

## **Criminal Background Checks**

### **Acronyms**

*Criminal History Record Information (CHRI), Criminal Justice Information Services (CJIS), Local Agency Security Officer (LASO), Noncriminal Agency Coordinator (NAC), Point of Contact (POC)*

### **Policy Statement**

In accordance with law and to protect the district's students, criminal background checks on persons who are employed in the district, who volunteer, student teach, or are employed by an entity which provides the District direct or indirect student services shall be required. The criminal background investigation shall be done by means of fingerprint checks by the Division of Criminal Investigation. If no disqualifying record is identified at the state level, the fingerprints shall be forwarded by the Division of Criminal Investigation to the Federal Bureau of Investigation for a national criminal history record check. The district and district employees will comply with state and federal law, rules, procedures and policies regarding the receipt, use and dissemination of criminal history record information of any individual.

### **Designations**

1. The Superintendent or his/her designee is responsible for signing the SD Division of Criminal Investigation (SDDCI) User Agreement on behalf of the District.
2. The Superintendent or his/her designee shall be the District's Point of Contact(POC) and Noncriminal Agency Coordinator (NAC) to act as the primary contact person for the District, shall serve as the liaison between the District and SD Division of Criminal Investigation, and will fulfill all responsibilities of the POC/NAC, including but not limited to being the contact person when SDDCI sends out Audit information, shall be the contact person when an onsite Audit is scheduled, and responsible for notifying SDDCI when a new employee starts or an employee leaves so SDDCI can keep CJIS Security training records current.
3. The Superintendent or his/her designee is designated to be the Local Agency Security Officer (LASO) to act as liaison with SDDCI to ensure the agency is in compliance with security procedures. The LASO shall be knowledgeable in CHRI, policies and mandated rules and regulations as well as knowledge of IT security procedures. The LASO shall actively represent the District in all matters pertaining to information security, dissemination of information security alerts and other material within the District, and responsible for contacting SDDCI if there has been misuse of CHRI.

### **Criminal Background Checks**

1. The school district requires the Division of Criminal Investigation report before the prospective new employee, volunteer, or student teacher enters into service.
2. Any person that routinely volunteers in the district and/or has direct contact with students without employee supervision shall be subject to a criminal background check.
3. The criminal investigation required by this section with respect to a student teacher completing requirements for teacher certification shall be the responsibility of the student teacher; however, the District may rely upon the results of that investigation for employment of that person as an employee of

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- the district if such criminal investigation is less than a year old. Results of a criminal background investigation conducted by another South Dakota public school district of a student teacher, hired by the District, may be relied upon by the District if such criminal investigation is less than a year old.
4. If no disqualifying record is identified at the state level, the fingerprints shall be forwarded by the Division of Criminal Investigation to the Federal Bureau of Investigation for a national criminal history record check.
  5. Any person hired to officiate, judge, adjudicate, or referee a public event sponsored by a school district is not required to submit to a criminal background investigation.
  6. The District may, without liability, withdraw its offer of employment or status as a volunteer without notice if the report reveals a disqualifying record.
  7. A District employee who is employed simultaneously with another school district is only required to obtain one criminal background investigation, if the background investigation was conducted less than one year before the person was first employed by the District.
  8. No person may be employed by the District, either directly or by contract, and no person employed by a contract provider and who would have direct student responsibilities may provide direct student services; or volunteer in the District or student teach, if the person has been convicted of a crime of violence (murder, manslaughter, rape, aggravated assault, riot, robbery, burglary in the first degree, arson, kidnapping, felony sexual contact, felony child abuse, or any other felony in the commission of which the perpetrator used force, or was armed with a dangerous weapon, or used any explosive or destructive device), sex crimes (including but are not limited to, rape, felony sexual contact with a minor under sixteen, sexual contact with a person incapable of consenting, possessing, manufacturing, or distributing child pornography, and sexual exploitation of a minor), or distribution or trafficking in controlled substances or distribution of marijuana.
    - a. The District may also refuse to employ a person who has been convicted of a crime involving moral turpitude. "Moral turpitude" is defined "an act done contrary to justice, honesty, principle, or good morals, as well as an act of baseness, vileness, or depravity in the private and social duties which a person owes to his fellow man or to society in general.
    - b. The District may consider any criminal conviction in making a hiring decision. The District has the sole and absolute discretion to determine whether the results of a criminal background investigation disqualify a person from employment within the District.
    - c. For purposes of this policy, the term conviction means a plea or verdict of guilty or a conviction following a plea of nolo contendere (no contest) in this state or any other state.
  9. Should an applicant be disqualified from employment due to the results of a criminal background check, the District shall inform the applicant that the criminal background check results prohibit the District from employing the person. The District will not delay the employment hiring decision solely because the applicant seeks to correct his or her FBI criminal history record information (CHRI).
  10. All employees and other persons required to submit to a criminal background check pursuant to this policy must notify the district in writing if they are convicted of any offense of domestic violence, child abuse, sex offense, drug (including marijuana) or any felony offense. This notification must be made as soon as possible, but no later than five business days after the event.
  11. The District reserves the right to require any employee, volunteer, or student teacher to submit to additional criminal background checks. The District reserves the right to require any employee of an entity which provides the District direct or indirect student services to submit to additional criminal background checks.

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12. As required by state law, SDCL 13-10-15, if, as the result of a criminal conviction the school board suspends an employee without pay, or an employee resigns, or an employee is terminated, the superintendent shall within ten days of the date of the suspension or the date the employment is severed report the circumstances and the name of the employee to the S.D. Department of Education.

**Training**

The District will ensure that all employees who have access to CHRI shall be trained by SDDCI on the rules and responsibilities for the confidentiality, receipt, use and dissemination of the CHRI.

**Confidentiality**

1. Before requesting CHRI on any individual, the district will give the individual written notification that his or her fingerprints will be used to obtain the CHRI of the individual. Information received by the district pursuant to a criminal background check is confidential. Only authorized persons within the district may access, view or use CHRI. Authorized persons may not share or otherwise disclose information contained in CHRI to unauthorized persons unless explicitly allowed for in this procedure.
2. Unless otherwise allowed by law, the District will only use this information for the district's internal purposes in determining the suitability of an applicant, employee, or other worker on district property. The district will note in an employee's or applicant's personnel file that the background check was completed and if the person was disqualified by the CHRI for employment or assignment. The District will keep the CHRI in a separate file in a location that is only accessible to persons who need to know the information to carry out their responsibilities with the District.
3. Individuals that have access to CHRI will receive CJIS security training provided by SD DCI. Once the individual has completed the CJIS online training and has taken the test each individual will receive and acknowledge in writing the receipt of the following:(1) User Rules of Behavior Acknowledgement form, (2) CHRI Disciplinary Policy, and (3) Acknowledgment Statement of Misuse. The District will keep a copy of the signed documents in each individual's personnel file.

**Access and Retention**

1. The District will not disseminate CHRI across state lines.
2. FBI rules prohibit the District from providing a copy of the FBI CHRI to the person who is the subject of the criminal background check.
3. The results of the background investigation done by the District shall be transferred to another South Dakota public school district if the other public school district, or current District employee, submits a written request to the District that the results be transferred to the other public school district. The District employee who was the subject of the criminal background investigation must sign a written release authorizing the transfer. The information will be sent by U.S. Mail or encrypted email.

**Recordkeeping**

A Secondary Dissemination Log shall be maintained in which all authorized disseminations of FBI and State DCI criminal background check results are recorded. The following shall be recorded in the District's Secondary Dissemination Log:

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1. name of District;
2. name of person subject to the criminal background check review;
3. date of birth of person subject to the criminal background check review;
4. SD public school district requesting FBI and DCI criminal background check results and person/title requesting on behalf of the SD public school district;
5. written request signed by person subject to the criminal background check review for a copy of the SDDCI criminal background check results, attached to the Secondary Dissemination Log; NOTE: FBI CHRI cannot be released to the person who is the subject of the criminal background check.
6. date of release of criminal background check results;
7. description of the record that was shared;
8. how the record was sent or received
9. person to whom criminal background check results were disseminated;
10. signature of District employee disseminating the criminal background check review pursuant to a valid request.

The Secondary Dissemination Log shall be maintained until the onsite audit is complete and the District receives from the SD Division of Criminal Investigation written notice of a successful Policy Compliance Review, unless the log is needed or required for other purposes

### **Security**

The district will provide for the security of any CHRI received, including the appropriate administrative, technical and physical safeguards to provide for the security and confidentiality of the information. This includes, but is not limited to, the following:

1. The LASO shall maintain a list of school district authorized persons who have access to CHRI.
2. In those cases when the District has physical copies of CHRI, the District will restrict access to authorized persons only. Physical copies of CHRI, if any, will be maintained in a controlled, secure environment, such as a locked cabinet in a room that is free from public or unauthorized access. The room or the locked cabinet will include an "Authorized Personnel Only" sign.
3. The District will dispose of records securely. Physical records will be cross-shredded or incinerated
4. The District will not provide auditors access to CHRI unless the auditor is authorized by the SDDCI or the FBI.

### **Security Incident Response Plan**

All District employees will immediately report to the LASO information security incidents such as the theft or loss of physical records or the hacking or failure of electronic systems or suspicions that an incident has or will take place. The LASO will document receipt of all reports, investigate incidents and report incidents to SDDCI. LASO documentation will include (1) date of security incident, (2) location of security incident, (3) systems affected, (4) method of detection, (5) nature of security incident, (6) description of security incident, (7) actions taken/resolution, (8) current date, and (9) contact information for LASO.

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**Consequences**

Employees who fail to keep background check results confidential or fail to follow this policy or any laws or rules regarding the access, receipt, use or dissemination of CHRI as required by law will be subject to disciplinary action up to and including termination. Unauthorized requests, receipts, release, interception, dissemination or discussion of CHRI may also result in criminal prosecution.

Adopted January 8, 2018