Educational Entity Responsibilities Concerning ADE Background Checks for CLASSIFIED EMPLOYEES

Each school district, charter school, or education service cooperative ("educational entity") must obtain a set of background checks for classified employees.

> *New under Act 1089 of 2015 - all staff positions, including those outsourced through a vendor, are subject to a background check – for example, a position as substitute teacher, cafeteria worker, or custodial/maintenance.*

The background checks consist of:

1. A state criminal records check;
2. A federal criminal records check through fingerprinting; and
3. A Child Maltreatment Central Registry Check.

See Ark. Code Ann. § 6-17-414

Application:

Each state and federal criminal records check application must be initiated:

1. By completing the ADE's Background Check Consent Form / Fingerprint Request "Consent Form"
   - The educational entity must complete the employer portion and sign the form
   - The applicant must complete the applicant portion and sign the form
   - The fingerprinting operator must complete form, or if the fingerprints are done by fingerprint card, the fingerprint card must be completed and signed by the applicant.

2. By submitting information:
   - From the educational entity at ASP Online *[and be billed by ASP]* or
   - From the applicant through the online application *[with payment by debit or credit card]* at: www.ar.gov/ADEbackground
   - Instructions are found at:

     http://www.arkansased.gov/public/userfiles/HR_and_Educator_Effectiveness/HR_Educator_Licensure/Instructions_for_payment_for_online_ASP_and_FBI_background_checks_revised_4-20-15.pdf

3. The applicant must bring the Consent Form to the fingerprinting station
   - If obtaining fingerprints by livescan, the applicant will also need a printed receipt for payment and the transaction number
   - If obtaining fingerprints by ink, the applicant will also need to complete and bring with them the fingerprint card
   - In either case, the applicant will need a government-issued photo ID

Important: The ADE must receive the Consent Form. If an educational entity has old consent forms on file that have not been sent to the ADE, those forms should be immediately provided to the ADE. Call Clara Toney, 501.683.3127, for information on how to provide consent forms to ADE.

Each Child Maltreatment Central Registry check must be initiated:

1. By the applicant using the form
   - found at http://www.arkansased.gov/public/userfiles/HR_and_Educator_Effectiveness/HR_Educator_Licensure/Central_Registry_Form_011513.pdf
   - with the educational entity information at the bottom completed; and
2. Mailed to the address on the form (not to ADE) accompanied by a pre-printed check or U.S. money order for $10.00 made payable to the Arkansas Department of Human Services.

Results:

All results of background checks are returned to the Department of Education.

Results from all three background checks are posted on the Arkansas Educator Licensure System (AELS) https://adeaels.arkansas.gov/AelsWeb/Search.aspx under "Employability Check" as:

Approved or Denied	As of the last date that all three checks were completed.
Unavailable	The Child Maltreatment check is not included because it was not required at the time of the last check.
Pending	Either • all three checks are not completed or • not all were completed within the same 12-month period.

Per FBI regulations, there is no longer the ability for an educational entity or applicant to see which background check is still pending. The applicant will need to contact the ADE for further information if there is a question.

Disqualification / Appeal:

The Department will notify the applicant and the educational entity if there is a disqualification for employment under A.C.A. § 6-17-414(c).

If the Department notifies an educational entity that a classified employee or applicant is disqualified for employment on the basis of the background check, the educational entity must send the applicant a notice that:

1. Advises them of the disqualification. A.C.A. § 6-17-414(g); and
2. Afford the applicant the opportunity to request a waiver within thirty (30) days after receiving the notice. A.C.A. § 6-17-414(g).

New under Act 1089 of 2015 - an educational entity may (but is not required to) grant a waiver to an applicant for a staff position contracted through an outside vendor, for example a position as substitute teacher, cafeteria worker, or custodial/maintenance worker.

The Department is now prohibited from disclosing to the educational entity the nature of the disqualifying offense. Therefore, if a waiver is requested:

- The educational entity may NOT contact the Department to obtain confirmation of the criminal record that constitutes a disqualifying offense.
- An applicant will have to contact the PLSB office to obtain a copy of his/her criminal history record in person.

Further, under FBI regulations (see Agency Privacy Requirements for Noncriminal Justice Applicants attached), the school board **shall not** identify an applicant's criminal record before the hearing in any public document, including the board's agenda. After the hearing is conducted and the applicant has disclosed the offense, the board's minutes and the resolution may contain the nature of the offense.

The hearing concerning the waiver request must be **a public hearing, at which the following circumstances are considered:**

1. The age at which the incident was committed;
2. The circumstances surrounding the incident;
3. The length of time since the incident;
4. Subsequent work history;
5. Employment references;
6. Character references; and
7. Other evidence demonstrating that the applicant does not pose a threat to the health or safety of school children or school personnel.

The educational entity's board may waive the disqualification and allow the applicant to work. If the educational entity grants the waiver and allows the employee to work, the educational entity must:

- Document the waiver in a written resolution of the board of directors (see Sample Resolution attached); and
- Send the written resolution to the Department of Education to the attention of:

Professional Licensure Standards Board
ATTN: Background Checks
Arkansas Department of Education
Four Capitol Mall, Box 30
Little Rock, AR 72201

AELS will still reflect that the applicant is disqualified because a waiver granted by the educational entity is valid only for that educational entity. If the applicant seeks employment at another educational entity, he or she will still be disqualified for employment and would have to seek a waiver from the new employer.

CHECKLIST:

____ 1. Consent Form completed and signed by educational entity and applicant

____ 2. State and federal application initiated online with payment

____ 3. Applicant is fingerprinted

____ 4. Consent Form provided to ADE

____ "old" consent forms sent to ADE

____ 5. Child Maltreatment form completed by applicant and educational entity, mailed to DHS with $10 fee

____ 6. If applicable, notification of disqualification sent to applicant (including notice of opportunity to request a waiver)

____ 7. If applicable, waiver hearing conducted as public hearing

____ 8. If a waiver is granted, copy of resolution sent to PLSB office

AGENCY PRIVACY REQUIREMENTS FOR NONCRIMINAL JUSTICE APPLICANTS

Authorized governmental and non-governmental agencies/officials that conduct a national fingerprint-based criminal history record check on an applicant for a noncriminal justice purpose (such as a job or license, immigration or naturalization matter, security clearance, or adoption) are obligated to ensure the applicant is provided certain notice and other information and that the results of the check are handled in a manner that protects the applicant's privacy.

- **Officials must provide to the applicant written notice[1] that his/her fingerprints will be used to check the criminal history records of the FBI.**
- **Officials using the FBI criminal history record (if one exists) to make a determination of the applicant's suitability for the job, license, or other benefit must provide the applicant the opportunity to complete or challenge the accuracy of the information in the record.**
- **Officials must advise the applicant that procedures for obtaining a change, correction, or updating of an FBI criminal history record are set forth at Title 28, Code of Federal Regulations (CFR), Section 16.34.**
- **Officials should not deny the job, license, or other benefit based on information in the criminal history record until the applicant has been afforded a reasonable time to correct or complete the record or has declined to do so.**
- **Officials must use the criminal history record solely for the purpose requested and cannot disseminate the record outside the receiving department, related agency, or other authorized entity.[2]**

The FBI has no objection to officials providing a copy of the applicant's FBI criminal history record to the applicant for review and possible challenge when the record was obtained based on positive fingerprint identification. If agency policy permits, this courtesy will save the applicant the time and additional FBI fee to obtain his/her record directly from the FBI by following the procedures found at 28 CFR 16.30 through 16.34. It will also allow the officials to make a more timely determination of the applicant's suitability.

Each agency should establish and document the process/procedures it utilizes for how/when it gives the applicant notice, what constitutes "a reasonable time" for the applicant to correct or complete the record, and any applicant appeal process that is afforded the applicant. Such documentation will assist State and/or FBI auditors during periodic compliance reviews on use of criminal history records for noncriminal justice purposes.

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[1] Written notification includes electronic notification, but excludes oral notification.

[2] See 5 U.S.C. 552a(b); 28 U.S.C. 534(b); 42 U.S.C. 14616, Article IV(c); 28 CFR 20.21(c), 20.33(d), 50.12(b) and 906.2(d).

NONCRIMINAL JUSTICE APPLICANT'S PRIVACY RIGHTS

As an applicant who is the subject of a national fingerprint-based criminal history record check for a noncriminal justice purpose (such as an application for a job or license, an immigration or naturalization matter, security clearance, or adoption), you have certain rights which are discussed below.

- You must be provided written notification[1] that your fingerprints will be used to check the criminal history records of the FBI.
- If you have a criminal history record, the officials making a determination of your suitability for the job, license, or other benefit must provide you the opportunity to complete or challenge the accuracy of the information in the record.
- The officials must advise you that the procedures for obtaining a change, correction, or updating of your criminal history record are set forth at Title 28, Code of Federal Regulations (CFR), Section 16.34.
- If you have a criminal history record, you should be afforded a reasonable amount of time to correct or complete the record (or decline to do so) before the officials deny you the job, license, or other benefit based on information in the criminal history record.[2]

You have the right to expect that officials receiving the results of the criminal history record check will use it only for authorized purposes and will not retain or disseminate it in violation of federal statute, regulation or executive order, or rule, procedure or standard established by the National Crime Prevention and Privacy Compact Council.[3]

If agency policy permits, the officials may provide you with a copy of your FBI criminal history record for review and possible challenge. If agency policy does not permit it to provide you a copy of the record, you may obtain a copy of the record by submitting fingerprints and a fee to the FBI. Information regarding this process may be obtained at http://www.fbi.gov/about-us/cjis/background-checks.

If you decide to challenge the accuracy or completeness of your FBI criminal history record, you should send your challenge to the agency that contributed the questioned information to the FBI. Alternatively, you may send your challenge directly to the FBI. The FBI will then forward your challenge to the agency that contributed the questioned information and request the agency to verify or correct the challenged entry. Upon receipt of an official communication from that agency, the FBI will make any necessary changes/ corrections to your record in accordance with the information supplied by that agency. (See 28 CFR 16.30 through 16.34.)

[1] Written notification includes electronic notification, but excludes oral notification.

[2] See 28 CFR 50.12(b).

[3] See 5 U.S.C. 552a (b); 28 U.S.C. 534(b); 42 U.S.C. 14616, Article IV(c); 28 CFR 20.21(c), 20.33(d) and 906.2(d).

28 CFR Sec. 16.34
Procedure to obtain change, correction or updating of identification records

If, after reviewing his/her identification record, the subject thereof believes that it is incorrect or incomplete in any respect and wishes changes, corrections or updating of the alleged deficiency, he/she should make application directly to the agency which contributed the questioned information. The subject of a record may also direct his/ her challenge as to the accuracy or completeness of any entry on his/her record to:

FBI, Criminal Justice Information Services (CJIS) Division
ATTN: SCU, Mod. D–2
1000 Custer Hollow Road
Clarksburg, WV 26306

The FBI will then forward the challenge to the agency which submitted the data requesting that agency to verify or correct the challenged entry. Upon the receipt of an official communication directly from the agency which contributed the original information, the FBI CJIS Division will make any changes necessary in accordance with the information supplied by that agency.

[Order No. 1134–86, 51 FR 16677, May 6, 1986, as amended by Order No. 2258–99, 64 FR 52226, Sept. 28, 1999]

WRITTEN RESOLUTION OF THE BOARD OF DIRECTORS OF
[EDUCATIONAL ENTITY'S NAME]
FOR WAIVER FOR CLASSIFIED EMPLOYEE UNDER
ARK. CODE ANN. § 6-17-414(g)

WHEREAS, on _____, 20__, the board of directors of **[Educational Entity]** met in an open meeting to consider the request by **[Applicant Name]** for a waiver under Ark. Code Ann. § 6-17-414(g);

WHEREAS, the board heard the request for a waiver by **[Applicant Name]** of the following disqualifying offense: **[specify the nature of the offense and date]**;

WHEREAS the board considered the following in making its determination:

1. The age at which the incident was committed;
2. The circumstances surrounding the incident;
3. The length of time since the incident;
4. Subsequent work history;
5. Employment references;
6. Character references; and
7. Other evidence demonstrating that the applicant does not pose a threat to the health or safety of school children or school personnel; and

WHEREAS, after careful consideration of the foregoing factors, the board recommends that it grant a waiver of the disqualifying offense and allow **[Applicant Name]** to be eligible for employment with **[Educational Entity]**,

NOW THEREFORE BE IT RESOLVED, that the board hereby grants the waiver request of **[Applicant Name]** pursuant to Ark. Code Ann. § 6-17-414(g).

_____ _____
Board President Date

_____
Board Secretary

SAMPLE