatively concerning an inappropriate relationship with a minor must disclose in the affidavit all relevant facts pertaining to the charge, adjudication, or conviction, including, for a charge, whether the charge was determined to be true or false.

An applicant is not precluded from being employed based on disclosure of a charge if the School determines based on the information disclosed in the affidavit that the charge was false.

A determination that an employee failed to disclose required information is grounds for termination of employment.

SBEC may revoke the certificate of an administrator if the Board determines it is reasonable to believe that the administrator employed an applicant for a position described by Education Code 21.003(a) or (b) despite being aware that the applicant had been adjudicated for or convicted of having an inappropriate relationship with a minor.

Education Code 21.009

DO NOT HIRE
REGISTRY

The School shall review the TEA Do Not Hire Registry for all applicants selected for hire and shall decline to hire any applicant included in the registry. The Do Not Hire Registry contains:

1. The registry of persons who are not eligible to be employed in public schools; and
2. Information indicating that a person is under investigation.

Education Code 22.095

COMMERCIAL
DRIVER LICENSE
DRUG AND ALCOHOL
CLEARINGHOUSE

The U.S. Department of Transportation (DOT) operates and maintains a national clearinghouse for records relating to alcohol and controlled substances testing of commercial motor vehicle operators in order to improve compliance with DOT's alcohol and controlled substances testing program applicable to commercial motor vehicle operators [see DHE] and to enhance the safety of roadways by reducing accidents and injuries involving the misuse of alcohol or use of controlled substances by operators of commercial motor vehicles. *49 U.S.C. 31306a*

PRE-
EMPLOYMENT
QUERY
REQUIRED

The School shall not employ a driver subject to controlled substances and alcohol testing under 49 C.F.R. Part 382 to perform a safety-sensitive function without first conducting a pre-employment query of the federal Drug and Alcohol Clearinghouse to obtain information about the driver's previous test results.

ANNUAL QUERY
REQUIRED

The School shall conduct an annual query of the federal Drug and Alcohol Clearinghouse for information for all employees subject to controlled substance and alcohol testing under 49 C.F.R. Part 382 to determine whether information exists about those employees.

PROHIBITION

The School shall not allow a driver to perform any safety-sensitive function if the results of a Clearinghouse query demonstrate that the driver has a prohibited test result.

RECORDKEEPING
REQUIRED

The School shall retain a record of each query for a period of three years from the date of the query and all information received in response to each query made under this section.

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 shall not obtain a consumer report for employment purposes unless:
The School has provided the applicant or employee with a written disclosure that a consumer report may be obtained for employment purposes; and

The applicant or employee has authorized the School to obtain the report. Authorization must be in writing.

ADVERSE ACTION

The School shall provide the applicant or employee with 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, prior to taking any adverse action based on the report.

15 U.S.C. 1681b(b)(2)

DISPOSAL OF
RECORDS

The School shall properly dispose of a consumer report.

16 C.F.R. 682.3

Adopted:
12.11.2020