

# SOUTH DAKOTA BOARD OF REGENTS

## Policy Manual

**SUBJECT:** Employment Background Checks

**NUMBER:** 4.1.9

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### **A. PURPOSE**

To promote a safe and secure environment for its faculty, staff, students, volunteers, and visitors. The Board will take reasonable steps to ensure hiring decisions effectively contribute to reduced risk.

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.

### **B. DEFINITIONS**

**1. Background Check:** 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:

- 1.1. "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.)
- 1.2. "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.
- 1.3. "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.
- 1.4. "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.
- 1.5. "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.

- 1.6. "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.
- 1.7. "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.
- 1.8. "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.
- 1.9. "Sanction check" means verifying that the selected applicant or employee is not debarred or on a sanction list identified in BOR Policy 1.7.4.
2. **Fair Credit Reporting Act:** The federal law that regulates collection, dissemination, and use of consumer credit information.
3. **Employee:** is defined as any person employed by the Regental system, including full-time, part-time, temporary, graduate assistant, and student employee statuses.
4. **Favorable Background Check:** A background check that does not indicate any criminal record, information inaccuracies or discrepancies, or other position-related concerns.
5. **Institution:** Black Hills State University, Dakota State University, Northern State University, South Dakota School of Mines & Technology, South Dakota State University, South Dakota School for the Blind and Visually Impaired, South Dakota Services for the Deaf, University of South Dakota, and the Office of the Executive Director.
6. **Personally Identifiable Information:** Information that can be used to distinguish or trace an individual's identify or, when combined with other personal or identifying information, is linked or linkable to a specific individual.
7. **Final Candidates:** Includes the internal or external applicant(s) identified as the finalist, or finalists, for the position.

## **C. POLICY**

1. Certain positions require credential, criminal, and other background information verified as a condition of employment, volunteer status, or as required in BOR Policy 1.6.4 – Minors on Campus.
2. Background checks may be conducted by law enforcement agencies, credit reporting agencies, or designated employees of the Board of Regents and its institutions.
3. Law enforcement agency checks are required by statute for certain positions.

4. The Board or institutions will require credit, criminal, education, employment reporting, or other background verifications for positions as required or deemed necessary, in which case, a reporting agency selected or approved by the Executive Director will be used.
5. 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.
6. As a condition of employment or appointment as a volunteer, the Board performs the following background check components on positions with the following responsibilities in conformity with applicable laws, regulations, and standards:
  - 6.1. The Board will perform Criminal History Checks, Sex and Violent Offender Registry Checks, or combinations thereof for all positions that entail:
    - 6.1.1. Direct access to, or responsibility for, controlled substances.
    - 6.1.2. Direct access to, or responsibility for, hazardous materials or hazardous biological agents.
    - 6.1.3. Access to, or control of confidential data files, essential electronic information resources, confidential information, Personally Identifiable Information, or combinations thereof.
    - 6.1.4. Master key access to multiple buildings or large amount of space, or control of Board of Regents facilities.
    - 6.1.5. Authority for committing financial resources, or direct assets to cash.
    - 6.1.6. Direct responsibility for care, safety, or security of human beings, including also vulnerable individuals, minors, or disabled persons.
    - 6.1.7. All Senior administrators.
    - 6.1.8. Operation of a vehicle or motorized equipment as an essential function of the position.
    - 6.1.9. Any other positions funded by a contract which lawfully requires a background check.
  - 6.2. The Board will perform educational, licensure and employment background verifications where the assigned work requires specific education, experience and or licensures or certifications.
7. Where a background check must be conducted by a consumer credit agency, the Board will contract for such services through the third-party vendor as identified by the system office of human resources.
8. Human resources may determine additional background checks are required for a position not designated in this Policy in conformity with applicable law and SDBOR policy.
9. Notices and advertisements for open positions must provide notification that final candidates are subject to this policy.
10. A final candidate's failure to submit to a required background check will result in withdrawal of the conditional offer of employment or volunteer designation.

11. All offers are contingent upon successful completion of the background check. All offers of employment, oral or written, must include a statement that indicates this contingency.
12. 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.
  - 12.1. In accordance with BOR Policy 1.7.4, the human resources office at each university, special school, or board office will determine whether a sanctions check is necessary based on the employee job duties and responsibilities. If the human resources office determines a sanctions check is necessary, the institution will ensure a sanction check screening is completed for the candidate as part of their background check and for verification of employment eligibility prior to hire date. When a new employee is not subject to a background check under this policy, Shared Services is responsible for sanction check screening if necessary as dictated by the employee job duties and responsibilities.
13. If the background check indicates that there are debarments, sanctions list, convictions or other anomalies, the third party vendor will inform human resources. The approved third party vendor will supply the report to the applicant.
14. 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.
  - 14.1. 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.
  - 14.2. 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.)
15. If unreported debarments, sanctions list, or 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 debarment, sanctions list, or conviction is solely at the discretion of the University, Special School, or Board of Regents.
16. In the event that the results of the background check influence a decision to withdraw an employment offer or terminate employment, human resources will inform the hiring department and the individual.
17. All results of a background check are considered confidential and will be maintained in confidential files by the approved third-party vendor.
18. Human resources maintains the confidential records of a the background check results as a part of, but separate from, the personnel file.

19. 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.
20. If the employee is terminated as the result of an unreported conviction, sanction list, or debarment the employee may appeal the termination pursuant to Board of Regents policy and procedures.

**FORMS / APPENDICES:**

None

**SOURCE:**

BOR December 2010; BOR October 2011; BOR August 2023; October 2023 (Clerical).