



Educational Entity Responsibilities Concerning Waiver of Disqualifying Offenses for CLASSIFIED EMPLOYEES

Disqualification / Waiver:

The Department will notify the applicant and the educational entity if there is a disqualification for employment under A.C.A. § 6-17-414(c).

If the Department notifies an educational entity that a classified employee or applicant is disqualified for employment on the basis of the background check, the educational entity must send the applicant a notice that:

1. Advises them of the disqualification. A.C.A. § 6-17-414(g); and
2. Afford the applicant the opportunity to request a waiver from the school board within thirty (30) days after receiving the notice. A.C.A. § 6-17-414(g).

*Under Act 1089 of 2015 - an educational entity **may** (but is not required to) grant a waiver to an applicant for a staff position contracted through an outside vendor, for example a position as substitute teacher, cafeteria worker, or custodial/maintenance worker.*

The Department is prohibited from disclosing to the educational entity the nature of the disqualifying offense. Therefore, if a waiver is requested:

- The educational entity may NOT contact the Department to obtain confirmation of the criminal record that constitutes a disqualifying offense.
- An applicant will have to contact the Licensure office to obtain a copy of his/her criminal history record in person.

Further, under FBI regulations (see Agency Privacy Requirements for Noncriminal Justice Applicants attached), the school board **shall not** identify an applicant's criminal record before the hearing in any public document, including the board's agenda. After the hearing is conducted and the applicant has disclosed the offense, the board's minutes and the resolution may contain the nature of the offense.

The hearing concerning the waiver request must be **a public hearing**, at which the following circumstances are considered:

1. The age at which the incident was committed;
2. The circumstances surrounding the incident;
3. The length of time since the incident;
4. Subsequent work history;
5. Employment references;
6. Character references; and
7. Other evidence demonstrating that the applicant does not pose a threat to the health or safety of school children or school personnel.

The educational entity's board may waive the disqualification and allow the applicant to work. If the educational entity grants the waiver and allows the employee to work, the educational entity must:

- Document the waiver in a written resolution of the board of directors (see Sample Resolution attached); and
- Send the written resolution to the Department of Education to the attention of:

Office of Educator Licensure
ATTN: Background Checks Arkansas
Department of Education
Four Capitol Mall
Little Rock, AR 72201

AELS will still reflect that the applicant is disqualified because a waiver granted by the educational entity is valid only for that educational entity. If the applicant seeks employment at another educational entity, he or she will still be disqualified for employment and would have to seek a waiver from the new employer.

AGENCY PRIVACY REQUIREMENTS FOR NONCRIMINAL JUSTICE APPLICANTS

Authorized governmental and non-governmental agencies/officials that conduct a national fingerprint-based criminal history record check on an applicant for a noncriminal justice purpose (such as a job or license, immigration or naturalization matter, security clearance, or adoption) are obligated to ensure the applicant is provided certain notice and other information and that the results of the check are handled in a manner that protects the applicant's privacy.

- **Officials must provide to the applicant written notice¹ that his/her fingerprints will be used to check the criminal history records of the FBI.**
- **Officials using the FBI criminal history record (if one exists) to make a determination of the applicant's suitability for the job, license, or other benefit must provide the applicant the opportunity to complete or challenge the accuracy of the information in the record.**
- **Officials must advise the applicant that procedures for obtaining a change, correction, or updating of an FBI criminal history record are set forth at Title 28, Code of Federal Regulations (CFR), Section 16.34.**
- **Officials should not deny the job, license, or other benefit based on information in the criminal history record until the applicant has been afforded a reasonable time to correct or complete the record or has declined to do so.**
- **Officials must use the criminal history record solely for the purpose requested and cannot disseminate the record outside the receiving department, related agency, or other authorized entity.²**

The FBI has no objection to officials providing a copy of the applicant's FBI criminal history record to the applicant for review and possible challenge when the record was obtained based on positive fingerprint identification. If agency policy permits, this courtesy will save the applicant the time and additional FBI fee to obtain his/her record directly from the FBI by following the procedures found at 28 CFR 16.30 through 16.34. It will also allow the officials to make a more timely determination of the applicant's suitability.

Each agency should establish and document the process/procedures it utilizes for how/when it gives the applicant notice, what constitutes "a reasonable time" for the applicant to correct or complete the record, and any applicant appeal process that is afforded the applicant. Such documentation will assist State and/or FBI auditors during periodic compliance reviews on use of criminal history records for noncriminal justice purposes.

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

² 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), 50.12(b) and 906.2(d).

NONCRIMINAL JUSTICE APPLICANT'S PRIVACY RIGHTS

As an applicant who is the subject of a national fingerprint-based criminal history record check for a noncriminal justice purpose (such as an application for a job or license, an immigration or naturalization matter, security clearance, or adoption), you have certain rights which are discussed below.

- You must be provided written notification¹ that your fingerprints will be used to check the criminal history records of the FBI.
- If you have a criminal history record, the officials making a determination of your suitability for the job, license, or other benefit must provide you the opportunity to complete or challenge the accuracy of the information in the record.
- The officials must advise you that the procedures for obtaining a change, correction, or updating of your criminal history record are set forth at Title 28, Code of Federal Regulations (CFR), Section 16.34.
- If you have a criminal history record, you should be afforded a reasonable amount of time to correct or complete the record (or decline to do so) before the officials deny you the job, license, or other benefit based on information in the criminal history record.²

You have the right to expect that officials receiving the results of the criminal history record 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

If agency policy permits, the officials may provide you with a copy of your FBI criminal history record for review and possible challenge. If agency policy does not permit it to provide you a copy of the 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 <http://www.fbi.gov/about-us/cjis/background-checks>.

If you decide to challenge the accuracy or 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. (See 28 CFR 16.30 through 16.34.)

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

² See 28 CFR 50.12(b).

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).

28 CFR Sec. 16.34

Procedure to obtain change, correction or updating of identification records

If, after reviewing his/her identification record, the subject thereof believes that it is incorrect or incomplete in any respect and wishes changes, corrections or updating of the alleged deficiency, he/she should make application directly to the agency which contributed the questioned information. The subject of a record may also direct his/ her challenge as to the accuracy or completeness of any entry on his/her record to:

FBI, Criminal Justice Information Services (CJIS) Division
ATTN: SCU, Mod. D-2
1000 Custer Hollow Road
Clarksburg, WV 26306

The FBI will then forward the challenge to the agency which submitted the data requesting that agency to verify or correct the challenged entry. Upon the receipt of an official communication directly from the agency which contributed the original information, the FBI CJIS Division will make any changes necessary in accordance with the information supplied by that agency.

[Order No. 1134-86, 51 FR 16677, May 6, 1986, as amended by Order No. 2258-99, 64 FR 52226, Sept. 28, 1999]

WRITTEN RESOLUTION OF THE BOARD OF DIRECTORS OF
[EDUCATIONAL ENTITY'S NAME]
FOR WAIVER FOR CLASSIFIED EMPLOYEE UNDER
ARK. CODE ANN. § 6-17-414(g)

WHEREAS, on _____, 20 , the board of directors of **[Educational Entity]** met in an open meeting to consider the request by **[Applicant Name]** for a waiver under Ark. Code Ann. § 6-17-414(g);

WHEREAS, the board heard the request for a waiver by **[Applicant Name]** of the following disqualifying offense: **[specify the nature of the offense and date]**;

WHEREAS the board considered the following in making its determination:

1. The age at which the incident was committed;
2. The circumstances surrounding the incident;
3. The length of time since the incident;
4. Subsequent work history;
5. Employment references;
6. Character references; and
7. Other evidence demonstrating that the applicant does not pose a threat to the health or safety of school children or school personnel; and

WHEREAS, after careful consideration of the foregoing factors, the board recommends that it grant a waiver of the disqualifying offense and allow **[Applicant Name]** to be eligible for employment with **[Educational Entity]**,

NOW THEREFORE BE IT RESOLVED, that the board hereby grants the waiver request of **[Applicant Name]** pursuant to Ark. Code Ann. § 6-17-414(g).

Board President

Date

Board Secretary