

March 18, 2015

MEMORANDUM

TO: State Board of Regents
FROM: David L. Buhler
SUBJECT: Regent Policy R847, Criminal Background Checks

Issue

Regent Policy R847, *Criminal Background Checks*, has recently been reviewed by the Office of the Commissioner, the Utah Attorney General's Office, and USHE institutional personnel. This review is part of the continuing review of all Regent Policies. Several of the revisions are technical or add clarification, but there are substantive changes related to the reasonable cause language.

Background

R847 has been revised in an effort to clarify and strengthen the policy and provide guidance and consistency for institutions. Significant revisions to the policy include:

- Section 3.8, updates the reasonable cause language to allow for periodic background checks of security sensitive positions
- Section 4.4, clarifies the written release of information
- Previous section 4.15. is deleted, eliminating outdated language

Commissioner's Recommendation

The Commissioner recommends that the Regents approve revisions to policy R847, Criminal Background Checks, effective immediately.

David L. Buhler
Commissioner of Higher Education

DLB/GLS/KVO/CRW
Attachment

R847-1. Purpose: To provide [procedures](#) for [requiring or administering](#) criminal background checks of certain prospective and existing employees of System institutions.

R847-2. References

- 2.1. Utah Code 53A-3-410 (Criminal background checks on school personnel—Notice—Payment of cost—Request for review)
- 2.2. Utah Code 53B-1-110 (Higher Education Criminal Background Checks)
- 2.3. Policy and Procedure R165, Concurrent Enrollment
- 2.4. [Federal Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq.](#)
- ~~2.4. Policy and Procedure R481, Academic Freedom, Professional Responsibility and Tenure~~

R847-3. Definitions

- 3.1. **Adjunct Faculty:** part-time teachers, post-doctoral fellows, visiting lecturers, graduate assistants and other professional staff members of businesses, industries, and other agencies and organizations who are appointed by the institutions on a part-time basis to carry out instructional, research or public service functions.
- 3.2. **Applicant:** ~~the~~ [a](#) final applicant offered employment, transfer or promotion, contingent on acceptable results of a criminal background check and other reviews required for the position by ~~the~~ [an](#) institution such as financial/credit checks, degree transcripts or license documentation, or student loan status.
- 3.3. **Background Check:** a commercial or governmental process of searching public records to determine ~~no less than~~, [at a minimum](#), whether an individual has been convicted of criminal conduct anywhere in the United States of America within no less than the last seven years. An institution may choose to specify a longer time period, search in one or more foreign countries, or seek additional information such as arrests or other evidence of character issues as part of a Background Check.
- 3.4. **Diminished Capacity Adult:** a person who lacks decision making capacity, which requires, ~~to greater or lesser degree:~~ (1) possession of a set of values and goals; (2) the ability to communicate and to understand information; and (3) the ability to reason and to deliberate about one's choices.
- 3.5. **Employee:** [\(1\)](#) a faculty member, ~~or~~ [\(2\)](#) ~~classified or professional~~ [an exempt or non-exempt](#) employee of a Utah System of Higher Education institution who receives compensation for work or services from funds controlled by the institution, regardless of the source of the funds, the duties of the position, the amount of compensation paid, or the percent of time worked.
- 3.6. **Institution:** an institution listed in [Utah Code](#) Section 53B-1-102.

¹ Adopted July 20, 2007.

3.7. **Minor:** a person younger than 21 years of age.

3.8. **Reasonable Cause:** may exist with respect to a position or with respect to an individual. As to a position, reasonable cause exists to conduct periodic criminal background checks (including yearly checks) for any employee holding a security sensitive position. As to an individual, reasonable cause exists where the known facts ~~and~~ or circumstances about a particular employee are sufficient to warrant a person of reasonable prudence in the belief that the employee poses an unreasonable risk to persons or property and/or a history or report of a crime will be found.

3.9. **Security Sensitive Positions:** positions designated by ~~the~~ an institution as security sensitive whose duties require, provide for, or encompass the potential to incur human, financial or property loss or other harm to the institution and its constituents. Besides institution wide designations of security sensitive positions, individual departments may be subject to additional restrictions, requirements, laws or regulations. A security sensitive position ~~should~~ includes at least one of the following elements:

3.9.1. access to children, including child care in a child care center, or to diminished capacity adults;

3.9.2. relationships with students where exceptional trust and responsibility are involved, such as counselors, health care providers, coaches, and residence hall personnel;

3.9.3. responsibility for providing direct medical care, treatment, or counseling and/or access to pharmaceuticals, toxins, hazardous or controlled substances;

3.9.4. direct access to laboratory materials and other property that have the potential of being diverted from their proper use either for financial gain or for harmful, dangerous or illegal purposes;

3.9.5. decision making authority for committing institutional funds or financial resources through contracts and commitments and/or direct access to or responsibility for handling cash, checks, credit/debit cards or cash equivalents, institutional property, disbursements or receipts;

3.9.6. access to building and residence hall master control and key systems;

3.9.7. access to confidential information or sensitive personal information such as employment, health, donor, financial and other records, including data that could facilitate identity theft;

3.9.8. access to and responsibility for the maintenance, upgrading, and repair of the institution's computer networks and/or information technology systems; ~~and~~ or

3.9.9. responsibility for police, security, guard forces, or other significant health or safety issues.

~~3.9.10.—Besides institution wide designations of security sensitive positions, individual departments may be subject to additional restrictions, requirements, laws or regulations.~~

3.10. **Significant Contact with Minors:** an employee position involves significant contact with minor persons if there is a reasonable expectation that in the course of the normal, routine responsibilities of the position, the employee and a minor would interact on a one-on-one basis. For example, teachers with office hour consultations, mentors, counselors, test center employees, coaches, and advisors could all reasonably expect to interact one-on-one with students as a normal, routine part of their work and hence would have "significant contact" with one or more minor persons during the course of their employment.

R847-4. Policy

- 4.1. Required Background Checks for Applicants:** An applicant for any employee position at an institution that involves significant contact with minors or is considered to be security sensitive by the institution's president or his/her designee, must submit to a criminal background check as a condition of employment. The president or his/her designee may exempt applicants for adjunct faculty, temporary, or part time positions, from this requirement. The president or his/her designee may require such exempted employees to self disclose any criminal background and to sign an agreement to conform to institutional rules on sexual harassment and information, financial, health, and physical security.
- 4.2. Optional Background Checks for Applicants:** ~~The A~~ president or his/her designee may ~~allow or~~ require applicants for positions other than those described in [Section 4.1](#), including adjunct faculty, temporary or part time positions, to submit to a criminal background check as a condition of employment.
- 4.3. Background Checks for Existing Employees:** An existing employee must submit to a criminal background check, where the institution's president or his/her designee finds that reasonable cause exists.
- 4.4. Written Release of Information:** ~~For applicants for employment, the An~~ institution shall obtain a written and signed release of information for a criminal ~~history~~ background check ~~from an applicant required by institutional policy to submit to a criminal background check~~. ~~For existing employees, the An~~ institution shall request a written and signed release of information for a criminal ~~history~~ background check ~~from an existing employee when the institution's president or his/her designee finds that reasonable cause exists~~ .
- 4.5. Notice a Background Check has been Requested:** If ~~the an~~ existing employee does not provide a written and signed release as requested pursuant to [Section 4.4](#), the employee shall receive written notice that the background check has been requested.
- 4.6. Fingerprint Check:** ~~The An~~ institution may require each applicant or employee subject to a criminal background check under this section to be fingerprinted and consent to a fingerprint background check by the Utah Bureau of Criminal Identification, the Federal Bureau of Investigation or another government or commercial entity.
- 4.6.1.** Institutions may request the Utah Bureau of Criminal Identification to conduct ~~criminal~~ [fingerprint](#) background checks of prospective employees and, where reasonable cause exists, existing employees pursuant to board policy.
- 4.6.2.** At the request of an institution, the Utah Bureau of Criminal Identification is directed by [Utah Code Section 53B-1-110](#) to release the individual's full record of criminal convictions to the authorized institutional administrator requesting the information and is also directed to seek additional information from regional or national criminal data files in responding to inquiries under [Utah Code Section 53B-1-110](#).
- 4.6.3.** [Utah Code Section 53B-1-110](#) provides that information received by the Utah Bureau of Criminal Identification from entities other than agencies or political subdivisions of the state may not be released to a private entity unless the release is permissible under applicable laws or regulations of the entity providing the information.
- 4.6.4.** Except as provided in [Section 4.8](#), ~~the an~~ institution shall pay the actual cost of fingerprint background checks incurred by the Utah Bureau of Criminal Identification, and the moneys collected shall be credited to the Utah Bureau of Criminal Identification to offset its expenses in conducting the checks.

4.7. Consumer-reporting Agency Criminal History Background Check: ~~The A~~ president or his/her designee may determine to use a consumer-reporting agency to conduct a criminal ~~history~~ background check instead of the fingerprint background check process provided in [Section 4.6](#).

4.7.1. At a minimum, the consumer-reporting agency must conduct an investigation to verify the applicant or employee's social security number, obtain information regarding past employment, and search the individual's criminal background nationwide in the individual's counties of residence for the last seven years.

4.8. Payment of Costs: ~~The A~~ president or his/her designee may require an applicant to pay the costs of a criminal background check as a condition of employment.

4.9. Risk Assessment: Based on the convictions disclosed by the criminal background check, ~~the an~~ institution will assess the overall risk to persons and property. That risk assessment will include: (1) the number of crimes committed, (2) the severity of those crimes, (3) the length of time since they were committed, (4) the likelihood of recidivism, (5) the security sensitivity of the position sought by the applicant or held by the existing employee, and (6) other factors that may be relevant. The institution may determine that an individual with a criminal history should be considered eligible to obtain or retain the position, or that additional documentation should be required.

4.10. Opportunity to Respond: Before an applicant is denied employment or an employee is subjected to an adverse employment action based on information obtained in ~~the criminal background report a~~ [background check](#), the applicant or employee shall receive a copy of the report, written notice of the reasons for denial or the adverse action, a written description of his/her rights under the Fair Credit Reporting Act, and shall have an opportunity to respond to the reasons and any information received as a result of the ~~criminal~~ background check. If an applicant ~~or employee~~ disagrees with the accuracy of any information in the report and notifies the human resources office of the institution within three ~~(3)~~ business days of his/her receipt of the report, the institution shall provide a reasonable opportunity to address the information contained in the report.

4.11. Financial/Credit Check: If an applicant is applying for, or an employee holds, a security sensitive position with access to sensitive personal information or financial responsibilities over the funds of the institution or others, ~~the a~~ president or his/her designee may require an additional financial/credit check to be performed.

4.12. Degree Transcripts or License Documentation: If ~~the a~~ position requires a degree or license, ~~the an~~ institution may obtain a copy of the applicant's degree transcripts or license documentation.

4.13. Student Loan Status: If an applicant or employee has a student loan, ~~the an~~ institution may check on the loan status. The institution may deny employment or take adverse employment action if the applicant or employee has a delinquent or defaulted student loan.

4.14. Limitations on the Use of Information: The information contained in ~~the criminal history a~~ background check will be available only to those persons involved in making employment decisions or performing the background investigation, and the information will be used only for the purpose of making an employment or promotion decision.

~~4.15. — Background Checks Phased In: Criminal background checks for new employees may be phased in over a two year period ending May 1, 2009.~~

~~4.16~~ **4.15. Concurrent Enrollment Faculty:** Higher education employees, whether full-time or adjunct faculty, who are concurrent enrollment instructors with unsupervised access to K-12 students shall complete a criminal background check consistent with [Utah Code](#) §53A-3-410. The institution employing a concurrent [enrollment](#) instructor who is also a higher education employee shall have responsibility to determine the need for the criminal background check consistent with the law, shall satisfy this requirement, and shall maintain appropriate documentation. (See Policy and Procedures R165, Concurrent Enrollment).~~;~~
~~paragraph 9.2.) This requirement is not subject to the phase in provisions of 4.15.~~

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