

HAWAII ADMINISTRATIVE RULES

TITLE 8

DEPARTMENT OF EDUCATION

SUBTITLE 2 EDUCATION

PART 1 PUBLIC SCHOOLS

CHAPTER 7

PUBLIC SCHOOL PERSONNEL:

CRIMINAL HISTORY RECORD,

EMPLOYMENT HISTORY,

AND BACKGROUND CHECKS

§8-7-1 Definitions. As used in this chapter:

"*Affected individual*" means the person to which a Federal Bureau of Investigation (FBI) identification record pertains.

"*Applicant*" means a person seeking employment to a position in the department of education.

"*Arrest records*" means criminal history information obtained from sources other than the FBI pertaining to arrests for alleged criminal behavior.

"*Background information*" means information pertaining to a person's behavioral history that may indicate a significant risk to the health, safety, or well-being of children.

"*Children*" means students enrolled in public schools up to grade twelve.

"*Clean criminal history record*" means that an individual's criminal history record check shows no indication of criminal behavior.

"Criminal conviction record" means criminal history information obtained from sources other than the FBI pertaining to an individual's conviction of a crime.

"Criminal history" means information about a person's actual or alleged criminal offense(s).

"Criminal history record" means evidence of a person's actual or alleged criminal offense(s) (arrests, convictions and supporting information) on file with law enforcement agencies, courts, the Hawaii criminal justice data center or in the national criminal history record files.

"Criminal history record check" means an examination or search for evidence of an individual's criminal history by means of:

- (1) A search for the individual's fingerprints in the national criminal history record files and, if found, an analysis and any other information available pertaining thereto; and
- (2) A criminal history record check conducted by the Hawaii criminal justice data center.

"Department" means the department of education, State of Hawaii.

"Employee" means a person who is employed or who is seeking employment in a public school or employed by a related government agency or entity contracted by the department in a position which places that person in close proximity to children. Unpaid, volunteers are excluded from this definition.

"Employment history" means information relating to a person's past work experiences.

"FBI identification record" means a listing of certain information taken from fingerprint cards submitted to and retained by the FBI in connection with arrests and, in some instances, includes information taken from fingerprint cards submitted in connection with Federal employment, naturalization, or military service. The FBI identification record is often referred to as a "rap sheet". The identification record includes the name of the agency or institution which submitted the fingerprint card to the FBI. If the fingerprint card concerns a criminal offense, the identification record includes the date arrested or received, the arrest charge, and the disposition of the arrest if known to the FBI. All arrest data included in an identification record are obtained from fingerprint cards,

disposition reports and other reports submitted by agencies having criminal justice responsibilities. Therefore, the FBI Identification Division is not the source of the arrest data reflected on an identification record.

"FBI rules to correct the FBI identification record" means rules and regulations published in the Federal Register by the FBI pertaining to the procedure for the affected individual to obtain, review, and request change, correction or updating of any alleged deficiency to the FBI identification record.

"Fingerprinting" means the recording of a person's fingerprints using conventionally accepted equipment and procedures to satisfy the quality, readability, and specifications of the FBI's criminal history record checking requirements.

"Persons who have been employed continuously by the department on a salaried basis prior to July 1, 1990" means salaried employees of the department who were on employment status on June 30, 1990, and who continuously remain so employed.

"Position" means a specific office or employment in the department whether occupied or vacant, consisting of a group of all the current duties and responsibilities assigned or delegated by competent authority, requiring the full or part-time employment of one person. [Eff. APR 03, 1992] (Auth: HRS §§302A-1112, 846-43) (Imp: HRS §846-43)

§8-7-2 General rule.

(a) Employees and applicants who work in close proximity to children shall be of reputable and responsible character.

(b) The department may refuse to employ, may refuse to issue a teaching certificate to, may terminate the employment of, or may revoke the teaching certificate of any employee or applicant who has a criminal history record, employment history, or background involving violence, alcohol or drug abuse, sex offense, offense involving children or any other circumstance which indicates that the applicant or employee may pose a risk to the health, safety, or well-being of children. The refusal, termination, or revocation action may be based on:

(1) Conviction of a crime, other than a minor traffic offense involving a fine of \$50 or less, which indicates that the person poses a risk to the health, safety or well-being of children (the type of criminal offense, when it occurred, and evidence of rehabilitation may be considered in determining whether the criminal history record indicates a risk to children);

(2) Other information or evidence which reflect upon the character and fitness of the person which indicates that the person poses a risk to children;

(3) Failure to accurately and fully complete and submit employment application documents; or

(4) Failure to declare, concealing, or falsifying criminal history, employment history, or background information to the department. [Eff. APR 03, 1992] (Auth: HRS §§302A-1112, 846-43) (Imp: HRS §846-43)

§8-7-3 Applicant or employee duty to provide information.

(a) Except as otherwise specified or exempted from criminal history record check requirements, any person who is employed or seeks employment with the department in a position which places that person in close proximity to children is required to provide to the department:

(1) An accurately and fully completed employment application with all requested information and documents including employment references;

(2) A sworn statement indicating:

(A) Whether the person ever had a teaching certificate or other professional license revoked or not renewed;

(B) Whether the person within the past ten years was suspended, fired, asked to resign from employment, or separated from military service under conditions other than honorable;

(C) Whether the person had been convicted of a crime, other than a minor traffic offense involving a fine of \$50 or less;

(D) Whether the person had been diagnosed as having a mental or emotional condition which may affect the person's ability to responsibly manage, supervise, control and interact with children; and

(E) A detailed explanation for each of the above when applicable.

(3) A written consent for the department to conduct a criminal history record check;

(4) A written consent for the department to obtain information from current and past employers and references; and

(5) Written permission to be fingerprinted.

(b) Employees and applicants shall cooperate fully and make every reasonable effort to provide information and comply with fingerprinting and other related requirements when so notified and instructed by the department or its representative agents. The department may refuse to hire or terminate any person who willfully fails to cooperate or fails to provide the requested information.

[Eff. APR 03, 1992] (Auth: HRS §§302A-1112, 846-43) (Imp: HRS §846-43)

§8-7-4 Fingerprinting requirement. Persons who have been employed continuously by the department on a salaried basis prior to July 1, 1990, shall not be required to undergo criminal history record checks. The department shall require all other employees and may require applicants to undergo fingerprinting to conduct criminal history record checks as may be accommodated by the Hawaii criminal justice data center. Fingerprinting and criminal history record checks shall be conducted without charge to employees and applicants. Employees and applicants shall cooperate fully and make every reasonable effort to comply with fingerprinting and other requirements when so notified and instructed by the department or its representative agents. The department may refuse to hire and may terminate any person who willfully fails to comply or cooperate fully fingerprinting requirements. [Eff. APR 03, 1992] (Auth: HRS §§302A-1112, 846-43) (Imp: HRS §846-43)

§8-7-5 Use of criminal history records results.

(a) Information obtained from criminal history record checks shall be used exclusively by the department for the purpose of determining whether or not a person is suitable for working in close proximity to children. Use and release of such information obtained from the FBI shall be subject to federal laws and regulations.

(b) The department may disclose information that an affected individual's criminal history record check shows a "clean criminal history record". Federal law (28 U.S.C. §534) otherwise prohibits the disclosure of criminal history information obtained from the FBI. An FBI identification record and information contained therein, however, may be disclosed to the affected individual when explaining decisions or contemplated decisions resulting in refusal to hire, refusal to issue teaching certificate, termination of employment or revocation of teaching certificate. Information from an FBI identification record may also be disclosed to a union representative with the consent of the affected individual and may also be displayed, with the consent of the affected individual, at an administrative hearing to resolve issues concerning the record's content and use. If desired, the affected individual may also request the correction of FBI criminal history information by following FBI rules to correct the FBI identification record.

(c) Criminal history information obtained from sources other than the FBI may be categorized into criminal convictions and arrest records. Criminal convictions are considered public records and may be disclosed to the general public. Arrest records are private and shall not be released by the department except in the process of verifying the disposition of the arrests, or as otherwise required by law. Information regarding a person's arrest records for offenses that may pose a risk to the health, safety or well-being of children may be used as the basis to delay hiring decisions or for the suspension of employment pending further inquiry and investigation. Arrest records shall not be used as the sole basis to refuse to employ a prospective employee or to terminate an employee. [Eff. APR 03, 1992] (Auth: HRS §§302A-1112, 846-43) (Imp: HRS §846-43)

§8-7-6 Implementation procedures and instructions.

(a) The department shall develop necessary plans, procedures, and instructions to implement the provisions of this chapter.

(b) The department may implement the provisions of this chapter incrementally subject to the availability of funds and resources.

[Eff. APR 03, 1992] (Auth: HRS §§302A-1112, 846-43) (Imp: HRS §846-43)