

BACKGROUND CHECKS

The School District is committed to the selection of quality staff and to providing a safe environment for students and staff. As part of that commitment, the district will obtain background checks on school employees and may obtain background checks on school volunteers or employees of contracted vendors pursuant to this policy and in accordance with state and federal law.

DEFINITIONS

Authorized Persons: Individuals determined by the superintendent or designee to need access to or need to view criminal history record information in their official capacity with the district.

Criminal History Record Information (CHRI): A criminal history of an individual obtained through the South Dakota Division of Criminal Investigation (SDDCI) and/or the Federal Bureau of Investigation (FBI) using the individual's fingerprints. CHRI includes information on the arrest, detention, complaint, indictment or former criminal charge of an individual as well as the disposition of any charges. The FBI rules differ from the DCI rules regarding the disclosure of criminal history record information.

Criminal Justice Information Services (CJIS): The FBI's Criminal Justice Information Services Division, or CJIS, provides a range of state-of-the-art tools and services to law enforcement, national security and intelligence community partners, and the general public. Its purpose is to equip law enforcement, national security, and intelligence community partners with the criminal justice information needed to protect the United States and the public. The CJIS Division was established in 1992 to serve as the focal point and central repository for criminal justice information services in the FBI. It is the largest division in the FBI.

Local Agency Security Officer (LASO): liaison with SDDCI to ensure the agency is in compliance with security procedures. The LASO shall (1) maintain a list of users who have access to CHRI, (2) Identify and maintain a list of persons who are authorized to use the approved hardware, software and firmware to access CHRI and ensure no unauthorized individuals have access to this technology, (3) identify and document how the equipment is connected to the state system, (4) ensure that personnel security screening procedures are being followed, (5) ensure that approved and appropriate security measures are in place and working as expected, (6) promptly notify the MSHP of any security incidents, and (7) support any district security audits.

Noncriminal Agency Coordinator (NAC): primary contact person for the District who serves as the liaison between the District and SD Division of Criminal Investigation, responsible for notifying SDDCI when a new employee starts or an employee leaves so SDDCI can keep CJIS Security training records current and such other duties as required.

Point of Contact (POC): District's contact person when SDDCI sends out Audit information, the contact person when an onsite Audit is scheduled.

Security Incident: An act of violating an explicit or implied security policy regarding CHRI including, but not limited to (1) attempts (either failed or successful) to gain unauthorized access to a system or its data, (2) unwanted disruption or denial of service, (3) the unauthorized use of a system for the processing or storage of data, and (4) changes to system hardware, firmware or software characteristics without the district's knowledge, instruction or consent.

Designations

1. The Superintendent, as the Agency Representative, is responsible for signing the SD Division of Criminal Investigation (SDDCI) User Agreement on behalf of the District.
2. The Superintendent shall serve (or appoint) the District's Point of Contact (POC) and Noncriminal Agency Coordinator (NAC) to act as the primary contact person for the District, shall serve as the liaison between the District and SD Division of Criminal Investigation, and will fulfill all responsibilities of the POC/NAC, including but not limited to being the contact person when SDDCI sends out Audit information, shall be the contact person when an onsite Audit is scheduled, and responsible for notifying SDDCI when a new employee starts or an employee leaves so SDDCI can keep CJIS Security training records current.
3. The Superintendent is designated to be the Local Agency Security Officer (LASO) to act as liaison with SDDCI to ensure the agency is in compliance with security procedures. The LASO shall be knowledgeable in CHRI, policies and mandated rules and regulations as well as knowledge of IT security procedures. The LASO shall actively represent the District in all matters pertaining to information security, dissemination of information security alerts and other material within the District, and responsible for contacting SDDCI if there has been misuse of CHRI.

EMPLOYEE CRIMINAL BACKGROUND CHECKS

Any offer of employment is contingent upon the satisfactory outcome of a criminal background check. The district has the sole discretion to determine whether the outcome of a criminal background check is satisfactory. In making a determination, the district:

1. Shall submit completed fingerprint cards to the Division of Criminal Investigation before the prospective new employee or volunteer enters into service.
2. If no disqualifying record is identified at the state level, the fingerprints shall be forwarded by the Division of Criminal Investigation to the Federal Bureau of Investigation for a national criminal history record check.
3. Shall adhere to all applicable state laws that disqualify an individual from employment by a school district; and
4. May consider the conviction of any crime of moral turpitude; and
5. May consider any criminal conviction, including convictions not disclosed by an employee;
6. Reserves the right to require any employee or volunteer to submit to additional criminal background checks;

7. Reserves the right to require any employee of an entity which provides the District direct or indirect student services to submit to additional criminal background checks which shall be at the entity's or person's expense.

All employees and other persons required to submit to a criminal background check pursuant to this policy must notify the district in writing if they are convicted of any offense of domestic violence, child abuse, sex offense, drug (including marijuana) or any felony offense. This notification must be made as soon as possible, but no later than five business days after the event.

An individual may be granted employment on a temporary basis pending the receipt of the results of a criminal background check. In the event that a temporary employee is determined to have an unsatisfactory background check, the District shall inform the person whose conditional employment is subject to termination that the criminal background report reveals a conviction which prohibits the District from employing the person, and inform the person of his or her right to appeal the accuracy or completeness of the CHRI to the SDDCI or FBI. Employees shall be afforded procedural due process consistent with their employment status (i.e., whether the person is an employee-at-will, certified, or administration) should termination of conditional employment be a possibility following the District's receipt of the CHRI.

This policy shall not apply to persons performing services for the district under the authority of the South Dakota High School Activities Association or any person hired to officiate, judge, adjudicate, or referee a public event sponsored by a school district. This policy applies to all other employment agreements, whether written or oral.

FINANCIAL BACKGROUND CHECKS

Any individual employed as the district's business official shall, prior to employment, be subject to a financial background check. A financial background check may include a credit check, financial delinquencies, corporate interests and any other examination of the individual's financial trustworthiness.

At the discretion of the superintendent or a designee, individuals applying for financially sensitive positions may be subject a financial background check prior to employment.

TRAINING

The District will ensure that all employees who have access to CHRI shall be trained by SDDCI on the rules and responsibilities for the confidentiality, receipt, use and dissemination of the CHRI.

CONFIDENTIALITY

Information received as the result of this policy shall remain confidential and shall not be released to any other individual or entity without the written request of the employee.

1. Before requesting CHRI on any individual, the district will give the individual written notification that his or her fingerprints will be used to obtain the CHRI of the individual, and the district will provide the individual a copy of the statement "Noncriminal Justice Applicant's Privacy Rights." Exhibit GCDB-E(1).
2. Information received by the district pursuant to a criminal background check is confidential. Only authorized persons within the district may access, view or use CHRI. Authorized persons may not share or otherwise disclose information contained in CHRI to unauthorized persons unless explicitly allowed for in this procedure.
3. Unless otherwise allowed by law, the District will only use this information for the district's internal purposes in determining the suitability of an applicant, employee, or other worker on district property. The district will note in an employee's or applicant's personnel file that the background check was completed and if the person was disqualified by the CHRI for employment or assignment. The District will keep the CHRI in a separate file in a location that is only accessible to persons who need to know the information to carry out their responsibilities with the District.
4. Individuals that have access to CHRI will receive CJIS security training provided by SD DCI. Once the individual has completed the CJIS online training and has taken the test each individual will receive and acknowledge in writing the receipt of the following: (1) User Rules of Behavior Acknowledgement form, (2) CHRI Disciplinary Policy, and (3) Acknowledgment Statement of Misuse. The District will keep a copy of the signed documents in each individual's personnel file.

Access and Retention

1. The District may print share records when necessary to determine whether the person is authorized to work for the district. In those situations, the physical copy will be destroyed immediately after the decision is made.
2. If the District runs a background check on employees of a contractor that does business with the district, the district will not provide the CHRI to the contractor. Instead, the district will provide a clearance letter notifying the contractor whether the employee is cleared to provide services in the district.
3. The District will not disseminate CHRI across state lines.
4. Upon request the district will provide a copy of the SDDCI CHRI to the person who is the subject of the background check. The SDDCI CHRI will only be released to the individual. The District will note in the dissemination log that a copy was provided to the individual.
5. FBI rules prohibit the District from providing a copy of the FBI CHRI to the person who is the subject of the criminal background check.
6. The results of the background investigation done by the District shall be transferred to another South Dakota public school district if the current District employee, submits a written request to the District that the results be transferred to the other public school district. The District employee who was the subject of the criminal background investigation must sign a written release authorizing the transfer. The information will be sent by U.S. Mail.

Recordkeeping

A Secondary Dissemination Log shall be maintained in which all authorized disseminations of FBI and State DCI criminal background check results are recorded. The following shall be recorded in the District's Secondary Dissemination Log:

1. name of District;
2. name of person subject to the criminal background check review;
3. date of birth of person subject to the criminal background check review;
4. written request signed by person subject to the criminal background check review for a copy of the SDDCI criminal background check results, attached to the Secondary Dissemination Log; NOTE: FBI CHRI cannot be released to the person who is the subject of the criminal background check.
5. date of release of criminal background check results;
6. description of the record that was shared;
7. how the record was sent or received
8. person to whom criminal background check results were disseminated;
9. signature of District employee disseminating the criminal background check review pursuant to a valid request.

Security

The district will provide for the security of any CHRI received, including the appropriate administrative, technical and physical safeguards to provide for the security and confidentiality of the information. This includes, but is not limited to, the following:

1. The LASO shall maintain a list of school district authorized persons who have access to CHRI.
2. In those cases when the District has physical copies of CHRI, the District will restrict access to authorized persons only. Physical copies of CHRI, if any, will be maintained in a controlled, secure environment, such as a locked cabinet in a room that is free from public or unauthorized access.
3. The District will not maintain electronic copies of CHRI.
4. CHRI will not be relocated, transmitted or transported outside a secure location unless transported in a locked container or in folders where the information is not visible to the public.
5. The District will dispose of records securely. Physical records will be cross-shredded.
6. The District will not provide auditors access to CHRI unless the auditor is authorized by the SDDCI or the FBI.

Security Incident Response Plan

1. All District employees will immediately report to the LASO information security incidents such as the theft or loss of physical records or the hacking or failure of electronic systems or suspicions that an incident has or will take place. The LASO will document receipt of all reports, investigate incidents and report incidents to SDDCI. LASO documentation will include (1) date of security incident, (2) location of security incident,

(3) systems affected, (4) method of detection, (5) nature of security incident, (6) description of security incident, (7) actions taken/resolution, (8) current date, and (9) contact information for LASO.

Consequences

1. Employees who fail to keep background check results confidential or fail to follow this policy or any laws or rules regarding the access, receipt, use or dissemination of CHRI as required by law will be subject to disciplinary action up to and including termination. Unauthorized requests, receipts, release, interception, dissemination or discussion of CHRI may also result in criminal prosecution.

Legal References: SDCL 13-10-12 (Criminal background investigation)
SDCL 13-10-13 (Criminal conviction as factor in hiring decision)
SDCL 13-10-14 (Persons continuously employed exempt)
SDCL 13-10-15 (Suspension or resignation for criminal conviction)
SDCL 13-10-16 (Conviction defined)
SDCL 22-1-2 (19) (Definition of "Immediate family")
SDCL 22-1-2 (25) (Definition of "Moral turpitude")
SDCL 22-24B-1 (Sex crimes defined)

South Dakota Division of Criminal Investigation
Federal Reference: CFR Title 28 §16.34
Federal Reference: CFR Title 28 §50.12

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NONCRIMINAL JUSTICE APPLICANT'S PRIVACY RIGHTS

As an applicant who is the subject of a national (FBI) fingerprint-based criminal history record check for a noncriminal justice purpose (such as an application for employment), you have certain rights which are discussed below.

- You must be provided written notification (1) that your fingerprints will be used to check the criminal history records of the FBI.
- You must be provided, and acknowledge receipt of, an adequate Privacy Act Statement when you submit your fingerprints and associated personal information. The Privacy Act Statement should explain the authority for collecting your information and how your information will be used, retained, and shared. (2)
- If the FBI criminal check reveals that you have a criminal history record, the District will not delay the employment hiring decision solely because the applicant seeks to correct his or her FBI criminal history record information (CHRI).
- The officials must advise you that the procedures for obtaining a change, correction, or update of your criminal history record are set forth at Title 28, Code of Federal Regulations (CFR), Section 16.34.

You have the right to expect that officials receiving the results of the criminal history check will use it only for authorized purposes and will not retain or disseminate it in violation of federal statute, regulation or executive order, or rule, procedure or standard established by the National Crime Prevention and Privacy Compact Council. (3)

FBI rules prohibit the District from providing you a copy of the FBI record. You may obtain a copy of the record by submitting fingerprints and a fee to the FBI. Information regarding this process may be obtained at <https://www.fbi.gov/services/cjis/identity-history-summary-checks>.

If you decide to challenge the accuracy of completeness of your FBI criminal history record, you should send your challenge to the agency that contributed the questioned information to the FBI. Alternatively, you may send your challenge directly to the FBI. The FBI will then forward your challenge to the agency that contributed the questioned information and request the agency to verify or correct the challenged entry. Upon receipt of an official communication from that agency, the FBI will make any necessary changes / corrections to your record in accordance with the information supplied by that agency.

(1) Written notification includes electronic notification, but excludes oral notification.

(2) <https://www.fbi.gov/services/cjis/compact-council/privacy-act-statement>

(3) See 5 U.S.C. 552a(b); 28 U.S.C. 534(b); 42 U.S.C. 14616, Article IV(c); 28 CFR 20.21(c), 20.33(d) and 906.2(d)