

#### **204.1.6. Criminal Background Check**

All prospective employees, including substitutes, must successfully pass a criminal records checks. Applicants shall answer completely and accurately all questions on their employment application with regard to previous criminal history. Failure to do so may preclude the applicant from being hired and subject a current employee to dismissal. Applicants shall consent in writing to a preliminary criminal record check and post-employment criminal record check and to provide fingerprints and other identifying information required to complete such checks. Failure to consent or to provide relevant information may result in rejection of an applicant or dismissal of current employee.

State law requires the School to adhere to criminal record check policy adopted by the LEA in which the school is located. At the time this policy was adopted, the Gaston County Schools' criminal background check policy was as follows:

Applicants must notify the Head of School immediately if they are arrested, charged with, or convicted of a criminal offense (including entering a plea of guilty or *nolo contendere*) other than a minor traffic violation (i.e., speeding, parking, or a lesser violation). Notice must be in writing, must include all pertinent facts, and must be delivered to the Head of School no later than the next scheduled business day following the arrest, charge, or conviction, unless the applicant is hospitalized or incarcerated, in which case the applicant must report the alleged violation within 24 hours after his or her release. Upon judicial action in the matter, the applicant must report the disposition and pertinent facts in writing to the Head of School no later than the next business day following adjudication.

A criminal history check and a check of sex offender registries must be conducted on all final candidates for employment with the school. Criminal history checks must be conducted in accordance with state law and any procedures established by the Head of School. School officials shall not require candidates to disclose expunged arrests, charges, or convictions and shall not ask candidates to voluntarily disclose such information without first advising that disclosure is not required. The Head of School or designee shall report to the State Board of Education any licensed individual who is found to have a criminal history, as required by State Board policy.

A final candidate for employment or for hiring as an independent contractor will be excluded from hiring on the basis of criminal conduct only when doing so is job-related and consistent with business necessity. If a final candidate is found to have been convicted of a criminal offense, other than a minor traffic violation, the Head of School shall determine whether the individual is qualified for employment despite the criminal history by considering, among other things, whether the individual poses a threat to the safety of students or personnel or has

demonstrated that he or she does not have the integrity or honesty to fulfill the duties of the position. The following factors will be considered in making this determination: (1) the nature and gravity of the offense or conduct; (2) the time that has passed since the offense or conduct and/or completion of the sentence; and (3) the nature of the job sought. Before the Head of School may exclude a final candidate based on his or her past criminal convictions, the Head of School must give the candidate the opportunity to demonstrate that the exclusion does not properly apply to him or her.

The board has determined that every position with the school system, regardless of whether the position is located in the school or elsewhere, potentially entails contact with students, either on a regular, occasional, or emergency basis. For that reason, no individual who is a registered sex offender will be hired for any position with the school system.

In addition, each contract executed by the board with an independent contractor or for services of independent contractors must require the contractor to check sex offender registries.

In addition, the following state rules shall apply with respect to criminal record checks:

1. Federal and state record checks will be performed for all applicants or conditional employees, in all states where the applicant or conditional employee has resided and worked.
2. The applicant or conditional employee will not be permanently employed if the criminal record check and supporting records, upon confirmation, reveal a "criminal history," defined as the conviction of a crime, whether a misdemeanor or felony, that indicates the employee (1) poses a threat to the physical safety of students or personnel, or (2) has demonstrated that he or she does not have the integrity or honesty to fulfill his or her duties as a School employee.
3. Conviction of a crime, as used in this policy, includes the entry of (1) a plea of guilty, no contest, or the equivalent, (2) a verdict or finding of guilt in a court of law or military tribunal or (3) a prayer for judgment.
4. The School shall consult with legal counsel or obtain a certified copy of an applicant's or conditional employee's conviction notice prior to making any final employment decision based on the criminal history.
5. If the School considers criminal history in rejecting an applicant or dismissing a conditional employee, the Head of School or his designee shall prepare written findings with regard to how such information was used.
6. The Head of School or his designee shall provide to the State Board of Education information on where to obtain the record of conviction,

including the person's name, criminal case number, and the county of conviction for a person who is certified or licensed by the State Board of Education.

7. If a criminal record check reveals that an applicant or conditional employee was charged with but not convicted of a crime, whether misdemeanor or felony, and such charge indicates that the employee may not meet the Board's employment standards, the Head of School may conduct further investigations into the person's conduct and the circumstances surrounding the charge.
8. Applicants and current employees shall notify the School if they are charged with or convicted of a criminal offense (including entering a plea of guilt or no contest) except for minor traffic violations.
9. Information obtained as a result of a criminal record check shall be kept confidential as required by state law and regulations. The School shall retain only hard copy records from a criminal history check conducted through the North Carolina Department of Justice. These records shall be kept in a locked, secure place, separate from the individual's personnel file.
10. If the School conducts criminal record checks that are subject to the Fair Credit Reporting Act, it shall provide employees or applicants with all required notices and disclosures before conducting the record check or taking adverse employment action against the employee or applicant.