

FINGERPRINTING and BACKGROUND CLEARANCE

Senate Bill 9 (SB 9), which was passed by the 80th Legislature and became law on June 15, 2007, requires expanded criminal history information reviews for most classes of educators and school employees. Individuals required by Senate Bill 9 (SB 9) to submit fingerprint information to the Texas Department of Public Safety (DPS) are:

- All certified educators holding an educator certification issued by the State Board for Educator Certification (SBEC)
- All classroom substitute teachers and aides, whether certified or not.
- Noncertified employees hired by a district on or after 1/1/08. The district can also require all employees to be fingerprinted at their discretion.
- Charter school employees, whether certified or not, who are working in a teaching or professional position that would require certification if they were employed in a traditional school district.
- Contractor employees hired before January 1, 2008, who has or will have continuing duties related to the contracted services and has or will have direct contact with students. Contractor employees include independent contractors and employees of subcontractors. Hallsville has required all contractors having contact with students to be fingerprinted.
- Volunteers, unless they are a parent or guardian of a student and accompanied on campus by a district employee, or are volunteering for a single event.

A non-certified employee is one who does not possess an SBEC issued certificate. Substitute teachers will be considered under the certified employee background check guidelines. The clearinghouse created by SB 9 will be administered by DPS, which will develop specific procedures for its use. The clearinghouse will consist of a database containing an employee's national criminal history based on fingerprints, photos, and other identification that will enable the employing school district and TEA and/or SBEC to have access not only to the employee's current national criminal history but also to updates of the employee's subsequent criminal history.

SB 9 does not require districts to pay for employee background checks for non-certified employees. Districts can choose to cover all or part of the cost as a matter of local policy.

The standards that will districts apply when deciding employability for non-certified individuals based on their criminal history.

Section 22.0895 (a) of the Texas Education Code requires a district to discharge or refuse to hire an employee or applicant if a criminal history review finds that the employee has been convicted of a felony offense under Title 5, Penal Code (homicide, kidnapping, assault, trafficking of person, sexual offenses) or equivalent state or federal offense, or an offense which requires the defendant to register as a sex offender. Additionally, at the time the offense occurred, the victim of the offense must have been under 18 years of age or enrolled in public school. Assuming that a non-certified employee is an "employee at will," a district may fire the employee on the basis of a

criminal history. This mandatory discharge provision does not apply if the date of the offense is more than 30 years old (as of June 15, 2007, for those already employed by that date, or as of the date employment will begin) and the employee or applicant satisfied all terms of the court order entered on conviction. Please note that this mandatory-discharge provision also does not apply to deferred adjudications for individuals charged with the above-mentioned crimes.

What kinds of criminal history will impact my certification or ability to maintain employment in a school district?

SBEC and local school districts will review criminal history on an individual basis and take employment or certification action based on those reviews; therefore, these lists are not exhaustive and do not cover all types of criminal history that may result in certification sanctions or adverse employment action. However, various provisions of SB 9 mandate that some types of criminal history subject an educator to certificate suspension or revocation or render them ineligible for employment in public schools.

Criminal history that may result in certificate suspension or revocation under SB 9:

- Conviction of a felony or misdemeanor involving moral turpitude;
 - Conviction of a felony or misdemeanor involving a form of sexual or physical abuse of a minor or student or other illegal conduct in which the victim is a minor or student;
 - Conviction of a felony involving the possession, transfer, sale, or distribution of or conspiracy to possess, transfer, sell, or distribute a controlled substance;
 - Conviction of a felony or misdemeanor involving the illegal transfer, appropriation, or use of school district funds or other district property; or
 - Conviction of a felony or misdemeanor involving an attempt by fraudulent or unauthorized means to obtain or alter a professional certificate or license issued by SBEC.
- Texas Education Code § 21.060.

Criminal history that will render an educator ineligible for employment in public schools under SB 9:

- Conviction of the felony offenses enumerated in Title 5 of the Penal Code, if at the time the offense occurred, the victim was under 18 years of age or was enrolled in a public school. These offenses include generally, criminal homicide, kidnapping and unlawful restraint, trafficking of persons, sexual offenses and assaultive offenses.
 - An offense on conviction of which a defendant is required to register as a sex offender, if at the time the offense occurred, the victim was under 18 years of age or was enrolled in a public school.
 - An offense under the laws of another state or federal law that is equivalent to the previously listed offenses.
- Texas Education Code § 22.085.

Hiring Policy

Current employees are subject to disciplinary action and/or termination based on the results of the information obtained from the national criminal background check. Non-compliance with Hallsville ISD Policy DH (LOCAL) in reporting criminal offenses could also result in disciplinary action and/or termination.

- Criminal records including guilty pleas
- No contest pleas
- Pre-trial intervention/diversion programs
- Results other than dismissal
- Adjudicated guilty

A. Will not hire or cause for discharge:

1. Title 5, Penal Code or equivalent state or federal offenses
2. Applicants currently serving probation for any offense
3. Extreme violence (aggravated assault/aggravated battery, murder, attempted murder)
4. Sexual offense (lewd and lascivious, sexual battery, etc.)
5. Kidnapping
6. Robbery
7. Manslaughter/homicide
8. Indecent exposure (sexual in nature)
9. Sale of controlled substances
10. Crime against a minor
11. Crime using a weapon that could cause injury to another person
12. Convicted of any Economic Espionage Act offense
13. Convicted of fraud
14. Convicted of embezzlement as a felony
15. Any conviction that prohibits an individual being covered by HISD liability insurance

B. Will not hire or cause for discharge if offense is less than 10 years old (will consider and carefully review if over 10 years old):

1. Domestic violence (felony)
2. Felony drug use or possession
3. Grand theft
4. Burglary related to theft
5. Felony possession of concealed weapon
6. Felony battery assault
7. Forgery
8. Solicitation for prostitution

9. Prostitution
10. Felony shoplifting
11. Other felony crimes
12. Manslaughter/vehicular homicide

C. Will Not hire or cause for discharge if offense is less than 5 years old (will consider and carefully review if older than 5 years):

1. Misdemeanor drug use or possession (and/or drug paraphernalia)
2. Misdemeanor possession of concealed weapon (or improper use of weapon)
3. Battery/assault
4. Resisting arrest with violence
5. Domestic violence (misdemeanor)
6. 3 DWI's within 5-year period
7. Misdemeanor shoplifting
8. Other misdemeanor criminal offenses related to theft, robbery, and vandalism
9. Sale of alcohol to minor
10. Check fraud, credit card fraud, identity theft

D. Judgment: Case-by-Case Review

1. DWI – one incident only
2. Criminal traffic offenses, Class A or B misdemeanor
3. Other miscellaneous criminal offenses that may determine “patterns of living” due to numerous occurrences that may not be considered a good moral example
4. Disorderly conduct
5. Multiple arrests within a five-year period that DO NOT RESULT in convictions
6. Petit theft
7. Domestic violence (misdemeanor)
8. Cruelty to animals
9. Resisting arrest without violence
10. Weapons charges

Hallsville ISD
102904

EMPLOYMENT REQUIREMENTS AND RESTRICTIONS
CRIMINAL HISTORY AND CREDIT REPORTS

DBAA
(LEGAL)

DEFINITIONS

“Criminal history clearinghouse” (Clearinghouse) means the electronic clearinghouse and subscription service established by the Department of Public Safety (DPS) to provide criminal history record information to persons entitled to receive that information and to provide updates to such information. A person who is the subject of the criminal history record information requested must consent to the release of the information. *Gov’t Code 411.0845(a), (h)*

“Criminal history record information” (CHRI) means information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, information, and other formal criminal charges and their dispositions. *Gov’t Code 411.082(2)*

“National criminal history record information” (NCHRI) means criminal history record information obtained from DPS under Government Code Chapter 411, Subchapter F, and the Federal Bureau of Investigation (FBI) under Government Code 411.087. *Education Code 22.081(2)*

CERTIFIED PERSONS

The State Board for Educator Certification (SBEC) shall review the NCHRI of a person who is an applicant for or holder of a certificate and who is employed by or is an applicant for employment by the District. *Education Code 22.0831(c)*

NONCERTIFIED EMPLOYEES APPLICABILITY

This section applies to a person who is not an applicant for or holder of a certificate from SBEC and who, on or after January 1, 2008, is offered employment by:

The District; or

A shared services arrangement, if the employee’s or applicant’s duties are or will be performed on school property or at another location where students are regularly present.

[For noncertified employees of a district or shared services arrangements hired before January 1, 2008, see ALL OTHER EMPLOYEES, below.]

INFORMATION TO DPS AND TEA

Before or immediately after employing or securing the services of a person subject to this section, the District shall send or ensure that the person sends to DPS information that DPS requires for obtaining NCHRI, which may include fingerprints and photographs.

The District shall provide TEA with the name of a person to whom this section applies. TEA shall examine the CHRI of the person and notify the District if the person may not be hired or must be discharged under Education Code 22.085.

EMPLOYMENT PENDING REVIEW

After the required information is submitted, the person may begin employment, but that employment is conditional upon the review of that person's CHRI by TEA and must be terminated if TEA makes a determination that the employee or applicant is ineligible for employment.

CRIMINAL HISTORY

The District shall obtain all CHRI that relates to a person subject to this section through the Clearinghouse and shall subscribe to the CHRI of that person. The District may require the person to pay any fees related to obtaining the CHRI.

Education Code 22.0833; 19 TAC 153.1109(d)

SUBSTITUTE TEACHERS APPLICABILITY

This section applies to a person who is a substitute teacher for the District or a shared services arrangement.

For purposes of the CHRI review requirements, a "substitute teacher" is a teacher who is on call or on a list of approved substitutes to replace a regular teacher and has no regular or guaranteed hours. A substitute teacher may be certified or noncertified.

INFORMATION TO DPS AND TEA

The District shall send or ensure that a person to whom this section applies sends to DPS information required for obtaining NCHRI, which may include fingerprints and photographs.

The District shall provide TEA with the name of a person to whom this section applies. TEA shall examine the CHRI and certification records of the person and notify the District if the person:

1. May not be hired or must be discharged as provided by Education Code 22.085;
or
2. May not be employed as a substitute teacher because the person's educator certification has been revoked or is suspended.

EMPLOYMENT PENDING REVIEW

After the required information is submitted, the person may begin employment, but that employment is conditional upon the review of that person's CHRI by TEA and must be terminated if TEA makes a determination that the employee or applicant is ineligible for employment.

CRIMINAL HISTORY

The District shall obtain all CHRI that relates to a person to whom this section applies through the Clearinghouse. The District may require the person to pay any fees related to obtaining the CHRI.

Education Code 22.0836; 19 TAC 153.1101(5), 153.1111(d)

STUDENT TEACHERS APPLICABILITY

This section applies to a person participating in an internship consisting of student teaching to receive a teaching certificate.

CRIMINAL HISTORY

A student teacher may not perform any student teaching until:

1. The student teacher has provided to the District a driver's license or another form of identification containing the person's photograph issued by an entity of the United States government; and
2. The District has obtained from DPS all CHRI that relates to a student teacher. The District may also obtain CHRI relating to a student teacher from any other law enforcement agency, criminal justice agency, or private consumer reporting agency. The District may require a student teacher to pay any costs related to obtaining the CHRI.

Education Code 22.0835

COORDINATION OF EFFORTS

TEA, SBEC, the District, and a shared services arrangement may coordinate as necessary to ensure that criminal history reviews authorized or required under Education Code Chapter 22, Subchapter C are not unnecessarily duplicated.

Education Code 22.0833(h)

ALL OTHER EMPLOYEES

The District shall obtain CHRI that relates to a person who is not subject to an NCHRI review under Education Code Chapter 21, Subchapter C and who is an employee of:

1. The District;
or
2. A shared services arrangement, if the employee's duties are performed on school property or at another location where students are regularly present.

The District may obtain the CHRI from:

1. DPS;
2. A law enforcement or criminal justice agency; or
3. A private consumer reporting agency [see CONSUMER CREDIT REPORTS, below].

Education Code 22.083(a), (a-1), (c); Gov't Code 411.097

CONFIDENTIALITY OF RECORD

CHRI that the District obtains from DPS, including any identification information that could reveal the identity of a person about whom CHRI is requested and information that directly or indirectly indicates or implies involvement of a person in the criminal justice system:

1. Is for the exclusive use of the District; and
2. May be disclosed or used by the District only if, and only to the extent, disclosure is authorized or directed by a statute, rule, or order of a court of competent jurisdiction.

For purposes of these confidentiality provisions, “criminal history record” information does not refer to any specific document provided by DPS, but to the information contained, wholly or partly, in a document’s original form or any subsequent form or use.

The District or an individual may not confirm the existence or nonexistence of CHRI to any person who is not eligible to receive the information.

Gov’t Code 411.084

CHRI obtained by the District, in the original form or any subsequent form, may not be released to any person except the individual who is the subject of the information, TEA, or SBEC, or by court order. The CHRI is not subject to disclosure under Government Code Chapter 552 (Public Information Act).

An employee of the District may request from the District a copy of any CHRI related to that employee that the District has obtained from DPS. The District may charge a fee to provide the information, not to exceed the actual cost of copying the CHRI.

Gov’t Code 411.097(d), (f)

Destruction of CHRI

The District shall destroy CHRI obtained from DPS on the earlier of:

1. The date the information is used for the authorized purpose; or
2. The first anniversary of the date the information was originally obtained.

Gov’t Code 411.097(d)(3)

CONFIDENTIALITY OF INFORMATION OBTAINED FROM APPLICANT OR EMPLOYEE

The District may not release information collected about a person in order to obtain CHRI, including the person's name, address, phone number, social security number, driver's license number, other identification number, and fingerprint records, except:

1. To comply with Government Code Chapter 22, Subchapter C (criminal records);
2. By court order; or
3. With the consent of the person who is the subject of the information.

In addition, the information is not subject to disclosure under Government Code Chapter 522 (Public Information Act).

The District shall destroy the information not later than the first anniversary of the date the information is received.

Education Code 22.08391

SBEC NOTIFICATION

The Superintendent shall promptly notify SBEC in writing by filing a report with the TEA staff within seven calendar days of the date the Superintendent obtains or has knowledge of information indicating that an applicant for or holder of a certificate issued by SBEC has a reported criminal history. *Education Code 22.087; 19 TAC 249.14(d)(1)* [See also DF]

Note: For criminal history record provisions regarding volunteers, see GKG. For provisions on employees of entities that contract with the District, see CJA.

DISCHARGE OF CONVICTED EMPLOYEES

The District shall discharge or refuse to hire an employee or applicant for employment if the District obtains information through a CHRI review that:

1. The employee or applicant has been convicted of:
 - a. A felony under Penal Code Title 5;
 - b. An offense requiring registration as a sex offender under Code of Criminal Procedure Chapter 62; or

- c. An offense under the laws of another state or federal law that is equivalent to an offense under paragraphs a or b; and
2. At the time the offense occurred, the victim of the offense was under 18 years of age or was enrolled in a public school.

EXCEPTION

However, the District is not required to discharge or refuse to hire an employee or applicant if the person committed an offense under Title 5, Penal Code and:

1. The date of the offense is more than 30 years before:
 - a. June 15, 2007, in the case of a person employed by the District as of that date; or
 - b. The date the person's employment will begin, in the case of a person applying for employment with the District after June 15, 2007; and
2. The employee or applicant for employment satisfied all terms of the court order entered on conviction.

CERTIFICATION TO SBEC SANCTIONS

Each school year, the Superintendent shall certify to the Commissioner that the District has complied with the above provisions.

SBEC may impose a sanction on an educator who does not discharge an employee or refuse to hire an applicant if the educator knows or should have known, through a criminal history record information review, that the employee or applicant has been convicted of an offense described above.

OPTIONAL TERMINATION

The District may discharge an employee if the District obtains information of the employee's conviction of a felony or misdemeanor involving moral turpitude that the employee did not disclose to SBEC or to the District. An employee so discharged is considered to have been discharged for misconduct for the purposes of Labor Code 207.044 (unemployment compensation).

Education Code 22.085 [See DF]

CONSUMER CREDIT REPORTS DEFINITIONS

“Adverse action” includes a denial of employment or any other decision for employment purposes that adversely affects any current or prospective employee.

“Consumer report” includes any information from a consumer reporting agency that is used or expected to be used as a factor in establishing the person’s eligibility for employment.

“Consumer reporting agency” is an agency that, for monetary fees, dues, or on a cooperative nonprofit basis, regularly assembles or evaluates consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties.

“Employment purposes” when used in connection with a consumer report means a report used for the purpose of evaluating a person for employment, promotion, reassignment, or retention as an employee.

15 U.S.C. 1681a

OBTAINING REPORTS

The District may not procure a consumer report for employment purposes unless:

1. The District has provided the applicant or employee a written disclosure that a consumer report may be obtained for employment purposes; and
2. The applicant or employee has authorized in writing the procurement of the consumer report.

ADVERSE ACTION

Before taking any adverse action based on the consumer report, the District shall provide the applicant or employee a copy of the consumer report and a written description of the person’s rights under the Fair Credit Reporting Act, as prescribed by the Federal Trade Commission.

15 U.S.C. 1681b(b)(2)

Note: The following provisions apply to a district that uses consumer reports.

ADDRESS DISCREPANCIES

“Notice of address discrepancy” means a notice sent to a user by a consumer reporting agency that informs the user of a substantial difference between the address for the consumer that the user provided to request the consumer report and the address(es) in the agency’s file for the consumer.

The District must develop and implement reasonable policies and procedures designed to enable the District, when it receives a notice of address discrepancy, to form a reasonable belief that a consumer report relates to the consumer about whom it has requested the report.

If the District regularly and in the ordinary course of business furnishes information to the consumer reporting agency from which it received the notice of address discrepancy, the District must also develop and implement reasonable policies and procedures for furnishing an address for the consumer, which the District has reasonably confirmed is accurate, to the consumer reporting agency.

16 CFR 681.1

DISPOSAL OF RECORDS

The District must properly dispose of a consumer report by taking reasonable measures to protect against unauthorized access to or use of the information.

“Dispose” includes discarding or abandoning the consumer report, or selling, donating, or transferring any medium, including computer equipment, upon which the consumer report is stored.

Examples of reasonable measures include:

1. Burning, pulverizing, or shredding papers containing a consumer report so the information cannot practicably be read or reconstructed;
2. Destroying or erasing electronic media containing a consumer report so that the information cannot practicably be read or reconstructed; or
3. After due diligence, entering into and monitoring compliance with a contract with another party engaged in the business of record destruction to dispose of the consumer report.

16 CFR 682.3

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DBAA (LEGAL)-P

EMPLOYEE STANDARDS OF CONDUCT

All District employees shall perform their duties in accordance with state and federal law, District policy, and ethical standards. [See DH(EXHIBIT)]

All District employees shall recognize and respect the rights of students, parents, other employees, and members of the community and shall work cooperatively with others to serve the best interests of the District.

Employees wishing to express concern, complaints, or criticism shall do so through appropriate channels. [See DGBA]

VIOLATIONS OF STANDARDS OF CONDUCT

Employees shall comply with the standards of conduct set out in this policy and with any other policies, regulations, and guidelines that impose duties, requirements, or standards attendant to their status as District employees. Violation of any policies, regulations, or guidelines may result in disciplinary action, including termination of employment. [See DCD and DF series]

ELECTRONIC MEDIA

Electronic media includes all forms of social media, such as text messaging, instant messaging, electronic mail (e-mail), web logs (blogs), electronic forums (chat rooms), video-sharing Web sites, editorial comments posted on the Internet, and social network sites. Electronic media also includes all forms of telecommunication, such as landlines, cell phones, and Web-based applications.

USE WITH STUDENTS

In accordance with administrative regulations, a certified or licensed employee, or any other employee designated in writing by the Superintendent or a campus principal, may use electronic media to communicate with currently enrolled students about matters within the scope of the employee's professional responsibilities. All other employees are prohibited from using electronic media to communicate directly with students who are currently enrolled in the District. The regulations shall address:

1. Exceptions for family and social relationships;
2. The circumstances under which employees may use text messaging to communicate with students; and
3. Other matters deemed appropriate by the Superintendent or designee.

An employee shall comply with the District's requirements for records retention and destruction to the extent those requirements apply to electronic media. [See CPC]

PERSONAL USE

Employees shall be held to the same professional standards in their public use of electronic media as they are for any other public conduct. If an employee's use of electronic media violates state or federal law or District policy, or interferes with the employee's ability to effectively perform his or her job duties, the employee is subject to disciplinary action, up to and including termination of employment.

SAFETY REQUIREMENTS

All employees shall adhere to District safety rules and regulations and shall report unsafe conditions or practices to the appropriate supervisor.

HARASSMENT OR ABUSE

Employees shall not engage in prohibited harassment, including sexual harassment, of:

1. Other employees. [See DIA]
2. Students. [See FFH; see FFG regarding child abuse and neglect]

While acting in the course of their employment, employees shall not engage in prohibited harassment, including sexual harassment, of other persons, including Board members, vendors, contractors, volunteers, or parents.

RELATIONSHIPS WITH STUDENTS

Employees shall not form romantic or other inappropriate social relationships with students. Any sexual relationship between a student and a District employee is always prohibited, even if consensual. [See FFH]

TOBACCO USE

Employees shall not use tobacco products on District premises, in District vehicles, or at school or school-related activities. [See also GKA]

ALCOHOL AND DRUGS

Employees shall not manufacture, distribute, dispense, possess, use, or be under the influence of any of the following substances during working hours while at school or at school-related activities during or outside of usual working hours:

1. Any controlled substance or dangerous drug as defined by law, including but not limited to marijuana, any narcotic drug, hallucinogen, stimulant, depressant, amphetamine, or barbiturate.
2. Alcohol or any alcoholic beverage.
3. Any abusable glue, aerosol paint, or any other chemical substance for inhalation.
4. Any other intoxicant, or mood-changing, mind-altering, or behavior-altering drugs.

An employee need not be legally intoxicated to be considered “under the influence” of a controlled substance.

EXCEPTIONS

An employee who manufactures, possesses, or dispenses a substance listed above as part of the employee’s job responsibilities, or who uses a drug authorized by a licensed physician prescribed for the employee’s personal use shall not be considered to have violated this policy.

NOTICE

Each employee shall be given a copy of the District’s notice regarding drug-free schools. [See DI (EXHIBIT)]

A copy of this policy, a purpose of which is to eliminate drug abuse from the workplace, shall be provided to each employee at the beginning of each year or upon employment.

ARRESTS, INDICTMENTS, CONVICTIONS, AND OTHER ADJUDICATIONS

An employee shall notify his or her principal or immediate supervisor within three calendar days of any arrest, indictment, conviction, no contest or guilty plea, or other adjudication of the employee for any felony, any offense involving moral turpitude, and any of the other offenses as indicated below:

- 1. Crimes involving school property or funds;**
- 2. Crimes involving attempt by fraudulent or unauthorized means to obtain or alter any certificate or permit that would entitle any person to hold or obtain a position as an educator;**
- 3. Crimes that occur wholly or in part on school property or at a school-sponsored activity; or**
- 4. Crimes involving moral turpitude, which include:**
 - Dishonesty; fraud; deceit; theft; misrepresentation;**
 - Deliberate violence;**
 - Base, vile, or depraved acts that are intended to arouse or gratify the sexual desire of the actor;**
 - Felony possession, transfer, sale, distribution, or conspiracy to possess, transfer, sell, or distribute any controlled substance defined in Chapter 481 of the Health and Safety Code;**
 - Acts constituting public intoxication, operating a motor vehicle while under the influence of alcohol, or disorderly conduct, if any two or more acts are committed within any 12-month period; or**
 - Acts constituting abuse under the Texas Family Code.**

DRESS AND GROOMING

The dress and grooming of District employees shall be clean, neat, in a manner appropriate for their assignments, and in accordance with any additional standards established by their supervisors and approved by the Superintendent.