

## **G.06 – Background Checks and Employment History Policy and Procedure**

SECTION 1. PURPOSE: To comply with NMSA 1978, §22-10A-5 (2019), and §22-10A-5.2. These laws require Governing Bodies of public schools to adopt policies and procedures for obtaining and reviewing applicant employment histories, and background checks on applicants who have been offered employment, or who apply to be a volunteer, or who provide services to the School as a contractor or contractor's employee, who may have unsupervised contact with children or students on School premises or during School-sponsored events, including but not limited to online learning, and to address application, review, and reporting requirements.

SECTION 2. POLICY STATEMENT. The School is committed to ensuring that its academic and related programs are staffed with qualified employees, competent volunteers, and ethical contractors. It is committed to providing a safe and secure working and learning environment for employees, students, visitors, and others doing business with our School. Further, this policy is adopted to ensure protection of the School's property and other interests. To that end School Administration will obtain applicant Employment histories and complete a Background Check as set forth herein to safeguard our School community from individuals who have a history of ethical misconduct and/or criminal conduct of a nature that may present an unreasonable risk of harm to our School community.

SECTION 3. PERSONS AFFECTED. This policy applies to all applicants for employment, and all volunteers/contractors/contractors' employees/others who may have unsupervised contact with children or students while on School's premises or during School sponsored events, including online learning. Failure or refusal to cooperate with the application requirements, and/or with Administration's completion of a Background Check, disqualifies the applicant from employment, volunteering at the School, or contracting with the School and/or the Governing Body. This policy does not apply to parents/guardians supervising only their own children during periods of online learning.

SECTION 4. USE OF BACKGROUND CHECK INFORMATION; DISCRIMINATION SAFEGUARDS. No applicant shall be required to disclose the applicant's criminal record prior to being offered a position contingent upon completion of a satisfactory Background Check. Subject to mandatory child abuse and ethical misconduct reporting requirements, information discovered through the School's Employment History/Background Check processes will be used solely for the purpose of evaluating an applicant's suitability for employment, volunteering or contracting, and will not be used to discriminate against a Finalist on the basis of race, color, religion/creed, sex/gender, age, sexual orientation, gender identity/expression, pregnancy, national origin, genetic information, marital/familial status, mental or physical disability, military, veteran status, or other protected status.

Convictions of felonies or misdemeanors contained in the FBI record shall be used in accordance with the New Mexico Criminal Offender Employment Act; provided that other information contained in the FBI record, if supported by independent evidence, may form the basis of employment decisions for just cause.

**SECTION 5. DISQUALIFYING ETHICAL MISCONDUCT/ CRIMINAL CONVICTIONS.** An applicant may be disqualified from employment/volunteering/contracting for ethical misconduct (defined below) or if convicted of a felony or misdemeanor involving moral turpitude and the criminal conviction directly relates to the position for which the individual will be employed, volunteering or contracting. The Governing Body finds that ethical misconduct (defined below), and criminal offenses listed herein, are so severe and directly relate to employment in any position at a public school that initial or continued employment, service as a volunteer, or contracting with individuals who have committed ethical misconduct or who have been convicted of such crimes, places the safety of students, employees and School visitors at an unreasonable risk. Ethical misconduct, and/or such crimes are, therefore, presumed to disqualify an individual from initial or current employment, volunteering or contracting with School. Such crimes include but are not limited to:

Criminal homicide, murder, capital murder, kidnapping, aggravated kidnapping, smuggling of persons, prostitution, false imprisonment, trafficking of persons, improper relationship between educator/school employee and student, public lewdness involving a child or student, indecency with a child, injury to a child, child abuse or neglect, abandoning or endangering a child, sale or purchase of a child, child pornography, sexual solicitation of a child.

Before any offer of employment or opportunity to volunteer or contract is withdrawn by the Head Administrator, applicants will be provided the opportunity to respond to such information as set forth in Section 13(F), below.

**SECTION 6. FELONY CONVICTION.** A Finalist may be denied employment based on a conviction for a felony or misdemeanor involving moral turpitude that *does not* directly relate to the particular employment position, volunteer service or contract for service, but which is a crime listed in Section 5, if the conviction is less than seven (7) years old, and the Head Administrator determines after an investigation demonstrates that the person has not been sufficiently rehabilitated to warrant the public trust. Before any offer of employment or opportunity to volunteer or contract is withdrawn pursuant to this Section, the Finalist will be provided the opportunity to respond to such information as set forth in Section 13(F), below.

**SECTION 7. CONFIDENTIALITY/MANDATORY REPORTING:**

A. Confidentiality. Records and related information provided to School during the Background Check process including from the Finalist's FBI Record shall be deemed confidential and shall not be disclosed to any person who is not authorized to be involved in the decisions or to receive information concerning a Finalist, Volunteer or Contractor.

B. Protection. Information obtained by School through an FBI Report or information from a criminal history check, shall only be used in accordance with the Criminal Offender Employment Act, provided that other information contained in the FBI Record or other criminal report, if supported by independent evidence may form the basis for an employment decision, decision to enter a contract or to permit a volunteer to serve. Such information shall be maintained

separately from personnel or other confidential files that are accessible only by authorized School employees.

C. Use of Information. Subject to mandatory child abuse and ethical misconduct reporting requirements, and to Subsections 7.D and E herein, information disclosed by a criminal Background Check shall only be used to make employment, volunteering or contract decisions.

D. The Head Administrator shall immediately report to the New Mexico Public Education Department any known convictions of a felony or misdemeanor involving moral turpitude of a licensed school employee, school contractor/contractor's employee, and/or school volunteer, as required by law.

E. The Head Administrator or designated representative shall investigate all allegations of ethical misconduct about any school personnel, employee, volunteer, contractor, or contractor's employee, who resigns, is discharged or terminated or otherwise leaves employment after an allegation has been made. If the investigation results in a finding of ethical misconduct by a licensed school employee, the Head Administrator or designated representative shall report the identity of the licensed school employee within 30 days following the separation from employment or immediately if the finding of ethical misconduct is sexual misconduct with an adult or child. The Head Administrator or designee shall also report allegations of sexual assault or sexual abuse involving any school personnel, employee, volunteer, contract or contractor's employee to the appropriate law enforcement agency. No agreement between a departing school employee and the School shall diminish or eliminate the responsibility of investigating and reporting the ethical misconduct to the NMPED or, if legally mandated, to law enforcement, and any such agreement to the contrary is void.

**SECTION 8. EMPLOYEES – BACKGROUND CHECK RENEWALS.** Employees must submit to a new background check after 5 consecutive years of employment. However, the School reserves the right to require any Employee to submit to additional criminal background checks at the School's expense at any time based on a reasonable suspicion that new information exists that would place students or other employees at an unreasonable risk of harm. The School shall pay for the renewal FBI Records check. An Employee's refusal to submit to a renewed background check will result in disciplinary consequences, up to including severance from employment. Information disclosed in a renewal background check may result in employment actions such as discharge or termination, mandatory reporting to the New Mexico Public Education Department's Licensing Bureau and/or the Public Education Department, or any other action deemed appropriate by the Head Administrator consistent with the Criminal Offender Employment Act, the Code of Ethical Responsibility of the Education Profession, School policies and procedures, or other applicable state or federal laws, rules or policies.

**SECTION 9. VOLUNTEERS AND CONTRACTORS – BACKGROUND CHECK RENEWALS.** New Background Checks for Volunteers must be completed after an interruption in service exceeding one (1) year. The School reserves the right to require a Volunteer, Contractor or a Contractor's employee(s) to submit to additional criminal background checks at the School's expense at any time based on a reasonable suspicion that new information exists. The School shall pay for a new FBI Record for Volunteers who have previously served the School for at least one (1) year (12 months) in the past three (3) years (36 months). Contractors and Contractor's employees must obtain and pay for a new FBI Record check before commencing work pursuant to a third contract. An unsatisfactory Background Check conducted on Contractor's employees may be grounds to terminate the Contract. A Volunteer's or Contractor's (or Contractor's

employees) refusal to submit to a renewed background check will result in ending a Volunteer's service at the School or may result in cancelling a Contractor's contract.

SECTION 10. DESIGNATION OF AUTHORIZED EMPLOYEE TO RECEIVE CRIMINAL HISTORY INFORMATION. The school has applied for an ORI number and will sign a User Agreement with the New Mexico Department of Public Safety when the ORI number has been received. The Executive Director and the Business Manager shall be the authorized designee[s] for the School to request FBI Records for Finalists. The Executive Director shall notify the New Mexico Department of Public Safety (DPS) whenever there is a change in the School's authorized designee.

SECTION 11. FINGERPRINTS. All Finalists will be informed that his/her/their fingerprints will be used to perform an FBI records check for the purposes of determining suitability for employment, volunteering or contracting with the School.

SECTION 12. TRANSFER OF FBI RECORD. The School may not transfer, release to or otherwise convey information contained in the Finalist's FBI Record for any purpose other than for which it was obtained. Under no circumstances, may the School transfer the results of an FBI records check to a third party.

SECTION 13. DESTRUCTION OF FBI RECORD INFORMATION. When an Employee's, Volunteer's, or Contractor's FBI Record is no longer needed by the School, it shall be destroyed by burning, shredding or other method rendering the information unreadable.

SECTION 14. DPS AUDIT. FBI Records are obtained through the New Mexico Department of Public Safety. The DPS or other authorities (e.g. the FBI) may conduct security audits related to the information provided to the School. Records subject to audit include criminal history records, notifications to individuals, School policies and procedures related to security, confidentiality and records and information dissemination.

#### SECTION 15. PROCEDURES.

A. Application Employment History Requirements. As part of the application for employment/Volunteer service/Contractor approval, School shall require all Applicants to provide information relating to the applicant's work history, including:

a. a list of the applicant's current and former employers that were schools or that employed the applicant in a position involving unsupervised contact with children or students; the list shall include name/address/phone number/other relevant contact information for each of the applicant's listed employers;

b. a written statement describing whether the applicant:

i. has ever been under investigation for, or has been found to have violated, any state or federal statute relating to child abuse or neglect, sexual misconduct or any sexual offense, including those offenses provided in Chapter 30, Article 3, 3A, 4, 6, 6A, 9, 37, 37A or 52 NMSA 1978, unless the allegations were false or unsubstantiated;

ii. has ever been under investigation for, or found to have violated, any ethical rule or policy approved by a former employer that previously employed the applicant, unless the allegations were false or unsubstantiated; or

iii. has ever had a professional license or certificate denied, suspended, surrendered or revoked due to a finding of child abuse or ethical misconduct or while allegations of child abuse or ethical misconduct were pending or under investigation; and

c. a written authorization that authorizes disclosure of information requested in this subsection, and the release of related records by the applicant's previous employers, releasing the applicant's previous employers from any liability related to the disclosure or release of records.

B. Consent to Obtain FBI Record. Finalists, Volunteers and Contractors will be informed during the pre-employment, contracting or application for volunteer status, that employment, volunteering and contracting with the School is contingent upon completion of a Background Check with results acceptable to the Executive Director and consistent with this Policy. Said individual shall sign a consent form to complete a Background Check, including an agreement to submit to fingerprinting for purposes of the School obtaining an FBI Record. Employment or unsupervised access to students shall not begin until a satisfactory Background Check has been completed. The School shall pay for or reimburse Finalists and Volunteers for their initial Background Checks.

C. Employment History Review. The School shall conduct a review of an Applicant's employment history and contact the applicant's current and former employers listed in the application and shall request that the employer provide, within 30 days of receiving the request:

a. the applicant's dates of employment; and

b. a written statement describing whether the applicant:

i. has ever been under investigation for, or has found to have violated, any state or federal statute relating to child abuse or neglect, sexual misconduct or any sexual offense, including those offenses prohibited in Chapter 30, Article 3, 3A, 4, 6, 6A, 9, 37, 37A or 52 NMSA 1978, unless the allegations were false or unsubstantiated;

ii. has ever been under investigation for, or found to have violated, any ethical rule or policy approved by a former employer that previously employed the applicant, unless the allegations were false or unsubstantiated; or

iii. has ever had a professional license or certificate denied, suspended, surrendered, or revoked due to a finding of child abuse or ethical misconduct or while allegations of child abuse or ethical misconduct were pending or under investigation; and

iv. any other information the applicant's current or former employer deems pertinent and substantive to the applicant's suitability for employment that includes unsupervised contact with children or students.

c. The School shall make and document efforts to verify the Employment History information provided by applicants and employers, and to obtain from an applicant's current or former out-of-state employer(s) the information required above.

d. The School shall respond to requests for written information on current and former employees/contractors/volunteers from other employers, and shall provide the requested information as set forth herein, within 30 days of receipt of the request.

D. Other Background Checks for New Employment Positions, Volunteers, Contractors.

Applicants are subject to criminal background checks, licensure and/or certification (where applicable), and employment history checks as defined herein. Criteria requiring additional or different background checks by the School include but are not limited to:

1. Direct responsibility for the safety, supervision and/or security of students;
2. Direct responsibility for handling or managing School funds; or
3. Responsibility for operating School vehicles or machinery.

E. Current Employees, Volunteers, Contractors Duty to Report.

As a condition of employment, continuation of volunteering and providing services pursuant to a School contract, all such persons are required to notify the Executive Director if they are charged, convicted, plead guilty to or otherwise found guilty of any misdemeanor or felony, regardless of the imposition of a sentence. This notification must be made as soon as possible, but no later than five (5) days after the event.

F. Submitting False Information/Willful Failure to Disclose.

If any person subject to this Policy provides knowingly false information or who willfully neglects to disclose information in response to questions about information gained through the Employment History and/or Background Check process, that person may be terminated from or denied employment, a volunteer may be prohibited from service, or a contract may be cancelled. Any other material misrepresentation given during a Background Check or a renewal background check may result in revocation of any conditional offer of employment, opportunity to serve as a Volunteer, or to contract with the School, or separation from current employment, volunteer service, or a contract. Action may also be taken to deny, suspend, or revoke a license for providing false information or willful neglect to disclose information required by law.

G. Evaluation of Background Check Results. Once a Background Check is completed, the Executive Director will make the final hiring decision (or approve a volunteer for service/execute a Contractor's agreement to provide service) based on the information obtained. Any findings of concern will be reviewed only by the Executive Director or in consultation with the business manager or the school attorney. If negative information is obtained through the Background Check process, the Executive Director will determine whether the information is directly related to the position and whether offering employment, volunteer service or a contract would be consistent with Section 5, above. When making this decision the Executive Director will consider, among all other relevant information, the following:

1. For criminal convictions, the nature and gravity of the offense(s), the number and type of each type of offense, length of time since the offense(s), and whether it is directly related to the position offered.

2. For all other negative information, the nature and gravity of the conduct of concern or data obtained, length of time since the conduct or data obtained, whether the information is reliable and directly related to the responsibilities of the position.

H. Adverse Action Contemplated Due to Background Check Results. If an adverse action is likely based in whole or in part on the results of a Background Check, the Finalist will receive written notice of the specific reasons for the contemplated action. The Finalist will be permitted to provide responsive information regarding the criminal history or other negative information, including but without limitation proof of: an incorrect criminal history; proof of a misidentification in a criminal history; an explanation of the facts and circumstances surrounding the conduct; the number of offenses for which the individual was convicted; the individual's age at the time of the offense(s) and the time that has elapsed; evidence of the same type of work without incident; the individual's employment history before and after the conduct; rehabilitation, training, education employment or character references; information regarding the individual's fitness for the position; whether the individual is bonded, licensed or certified under federal, state (any), or local law; extenuating circumstances including but not limited to disparate legal and enforcement practices; and other pertinent information. If the Finalist does not respond to an opportunity to explain negative information appearing in the Background Check process within five (5) business days, a decision will be made by the Executive Director based on the information obtained. Extensions may be provided to the Finalist in the Executive Director's sole discretion.

If adverse action is taken against the Finalist in whole or in part because of the results of the Background Check, the Finalist will receive a written statement from the Executive Director indicating the offer of employment, volunteer service or offer to contract with the School is rescinded.

I. Designation of Authorized Employee to Receive Criminal History Information. The school has applied for an ORI number and will sign a User Agreement with the New Mexico Department of Public Safety when the ORI number has been received. The Executive Director and the Business Manager shall be the authorized designee[s] for the School to request FBI Records for Finalists. The Executive Director shall notify the New Mexico Department of Public Safety whenever there is a change in the School's authorized designee.

J. Fingerprints. All Finalists will be informed that his/her/their fingerprints will be used to perform an FBI records check for the purposes of determining suitability for employment, volunteering or contracting with the School.

K. Transfer of FBI Record. The School may not transfer, release to or otherwise convey information contained in the Finalist's FBI Record for any purpose other than for which it was obtained. Under no circumstances other than those required by law, may the School transfer the results of an FBI records check to a third party.

L. Destruction of FBI Record Information. When an Employee's, Volunteers, or Contractor's FBI Record is no longer needed by the School, it shall be destroyed by burning, shredding or other method rendering the information unreadable.

M. DPS Audit. FBI Records are obtained through the New Mexico Department of Public Safety. The DPS or other authorities (e.g. the FBI) may conduct security audits related to the information provided to the School. Records subject to audit include criminal history records, notifications to individuals, School policies and procedures related to security, confidentiality and records and information dissemination.

N. NMPED List of Persons Reported for Convictions involving Moral Turpitude. As part of the background check process, the Executive Director shall request the list updated monthly by the NMPED which names the persons who have been reported as having been convicted of a felony or misdemeanor involving moral turpitude who have been found to have committed ethical misconduct, pursuant to NMSA 1978 §22-10A-5(I), and shall check a Finalist against that list.

## SECTION 16. DEFINITIONS.

A. Adverse Action. Withdrawal of an employment offer, denial of an opportunity to serve as a volunteer, or refusal to contract or cancellation of a contract to do business with the School, or any other decision made relating to employment, volunteer or contract services that adversely affects any current employee, Finalist, Volunteer or Contractor.

B. Applicant. An applicant being considered for employment, or an individual being considered as a contractor/contractor's employee/school volunteer who may have unsupervised access to students.

C. Background Check. Checking or verifying any or all parts of the Finalist's licensure, employment, educational, criminal, sex and violent offender histories. The nature and scope of the Background Check will be determined by the School in accordance with applicable laws, and will be appropriate for the position, but shall in all instances include obtaining an employment and criminal history check, and a Federal Bureau of Investigation record ("FBI Record") for individuals who will have unsupervised contact with children/students.

D. Contractor. All persons who, pursuant to a contract for services with the School or Governing Body, may have unsupervised contact with a child or student(s) regardless of whether the scope of services provided under the contract contemplates direct services to students. Such individuals include any person named in the contract, any employee of the Contractor who will have responsibilities under the contract at School or School-sponsored events, or any subcontractors assigned by Contractor to fulfill any service contemplated under the contract that require unsupervised contact with children/students.

E. Conviction. The act or process of judicially finding someone guilty of a crime. A conviction includes a judgment that a person is guilty of a crime pursuant to a jury verdict or confession or plea of guilty. A conviction as defined herein shall be sufficient evidence that the conduct of which the person is accused occurred.

F. Criminal history check. A search for any felony or misdemeanor convictions through the National Sex Offender Public Website, New Mexico Department of Public Safety Sex Offender Registry, public state or federal court filings, FBI Records check or other reliable sources containing information about criminal convictions. Criminal convictions will not automatically exclude a Finalist from consideration for employment unless they are related to the position offered and the decision not to hire is consistent with business necessity.

G. Employee. Individual currently employed by the School whether licensed or unlicensed.

H. Employment history check. Verifying that the Finalist worked in the positions cited in the Finalist's application and/or resume, and verification/investigation of the information provided by the applicant in the application. Verification shall include the review set forth in Subsection 15.C, and may also include dates of employment, positions held, eligibility for re-hire, licensure, certificates or other credentials required for the position, prior to extending an offer of employment.

I. Ethical misconduct. Means the following behavior or conduct by school personnel, school employees, school volunteers, contractors or contractors' employees:

a. Discriminatory practice based on race, age, color, national origin, ethnicity, sex, pregnancy, sexual orientation, gender identity, mental or physical disability, marital status, religion, citizenship, domestic abuse reporting status or serious mental condition;

b. Sexual misconduct or any sexual offense prohibited by Chapter 30, Article 6A or 9 NMSA 1978 involving an adult or child, regardless of a child's enrollment status;

c. Fondling a child or student, including touching private body parts, such as breasts, buttocks, genitals, inner thighs, groin or anus; or

d. Any other behavior, including licentious, enticing or solicitous behavior, that is reasonably apparent to result in inappropriate sexual contact with a child or student or to induce a child or student into engaging in illegal, immoral or other prohibited behavior.

J. FBI Report. Is a report obtained by the School's Administration about a Finalist from the Federal Bureau of Investigation that may include criminal convictions for felonies or misdemeanors.

K. Finalist. An individual who has been offered employment, volunteer opportunity, or contract, contingent upon completion of a satisfactory Background Check, including but not limited to, teachers, educational assistants, administrators and other staff members, Volunteers, and Contractors.

L. License history check. Independent verification that the Finalist has the license(s), endorsements, certifications or other credentials as claimed by the Finalist as required for the position.

M. Moral turpitude. Means an act or behavior that gravely violates the accepted standards of moral conduct, justice or honest and may include ethical misconduct.

N. Unsupervised access to or contact with children or students. Means access to or contact with, or the opportunity to have access to or contact with, a child or student for any length of time in the absence of:

a. a licensed staff person from the same school;

b. a school volunteer who has undergone a background check pursuant to NMSA 1978, §22-10A-5; or

c. any adult relative or guardian of the child or student.

O. Volunteer. A person, including a relative of a student, who commits to serve on a regular basis at a school or other educational entity without compensation.

**Administrative Position:**

Executive Director

**Legal Cross Ref:**

NMSA 1978, §22-10A-5;

NMSA 1978, §28-2-4;

NMSA 1978, §22-10A-5.2

NMSA 1978, §22-10A-2

**Procedural Directive Cross Ref.:**

· Employee Handbook

· Parent/Student Handbook

**Revision approved:** December 12, 2012

October 22, 2018

February 24, 2020