

SOUTH DAKOTA BOARD OF REGENTS

Policy Manual

SUBJECT: Background Checks

NUMBER: 4:47

1. Preamble

It is the policy of the Board of Regents, to promote a safe and secure environment for its faculty, staff, students, volunteers, and visitors. Therefore, the system will take reasonable steps to ensure hiring decisions effectively contribute to lessening unnecessary risk. The system has established this background check policy and minimum standards to accomplish this purpose.

Furthermore, this policy is intended to support the verification of credentials, criminal history, credit status, and other information related to employment decisions that assist the University, Special School, or Board of Regents in meeting its commitments.

2. General Policy and Applicability

It is the policy that certain positions require credential, criminal, and other background information verified as a condition of employment. Background checks may be conducted by law enforcement agencies, credit reporting agencies, and by Board personnel. Law enforcement agency checks are required by statute for certain positions. The Board or institutions may require credit, criminal, education, employment reporting, etc for other positions, in which case, a reporting agency selected or approved by the Executive Director will be used. Whether or not a law enforcement or reporting agency background check is required, the Board reserves the prerogative to conduct independent background checks of prospective employees using Board or institutional personnel, and such checks may include the review of information accessible by the public through the Internet.

Each University, Special School, and the Board Office will identify positions needing a background check. Because each institution has different needs, there are no system standards established to identify core or applicable positions. This responsibility will be held at the institution level. Each institution shall identify the positions for which background checks are deemed appropriate in their hiring practices and affirmative action plans.

3. Definitions

A. Background Check is the process of acquiring records regarding a final candidate that are used to determine suitability for employment. Components of a background check may include the following:

- 1) "Credit history check" means checking the credit history of the selected applicant or employee. (Federal laws prohibit discrimination against an applicant or employee as a result of bankruptcy.)
- 2) "Criminal history check" means verifying that the selected applicant or employee does not have any undisclosed criminal history in every jurisdiction where the applicant or employee currently resides, has resided, or has been employed.
- 3) "Educational verification" means ensuring that the selected applicant or employee possesses the educational credentials beyond high school listed on the application, resume, or cover letter or otherwise cited by the candidate that qualify the individual for the position sought.
- 4) "Employment verification" means ensuring that the selected applicant or employee actually worked in the positions listed on the application, resume, or cover letter or otherwise cited by the candidate that qualify the individual for the position sought, as well as all employment during a period of at least seven (7) years immediately preceding application. This verification should include dates of employment and reasons for leaving each position.
- 5) "License verification" means ensuring that the selected applicant or employee possesses all the licenses listed on the application, resume, or cover letter or otherwise cited by the candidate that qualify the individual for the position sought and verification of any license required for the position, including verification of the disposition of such licenses. This includes any motor vehicle drivers licenses required for the associated position.
- 6) "Limited criminal history check" means verifying that the selected applicant or employee does not have any undisclosed criminal history in the jurisdiction where the applicant or employee currently resides or has been previously employed, or where the applicant or employee last resided, if the applicant or employee only recently moved to a location near the institution or location working.
- 7) "Limited sex and violent offender registry check" means verifying that the selected applicant or employee does not have undisclosed convictions of certain sex and violent crimes in the jurisdiction where the applicant or employee currently resides, or where the applicant or employee last

resided, if the applicant or employee only recently moved to a location near the institution or location working.

- 8) "Sex and violent offender registry check" means verifying that the selected applicant or employee does not have undisclosed convictions of certain sex and violent crimes in every jurisdiction where the applicant or employee currently or has resided.

- B. Fair Credit Reporting Act is the federal law that regulates collection, dissemination, and use of consumer credit information.
- C. "Employee" is defined as any person employed by the Regental system, whether full- or part-time.
- D. Final Candidate includes the internal or external applicant identified as the finalist for the position.

4. Policy Provisions

- A. Background checks must be conducted on all positions with certain responsibilities identified at the local University, Special School or Board of Regents in compliance with applicable laws, regulations, and standards. Where an institution requires that a background check be conducted by a consumer credit agency, Human Resources will contract for such services through the third party vendor identified by the Regental system.
- B. Notices and advertisements for open positions must provide notification that final candidates are subject to this policy.
- C. Human Resources may determine to conduct background checks on final candidates for positions not designated as requiring a background check listed at their University, Special School, or the Board Office. When doing so, the institution must comply with Minimum Standards for Conducting Background Checks and perform the check with the Regental system approved vendor(s).
- D. All offers are contingent upon successful completion of the background check. All offers of employment, oral or written, must include a statement as follows: "This offer is contingent on the university's verification of credentials and other information required by law and/or university policies, including but not limited to a criminal background check." The YourFuture applicant system has been set up to identify conditional offers of employment.
- E. The Background Check Disclosure, Authorization, and Release form as well as the Summary of Your Rights under the Fair Credit Reporting Act must be used for any background checks.

5. Responsibilities

A. Human Resources Office or Other Designated Department by the Institution

- 1) The human resources office at each University, Special School, and Board Office will determine which of the components of the background check it will perform based on job duties. HR will work directly with the department and vice presidents on the components if not defined at their institution.
- 2) All offers of employment (if a background check is used), oral and written, shall include a statement as follows: "This offer is contingent on the university's verification of credentials and other information required by law and/or university policies, including, but not limited to, a criminal background check."
- 3) If the background check indicates that there are no convictions or other indications of misleading information, the third party vendor will inform human resources of the request who in turn will inform the applicant that the employment offer is confirmed.
- 4) If the background check indicates that there are convictions or other anomalies, the third party vendor will inform human resources. The approved third party vendor will supply the report to the applicant.
- 5) If the background check reveals convictions which the individual disclosed in the application, human resources will review the report in light of the position duties. Human resources and the hiring department will evaluate each incident, including any additional information that the individual provides, before the offer of employment is confirmed or withdrawn. The existence of a conviction does not automatically disqualify an individual from employment. Relevant considerations may include, but are not limited to, the nature and number of the convictions, the dates of convictions, and the relationship that a conviction has to the duties and responsibilities of the position. Any decision to accept or reject an individual with a conviction is solely at the discretion of the University, Special School, or Board of Regents. (All related information will be treated as confidential, and protected as such.)
- 6) If unreported convictions are revealed in the background check, the offer of employment may be withdrawn and, if employed, the individual could be subject to discipline, unless the individual shows that the report is in error. The decision to reject or discipline an individual with an unreported conviction is solely at the discretion of the University, Special School, or Board of Regents. (All related information will be treated as confidential, and protected as such.)

- 7) In the event that the results of the background check influences a decision to withdraw an employment offer or terminate employment, human resources will inform the hiring department and the individual.
- 8) All results of a background check are considered confidential and will be maintained in confidential files by the approved third party vendor.

B. The University, Special School, or Board of Regents will be responsible for any fees associated with any of the components of the background check process. (Institutions will decide how to fund the cost of associated fees.)

6. Confidentiality

Records gathered as a result of a background check are part of an employee's personnel file; however, the approved third party vendor will keep such records in files segmented by the individual's name separately from the individual's personnel file held at the University, Special School, or the Board Office. These records will be maintained in a secure vendor on-line database.

7. Sanctions for Violations

Violations of policies, including providing false or misleading information used for any of the above background checks, will be handled in accordance with applicable institution or BOR policies and procedures; which may include disciplinary actions up to and including termination from employment.

8. Appeals

If the offer is withdrawn as the result of a background check or if the employee is terminated as the result of an unreported conviction, the employee may appeal the withdrawal of the offer or the termination pursuant to Board of Regents policy and procedures (BOR Policy 4.8, BOR Policy 4.9, BOR Policy 4.7, or the Collective Bargaining Agreement as applicable to the classification of the position/employee).

SOURCE: BOR December 2010; BOR October 2011.