

BACKGROUND INVESTIGATIONS

The Erie County Board of Developmental Disabilities (Board) shall conduct appropriate background investigations of all applicants for employment and employees in accordance with applicable federal, state, and local laws and regulations. In addition, a "Declaration Regarding Material Assistance/Nonassistance to a Terrorist or Terrorist Organization" shall be obtained from any applicant under final consideration for employment and from any person or entity who seeks to contract with the Board to conduct business with or receive funding from the Board in an annual aggregate amount greater than \$100,000.00 as required by Ohio Revised Code Sections 2909.32, 2909.33, and 2909.34.

The Superintendent is authorized to establish and revise, as needed, the procedures to be utilized in the implementation of this policy. The Superintendent and or his/her designee shall ensure compliance with these procedures.

Implemented: 2008

Revision: December 16, 2010

CROSS REFERENCE: Ohio Revised Code: 5126.28, 5123.50-54, 149.43, 3721.32, 2909.32, 2909.33, and 2909.34

Administrative Code: 5123:2-1-05, 5123:2-17-03

Forms: Affidavit

Attachments: Procedures

PROCEDURE: BACKGROUND INVESTIGATION

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Applicants

For purposes of this policy and procedure, "applicant" includes anyone under final consideration for employment and includes an employee who is being recalled or reemployed after a layoff. An employee being considered for a different position with the Board or an employee returning from a leave of absence or seasonal break in employment is not an "applicant" unless the Superintendent has a reason to believe the employee may have committed an offense listed in Ohio Revised Code Section 5126.28.

Applicants for employment are evaluated based upon their qualifications for a vacant position. Applicants must submit to interviews, background checks, validated performance tests, and/or other related screening procedures in accordance with applicable employment laws and practices.

Applicants for employment shall be required to provide information such as high school diplomas or GED, transcripts, proof of licenses and/or certificates as required for the position, and undergo any examinations or testing necessary to demonstrate their qualification for the position. All external applicants under final consideration are subject to mandatory post-offer, substance abuse testing. All external and internal applicants for positions requiring a Commercial Drivers License (CDL) are subject to mandatory post-offer, substance abuse testing.

Not all applicants are interviewed for each vacancy. Individuals interviewed will be notified that a background investigation will be conducted on each individual who is under final consideration for employment. The background investigation will include a criminal records check from law enforcement agencies, including local law enforcement, fingerprinting the applicant for a criminal records check from the Bureau of Criminal Identification and Investigation (BCII) and where applicable a check from the Federal Bureau of Investigation (FBI); a check of the Abuser Registry established by the Ohio Department of Developmental Disabilities ("Department"); a check of the Ohio Department of Health Nurse Aide Registry; the exclusions list maintained by the Office of Inspector General, United States Department of Health and Human Services ("OIG-HHS"); the sanctions list maintained by the Ohio Department of Job and Family Services ("ODJFS"); reference checks including, but not limited to, present or previous employer(s); and obtaining a certified abstract of the applicant's motor vehicle record if the applicant will be required to transport individuals or to operate a Board vehicle or personal vehicle on Board business for any purpose.

The Board shall terminate the employment of any applicant if it is determined from the reports that the applicant failed to inform the Board that the applicant had been convicted of or pleaded guilty to any of the offenses listed or described in Ohio Revised Code Section 5126.28(E) and/or listed or described in Ohio Revised Code Sections 10.572(A)(8) or (A)(9) or 5104.09(A)(1).

The Department's Abuser Registry shall be checked at least annually to cross check the names of all current employees. The exclusions list maintained by OIG-HHS and the sanctions list maintained by ODJFS shall be checked annually to cross check the names of all current employees.

Any applicant under final consideration for employment shall provide a completed "Declaration Regarding Material Assistance/Nonassistance to Terrorist or Terrorist Organizations" as required by and pursuant to Ohio Revised Code Sections 2909.32 and 2909.34.

Employees

Criminal background checks shall be conducted by the Board in accordance with Ohio law and administrative rules adopted by the Department and the Ohio Department of Education ("ODE"). Generally, all Board employees are subject to a criminal background check at the time of hire in accordance with Ohio Revised Code Section 5126.28.

Additionally, Ohio law requires periodic criminal background checks of certain employees. As set forth below, the Board shall conduct criminal background checks of the following categories of employees.

A. As required by Ohio Administrative Code 5123:2-2-01, the Board shall also conduct the following criminal background checks in accordance with and pursuant to Ohio Revised Code Sections 109.57:

1. Within three (3) years of October 1, 2009, and at least once every three (3) years thereafter, for the Superintendent;
2. Within three (3) years of October 1, 2009, and at least once every three (3) years thereafter, for employees hired prior to October 1, 2009 to work in a direct services position;
3. Within three (3) years of the criminal background check conducted at the time of hire, and at least once every three (3) years thereafter, for employees hired after October 1, 2009 to work in a direct services position.

For purposes of this paragraph of this procedure, the phrase "direct services position" means an employment position in which the employee has physical contact with, the opportunity to be alone with, or exercises supervision or control over one or more individuals with a developmental disability. Employees working in a "direct services position" in the Board's Transportation Department are subject to this paragraph.

B. In accordance with Ohio Revised Code Section 3319.291, employees who hold licenses or certificates from the Ohio Department of Education ("ODE") may be required by ODE to undergo a criminal background check as part of the licensure or certification process, whether initial or renewal.

E. No person shall be employed or volunteer for the Board who has been convicted of or pleaded guilty to a prohibited offense listed in Ohio Revised Code Sections 109.572(A)(8) or (A)(9) or 5104.09(A)(1) unless the person meets the standards of rehabilitation set forth in the applicable rule.

F. All drivers shall undergo a background check annually.

Contractors

Any person or entity who seeks to contract with the Board to conduct business with or receive funding from the Board in an annual aggregate amount greater than \$100,000.00 shall provide a completed "Declaration Regarding Material Assistance/Nonassistance to Terrorist or Terrorist Organizations" as required by and pursuant to Ohio Revised Code Sections 2909.32 and 2909.33. Any person or entity who seeks to contract with the Board to conduct business with or receive funding from the Board will be checked against the exclusions list maintained by OIG-HHS and the sanctions list maintained by ODJFS. Contracts will not be entered with a person or entity that appears on either list.

PROCEDURES

The following procedures will be followed after an applicant's initial interview and upon final consideration for employment, for all employees returning from a layoff, for existing employees under consideration for a different position or an existing employee returning after a leave of absence or a seasonal break in employment when there is a reason to believe that the existing employee has committed a "disqualifying offense," and for employees required by Ohio Revised Code Sections 3319.291, 3319.391, and 3327.10(J)(2), and Ohio Administrative Code Sections 5123:2-2-01 and 5101:2-12-26.

1. An applicant/employee will be required to complete and sign an Affidavit:
 - a. stating that the applicant/employee has/has not been charged, convicted of or plead guilty to any of the offenses detailed in Ohio Revised Code Section 5126.28(E);
 - b. authorizing the release of confirming information from local law enforcement authorities, the BCII and/or any other state or federal agency;
 - c. agreeing to notify the Board if, while employed by the Board, he/she is charged with, convicted of, or pleads guilty to any criminal offense. Notification must occur no later than the employee's next scheduled shift. Failure to notify the Superintendent or the Board may result in termination.
2. An applicant/employee will be fingerprinted when completing and signing the Affidavit. An applicant's refusal to be fingerprinted or to complete and sign the Affidavit will result in no further consideration of his/her application. An employee refusing to be fingerprinted or to complete and sign the Affidavit will be terminated for just cause.
3. Information pertaining to any criminal convictions or guilty pleas by the applicant/employee will be requested from the appropriate county sheriff's department, the BCII, the FBI, and/or any other state or federal agency as may be necessary.
4. An applicant will be required to sign a Release authorizing the release of additional background information including but not limited to business and personal references.
 - a. The applicant's present or previous employer(s) will be contacted regarding the individual's work habits and reasons for leaving employment.
 - b. Personal references submitted by the applicant will be contacted for information concerning the individual.

5. If an applicant/employee holds an occupational or professional license or similar credentials, the Board may request that the appropriate regulating state or federal agency provide a written report of any information pertaining to the criminal record of the applicant/employee that the regulating agency obtains in the course of conducting an investigation or in the process of renewing the license or other credentials of the applicant/employee.
6. The Department's Abuser Registry will be checked. Applicants and current employees who are listed on the registry shall not be employed by the Board in accordance with Ohio Revised Code Section 5123.52. The registry shall be checked at least annually to cross check the names of current employees.
7. The Ohio Department of Health Nurse Aide Registry shall be checked. Applicants who are listed on the registry shall not be employed by the Board in accordance with Ohio Revised Code Section 3721.32.
8. The exclusions list maintained by the OIG-HHS and the sanctions list maintained by ODJFS will be checked annually. Applicants who are listed in either database will not be employed by the Board. Employees who are listed in either database may be disciplined, up to and including termination.
9. A driver's abstract will be requested for all applicants/employees who will transport individuals with developmental disabilities, operate a Board vehicle, and/or operate a personal vehicle for Board business for any other purpose. Drivers' abstracts will be reviewed at least annually.
10. All the findings will be reviewed and considered along with other factors in the decision to hire or employ an individual. An applicant/employee shall not be appointed to or retained in a position with the Board if the background check discloses information that the individual's name is on the Abuser Registry established by the Department, the Nurse Aide Registry established by the Ohio Department of Health, the exclusions list maintained by OIG-HHS, the sanctions list maintained by ODJFS, or that the individual has:
 - a. displayed work performance patterns which would prevent the applicant from performing the essential functions of the position being filled;
 - b. been dismissed for good cause from any branch of public service if the reason for dismissal bears a direct and substantial relationship to the position being filled;
 - c. a driving record unacceptable to the Board or the Board's insurance carrier for those positions in which driving is an essential component of the duties of the position;
 - d. Has been convicted of or plead guilty to:
 - (1.) any offense listed in Ohio Revised Code Sections 3319.31, 3319.39, or 5126.28(E)(1);

- (2.) any felony which bears a direct and substantial relationship to the duties and responsibilities of the position being filled;
- (3.) any offense in the Ohio Revised Code which is a misdemeanor of the first degree on the first offense and a felony on a subsequent offense if the offense bears a direct and substantial relationship to the duties and responsibilities of the position being filled;
- (4.) a violation of an existing or former municipal ordinance or law of Ohio, any other state, or the United States, if the offense is equivalent to any of the offenses described elsewhere in this procedure.

11. Under limited circumstances, the Board may employ a person who has been convicted of criminal offenses that would otherwise disqualify the person from employment with the Board if the person meets certain standards of rehabilitation. In considering whether a person meets the standards of rehabilitation, the Superintendent shall consider the criteria established by Ohio law, including, but not limited to, Ohio Administrative Code 3301-20-01, 3301-20-03, 3301-83-23, and 5123:2-1-05.

12. It is the duty of the applicant/employee to provide proof that the standards of rehabilitation specified in Ohio Administrative Code 3301-20-01, 3301-20-03, 3301-83-23, or 5123:2-1-05 have been met. If the applicant fails to provide such proof or if the Board determines that the proof offered by the applicant/employee is inconclusive, the applicant shall not be hired, and an employee shall no longer be employed. Any doubt shall be resolved against the applicant/employee. The Superintendent shall not consider for rehabilitation an applicant/employee for whom a court has denied the applicant/employee's request to have the record of his/her conviction sealed. If an applicant/employee has met all the requirements of Ohio Administrative Code 3301-20-01, 3301-20-03, 3301-83-23, or 5123:2-1-05, and 5101:2-12-26, as applicable, the Superintendent may consider, in his/her sole discretion, whether the applicant/employee has been rehabilitated. If the Superintendent decides to undertake such consideration, the following factors, in addition to any required by the rules referenced in the preceding sentence, shall be considered to determine if the applicant/employee has been rehabilitated and should be hired or retained as an employee:

- a. The duties and responsibilities of the position;
- b. The nature and seriousness of the offense;
- c. The extent of the applicant's past criminal activity;
- d. The age of the applicant/employee when the crime was committed;
- e. The time elapsed since the applicant/employee was fully discharged from imprisonment, probation or parole;
- f. The amount of time that has elapsed since the applicant/employee's last criminal activity.
- g. The applicant/employee's efforts at rehabilitation and written confirmation of the results of those efforts;

- h. Whether any criminal proceedings are pending against the applicant;
- i. Whether the applicant/employee fully disclosed the crime to the Board or any regulating state agency;
- j. Whether employment will have a negative impact on the local or stated-wide education community;
- k. Any personal references;
- l. The applicant's employment history; and
- m. Any other relevant factors.

13. The cost of any background investigation will be assumed by the Board.

14. All final applicants under final consideration for employment and any person or entity who seeks to contract with the Board to conduct business with or receive funding from the Board in an annual aggregate amount greater than \$100,000.00 shall complete a "Declaration Regarding Material Assistance/Nonassistance to Terrorist or Terrorist Organizations" as required by Ohio Revised Code Sections 2909.32, 2909.33, and 2909.34. Any answer of "yes" to any question on the declaration, or failure to answer "no" to any question on the declaration shall serve as a disclosure that material assistance to an organization identified on the U.S. Department of State Terrorist Exclusion List has been provided and shall result in denial of employment or development and/or continuation of a business relationship. Failure to disclose the provision of material assistance to such an organization or knowingly making false statements regarding material assistance to such an organization is a felony of the fifth degree.

REPORTING REQUIREMENTS

In accordance with Ohio Revised Code Section 5126.28, all employees must notify the Superintendent when the employee is charged with, convicted of, or pleads guilty to any criminal offense. Notification must occur no later than the employee's next scheduled work shift. Failure to inform the Superintendent may result in termination.

POLICY AND/OR PROCEDURE VIOLATION:

Any Board employee found in violation of the policy and/or procedure will be subject to corrective action up to and including termination of employment for cause.

The report from a criminal background check (and the response from any other local, state, or federal agency contacted) shall be compared to the information on the application and affidavit signed by the applicant/employee. If the applicant has been appointed to a position, any falsification on the application or affidavit which is disclosed by this comparison shall be cause for removal from employment.

BCII RECORDS

BCII reports and similar criminal records checks are not public records for purposes of Ohio Revised Code Section 149.43 and shall not be made available to any person except as permitted by Ohio Revised Code Section 5126.28(H), as amended from time to time.
Revised:



Superintendent Approval

12/17/10

Date