

**A. GENERAL PRINCIPLES**

It is the policy of the Elkin City Schools Board of Education to provide all applicants for employment with equal employment opportunities and to provide current employees with training, compensation, promotion and other attributes of employment without regard to race, color, religion, national origin, military affiliation, genetic information, sex (including pregnancy, childbirth, sexual orientation, and gender identity), age (40 or older) or handicap, except where sex, age or physical requirements are essential occupational qualifications. All candidates will be evaluated on their merits and qualifications for positions.

The Board also is committed to diversity throughout the programs and practices of the school district. To further this goal, the recruitment and employment program should be designed to encourage a diverse pool of qualified applicants.

**B. RECRUITMENT**

Recruitment for a specific vacancy will be undertaken only after the need and qualifications for the position are established and proper authorization is obtained. All vacancies will be adequately publicized within the school district so that employees may learn of promotional opportunities. Vacancies also may be publicized externally to attract qualified applicants.

**C. CRIMINAL HISTORY**

Except as otherwise provided in Section D of this policy, applicants must notify the office of human resources immediately if they are arrested, charged with or convicted of a criminal offense (including entering a plea of guilty or *nolo contendere*) other than a minor traffic violation (i.e., speeding, parking or a lesser violation). Notice must be in writing, must include all pertinent facts and must be delivered to human resources no later than the next scheduled business day following the arrest, charge or conviction, unless the applicant is hospitalized or incarcerated, in which case the applicant must report the alleged violation within 24 hours after his or her release. Upon judicial action in the matter, the applicant must report the disposition and pertinent facts in writing to human resources no later than the next business day following adjudication.

A criminal history check and a check of sex offender registries must be conducted on all final candidates for employment with the school system. Criminal history checks must be conducted in accordance with state law and any procedures established by the superintendent. School officials shall not require candidates to disclose expunged arrests, charges, or convictions and shall not ask candidates to voluntarily disclose such information without first advising that disclosure is not required. The superintendent or designee shall report to the State Board of Education any licensed individual who is found

to have a criminal history, as required by State Board policy. Special requirements are described in Section D of this policy for criminal history checks of candidates for certain positions working with pre-school children or working in afterschool or developmental day programs.

A final candidate for employment or for hiring as an independent contractor will be excluded from hiring on the basis of criminal conduct only when doing so is job-related and consistent with business necessity. If a final candidate is found to have been convicted (including entering a plea of guilty or nolo contendere) of a criminal offense, other than a minor traffic violation, the superintendent shall determine whether the individual is qualified for employment despite the criminal history by considering, among other things, whether the individual poses a threat to the safety of students or personnel or has demonstrated that he or she does not have the integrity or honesty to fulfill the duties of the position. The following factors will be considered in making the determination: (1) the nature and gravity of the offense or conduct; (2) the time that has passed since the offense or conduct and/or completion of the sentence; and (3) the nature of the job sought. Before the superintendent may exclude a final candidate based on his or her past criminal convictions, the superintendent must give the candidate the opportunity to demonstrate that the exclusion does not properly apply to him or her. The requirements of this paragraph do not apply to a child care provider who is determined to be disqualified by the Division of Child Development and Early Education on the basis of a criminal history check conducted pursuant to G.S. 110-90.2, 42 U.S.C. 9858f, and 45 C.F.R. 98.43. (See Section D of this policy).

The board has determined that every position with the school system, regardless of whether the position is located in a school or elsewhere, potentially entails contact with students, either on a regular, occasional, or emergency basis. For that reason, no individual who is a registered sex offender subject to the provisions of policy 5022, Registered Sex Offenders, will be hired for any position with the school system.

In addition, each contract executed by the board with an independent contractor or for services of independent contractors must require the contractor to check sex offender registries as specified in policy 5022, Registered Sex Offenders.

**D. CRIMINAL HISTORY CHECKS OF CHILD CARE PROVIDERS**

For purposes of this section, a “child care provider” is:

1. any person who works or is a final candidate seeking to work in a classroom or program licensed by the Department of Health and Human Services, Division of Child Development and Early Education (DCDEE); and

2. any person, including a volunteer, who has unsupervised contact with children enrolled in such classrooms or programs.

Before beginning initial employment or volunteer services and at least every five years thereafter, each child care provider must complete a criminal background check that meets the requirements of G.S. 110-90.2, 42 U.S.C. 9858f, and 45 C.F.R. 98.43 and present a letter issued by DCDEE indicating that the individual is qualified to have responsibility for the safety and well-being of children based on the individual's criminal history.

No person shall (1) be employed, continue to be employed, or be permitted to volunteer as a child care provider, or to otherwise have unsupervised contact with students enrolled in a licensed classroom or program operated by the school system or (2) be counted in the staff/child ration of such classroom or program, unless the person hold a current valid qualification letter issued by DCDEE. However, a child care provided with provisional status may be employed pending final results of the criminal background check but shall be subject to the restrictions established by 10A N.C.A.C 09.2703(f).

The application fee and cost of fingerprinting associated with the DCDEE criminal history check process shall be borne by the board.

A child care provider who has incurred any pending charges, indictments, or convictions (other than minor traffic offenses) since the last qualification letter was issued by DCDEE shall notify the assistant superintendent of human resources in writing of such charges within five business days or before returning to work, whichever comes first. The assistant superintendent of human resources shall notify DCDEE within one business day of being notified.

The superintendent or designee shall include the criminal history mandatory reporting requirement in all new employee orientation information for child care providers. The superintendent shall also be responsible for establishing effective recordkeeping methods and other processes as necessary to ensure compliance with all legal requirements pertaining to criminal history record checks of child care providers.

**E. SELECTION**

1. Qualifications

Candidates for employment will be selected based upon their likely ability to fulfill duties identified in the job description as well as performance standards established by the board. In making the determination, the following information will be considered:

- a. application;
- b. education and training;
- c. licensure and certification (when applicable);
- d. relevant experience;
- e. personal interviews; and
- f. references and/or background checks;
- g. acceptable drug screen results;
- h. Form I-9 Employment Verification Form
- i. acceptable medical screening to include adequate immunizations;
- j. an acceptable background check, and
- k. social security number verification

When several applicants for the same position are equally qualified and suitable for the position, employees within the school system will be given priority.

2. Nepotism

When making recommendations for the selection and assignment of personnel, the superintendent shall attempt to avoid situations in which one employee occupies a position in which he or she has influence over the employment status, including hiring, salary, and promotion, of another employee who is a member of the first employee's family. No administrative or supervisory personnel may directly supervise a member of his or her immediate family defined as spouse, children, siblings, or parents.

3. Employment Procedures

All applicants selected for employment must be recommended by the superintendent and approved by the board. In situations in which the employee must be hired between board meetings, the superintendent is authorized to approve

hiring such personnel, contingent upon approval by the board at its next scheduled board meeting.

State guidelines must be followed in selection and employment procedures. The superintendent shall develop any other procedures necessary to implement this policy.

The superintendent shall develop procedures for verifying new employees' legal status or authorization to work in the United States as required by law.

Effective February 1, 2007, all employees who have been selected for hire must have their social security number verified by the Department of Homeland Security.

Any applicant, whose social security number cannot be verified by the Department of Homeland Security and wishes to continue employment with Elkin City Schools, will follow processes outlined by Human Resources to resolve any conflicts. Failure to do so may result in the termination of employment by Elkin City Schools.

A criminal records check will be conducted of all final candidates for all positions that would place the candidates in the schools and/or other environments where they would be expected to interact regularly with the students. Such positions include substitute teachers, driver training teachers, bus drivers, clerical staff, and custodians, and Board approved volunteer positions. This measure is necessary in maintaining a safe and drug free school environment. In addition, annual criminal history rechecks will be conducted on current personnel. Criminal records checks will be conducted in accordance with state laws and any procedures established by the superintendent.

In making recommendations for the selection of personnel, the Superintendent will give every consideration to conditions which could result in the employment of two members of an immediate family where one member would occupy a position which has influence over the other's employment, promotion, salary or other related management and personnel considerations. No administrative or supervisory personnel will directly supervise a member of his or her immediate family defined as spouse, children or parents.

**F. BACKGROUND CHECK PROCESS**

The applicant or conditional employee will be rejected for employment when supporting records reveal a "criminal history," as defined on the criminal records check to mean the

conviction of a crime, whether a misdemeanor or felony, that indicates the employee (1) poses a threat to the physical safety of students or personnel, or (2) has demonstrated that he or she does not have the integrity or honesty to fulfill his or her duties as a public school employee. Conviction of a crime, as used in this policy, includes the entry of (1) a plea of guilty, nolo contendere, no contest or the equivalent, (2) a verdict or finding of guilty in a court of law or military tribunal or (3) a prayer for judgment. The school system shall consult with legal counsel or obtain a certified copy of applicant's or conditional employee's conviction notice prior to any final employment decision based on the criminal history.

If the school system considers criminal history in making a decision adverse to an applicant or conditional employee, the superintendent or designee shall make written findings with regard to how it used such information.

The school system shall provide to the State Board of Education information on where to obtain the records of conviction, including the person's name, criminal case number, and the county of conviction for a person who is certificated, certified or licensed by the State Board of Education where the school system discovers the "criminal history" through an employment criminal records checks.

If a criminal records check reveals that an applicant or conditional employee was charged with but not convicted of a crime, whether misdemeanor or felony, that suggests that the employee may not meet the employment standards of the board, the administration may conduct a further investigation into the person's conduct and circumstances surrounding the charge to determine the person's fitness for employment.

Applicants and current employees shall notify Human Resources if they are charged with or convicted of a criminal offense (including entering a plea of guilty or nolo contendere) except minor traffic violations. Further, any employee charged with or arrested for any violation(s) of a criminal or serious traffic vehicular law (e.g., vehicular homicide, hit and run, or any such law classified as a felony or for which a conviction could lead to incarceration) or ordinance must report such fact, in writing, to the administrator in charge of the department, office, or school to which the employee is assigned no later than the next scheduled business day. In cases involving employee hospitalization and/or incarceration (jail) involving the stated violation, the employee shall report the alleged violation within 24 hours after his/her release. Such report shall include all pertinent facts concerning the alleged violation(s). Following receipt by the administrator, such confidential report will be forwarded as soon as possible, but no later than one scheduled business day to the Director of Human Resources, or administrative designee, who shall carefully review the situation along with any recommendations from the administrator as to what action, if any, is appropriate at that time.

It is the employee's responsibility to keep his/her appropriate administrator apprised of the judicial process in the matter. Upon judicial action in the matter, the employee must report the disposition and pertinent facts, in writing, to the administrator no later than the next scheduled business day following adjudication. Following receipt by the site administrator, the confidential written report along with any recommendations will be presented (delivered) as soon as possible, but no later than one business day, to the Director of Human Resources or administrative designee who shall carefully review the situation along with any recommendations from the administrator as to what action, if any, is appropriate at that time.

A criminal records check will be conducted annually on rehired and current employees (including substitutes), as well as on independent contractors and volunteers whose services involve contact with students. If the school system conducts these checks through the North Carolina Department of Justice or through a private service, it must first obtain the individual's consent.

If a final candidate for employment or hiring as an independent contractor\* is found to have a criminal record, the Superintendent must determine whether the individual poses a threat to the physical safety of students or personnel or has demonstrated that he or she does not have the integrity or honesty to fulfill the duties of the position.

If the Superintendent recommends such a candidate to the Board for employment, the Board must be notified of the criminal record and the basis for the superintendent's determination.

**G. CONTRACTED PERSONNEL**

\*Contractor - the local school board (hereby referred to as "employer") will conduct an annual check of the state and national sex offender registries (NC Sex Offender, Public Protection Registration Program, the NC Sexually Violent Predator Registration Program, and the National Sex Offender Registry of that person) as a term of any contract that it enters into. The term

"contractual personnel" is defined as "any individual not hired through a third-party contractor whose contractual job involves direct interaction with students." If hired by a third-party contractor, the responsibility to provide documentation of the above-mentioned criminal record checks as required by this policy and conditions of a written contract would be the responsibility of the third-party vendor. In addition, the School Board must require (as a term of the contract) that any contractual personnel on a sex offender registry be PROHIBITED from having direct interaction with students.

All personnel selected for employment must be recommended by the Superintendent and approved by the Board.

**H. CRIMINAL RECORD CHECK REQUIREMENTS FOR PRE-KINDERGARTEN STAFF**

Under North Carolina law and, as of December 2008, Pre-K Staff will be required to undergo an initial criminal background check during the employment hiring process and, in addition, a requalification check for current employees every three years.

A substitute employee who is employed for more than five (5) days, whether working full- or part-time, shall also be subject to a recheck if the employment status has been greater than three (3) years since the initial criminal background check or subsequent re-qualification checks.

State guidelines will be followed in the selection and employment procedure. The superintendent will develop any other procedures necessary to carry out this policy.

Legal References: Age Discrimination in Employment Act of 1967, 29 U.S.C. 621 *et seq.*; Americans with Disabilities Act of 1990, 42 U.S.C. 12101 *et seq.*; Equal Educational Opportunities Act of 1974, 20 U.S.C. 1703; Equal Pay Act of 1963, 29 U.S.C. 206; Fair Credit Reporting Act, 15 U.S.C. 1681 *et seq.*; Genetic Information Nondiscrimination Act of 2008, 42 U.S.C. 2000ff *et seq.*; Military Selective Service Act, 50 U.S.C. Appx. 453; Rehabilitation Act of 1973, 29 U.S.C. 794; Title VII of the Civil Rights Acts of 1964, 42 U.S.C. 2000e *et seq.*; Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 *et seq.*; Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. 4301 *et seq.*; 8 U.S.C. 1101 *et seq.*; 42 U.S.C. 9858f; 45 C.F.R. 98.43; *Bostock v. Clayton County*, 590 U.S., 140 S. Ct. 1731 (2020); *Green v. Missouri Pacific Railroad*, 523 F.2d 1290 (8<sup>th</sup> Cir. 1975); *Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964*, U.S. Equal Employment Opportunity Commission (April 25, 2012), available at [http://www.eeoc.gov/laws/guidance/arrest\\_conviction.cfm](http://www.eeoc.gov/laws/guidance/arrest_conviction.cfm); G.S. 14-208.18; 15A-153; 110-90.2; 115C-12.2, -36, -47, -276(j), -332; 126-7.1(i), -16; 127A-202.1 *et seq.*; 127B-10, -12, -14; 143B-421.1, -1209.11; *Leandro v. State*, 346 N.C. 336 (1997); 10A N.C.A.C. 09 .0102, -.2701, -.2702, -.2703; 16 N.C.A.C. 6C .0313; State Board of Education Policy BENF-009

Cross References: Board Authority and Duties (policy 1010), Registered Sex Offenders (policy 5022)

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