

**Effective 1/24/2018**

**Part 4  
Background Checks**

**53G-11-401 Definitions.**

As used in this part:

- (1) "Authorized entity" means an LEA, qualifying private school, or the state board that is authorized to request a background check and ongoing monitoring under this part.
- (2) "Bureau" means the Bureau of Criminal Identification within the Department of Public Safety created in Section 53-10-201.
- (3) "Contract employee" means an employee of a staffing service or other entity who works at a public or private school under a contract.
- (4) "FBI" means the Federal Bureau of Investigation.
- (5)
  - (a) "License applicant" means an applicant for a license issued by the state board under Title 53E, Chapter 6, Education Professional Licensure.
  - (b) "License applicant" includes an applicant for reinstatement of an expired, lapsed, suspended, or revoked license.
- (6) "Non-licensed employee" means an employee of an LEA or qualifying private school that does not hold a current Utah educator license issued by the state board under Title 53E, Chapter 6, Education Professional Licensure.
- (7) "Personal identifying information" means:
  - (a) current name, former names, nicknames, and aliases;
  - (b) date of birth;
  - (c) address;
  - (d) telephone number;
  - (e) driver license number or other government-issued identification number;
  - (f) social security number; and
  - (g) fingerprints.
- (8) "Substitute teacher" means the same as that term is defined in Section 53E-6-901.
- (9) "Qualifying private school" means a private school that:
  - (a) enrolls students under Title 53F, Chapter 4, Part 3, Carson Smith Scholarship Program; and
  - (b) is authorized to conduct fingerprint-based background checks of national crime information databases under the Adam Walsh Child Protection and Safety Act of 2006, Pub. L. No. 109-248.
- (10) "Rap back system" means a system that enables authorized entities to receive ongoing status notifications of any criminal history reported on individuals whose fingerprints are registered in the system.
- (11) "WIN Database" means the Western Identification Network Database that consists of eight western states sharing one electronic fingerprint database.

Amended by Chapter 22, 2024 General Session

**53G-11-402 Background checks for non-licensed employees, contract employees, volunteers, and charter school governing board members.**

- (1) An LEA or qualifying private school shall:

- (a) require the following individuals who are 18 years old or older to submit to a nationwide criminal background check and ongoing monitoring as a condition of employment or appointment:
    - (i) a non-licensed employee;
    - (ii) a contract employee;
    - (iii) except for an officer or employee of a cooperating employer under an internship safety agreement under Section 53G-7-904, a volunteer who will be given significant unsupervised access to a student in connection with the volunteer's assignment; and
    - (iv) a charter school governing board member;
  - (b) collect the following from an individual required to submit to a background check under Subsection (1)(a):
    - (i) personal identifying information;
    - (ii) subject to Subsection (2), a fee described in Subsection 53-10-108(15); and
    - (iii) consent, on a form specified by the LEA or qualifying private school, for:
      - (A) an initial fingerprint-based background check by the FBI and the bureau upon submission of the application; and
      - (B) retention of personal identifying information for ongoing monitoring through registration with the systems described in Section 53G-11-404;
  - (c) submit the individual's personal identifying information to the bureau for:
    - (i) an initial fingerprint-based background check by the FBI and the bureau; and
    - (ii) ongoing monitoring through registration with the systems described in Section 53G-11-404 if the results of the initial background check do not contain disqualifying criminal history information as determined by the LEA or qualifying private school in accordance with Section 53G-11-405; and
  - (d) identify the appropriate privacy risk mitigation strategy to be used to ensure the LEA or qualifying private school only receives notifications for individuals with whom the LEA or qualifying private school maintains an authorizing relationship.
- (2)
- (a) An LEA or qualifying private school may not require an individual to pay the fee described in Subsection (1)(b)(ii) unless the individual:
    - (i) has passed an initial review; and
    - (ii) is one of a pool of no more than five candidates for the position.
  - (b) An LEA may not require a non-licensed employee, contract employee, or volunteer to pay the fee described in Subsection (1)(b)(ii).
- (3) An LEA or qualifying private school that receives criminal history information about a licensed educator under Subsection 53G-11-403(5) shall assess the employment status of the licensed educator as provided in Section 53G-11-405.
- (4) An LEA or qualifying private school may establish a policy to exempt an individual described in Subsections (1)(a)(i) through (iv) from ongoing monitoring under Subsection (1) if the individual is being temporarily employed or appointed.
- (5) An LEA or qualifying private school shall provide another LEA or qualifying private school that requires a national background check, as described in Subsection 53G-11-402(1)(a), an opportunity to clone the subscription or data from the FBI Rap Back System, as those terms are defined in Section 53-10-108, for employees or volunteers who are relocating, providing temporary volunteer services, or under contract, and in accordance with Section 53-10-108.

Amended by Chapter 22, 2024 General Session

**53G-11-403 Background checks for licensed educators.**

The state board shall:

- (1) require a license applicant to submit to a nationwide criminal background check and ongoing monitoring as a condition for licensing;
- (2) collect the following from an applicant:
  - (a) personal identifying information; and
  - (b) consent, on a form specified by the state board, for:
    - (i) an initial fingerprint-based background check by the FBI and bureau upon submission of the application;
    - (ii) retention of personal identifying information for ongoing monitoring through registration with the systems described in Section 53G-11-404; and
    - (iii) disclosure of any criminal history information to the individual's employing LEA or qualifying private school;
- (3) submit an applicant's personal identifying information to the bureau for:
  - (a) an initial fingerprint-based background check by the FBI and bureau; and
  - (b) ongoing monitoring through registration with the systems described in Section 53G-11-404 if the results of the initial background check do not contain disqualifying criminal history information as determined by the state board in accordance with Section 53G-11-405;
- (4) identify the appropriate privacy risk mitigation strategy that will be used to ensure that the state board only receives notifications for individuals with whom the state board maintains an authorizing relationship;
- (5) notify the employing LEA or qualifying private school upon receipt of any criminal history information reported on a licensed educator employed by the LEA or qualifying private school; and
- (6)
  - (a) collect the information described in Subsection (2) from individuals who were licensed prior to July 1, 2015, by the individual's next license renewal date; and
  - (b) submit the information to the bureau for ongoing monitoring through registration with the systems described in Section 53G-11-404.
- (7) An LEA or qualifying private school shall provide another LEA or qualifying private school that requires the same or less than a national background check, as described in Subsection 53G-11-402(1)(a), an opportunity to clone the subscription or data from the FBI Rap Back System, as those terms are defined in Section 53-10-108, for employees or volunteers who are relocating, providing temporary volunteer services, or under contract, and in accordance with Section 53-10-108.

Amended by Chapter 22, 2024 General Session

**53G-11-404 Bureau responsibilities.**

The bureau shall:

- (1) upon request from an authorized entity, register the fingerprints submitted by the authorized entity as part of a background check with:
  - (a) the WIN Database rap back system, or any successor system; and
  - (b) the rap back system maintained by the Federal Bureau of Investigation;
- (2) notify an authorized entity when a new entry is made against an individual whose fingerprints are registered with the rap back systems described in Subsection (1) regarding:
  - (a) an alleged offense; or
  - (b) a conviction, including a plea in abeyance;

- (3) assist authorized entities to identify the appropriate privacy risk mitigation strategy that is to be used to ensure that the authorized entity only receives notifications for individuals with whom the authorized entity maintains an authorizing relationship; and
- (4) collaborate with the state board to provide training to authorized entities on the notification procedures and privacy risk mitigation strategies described in this part.

Amended by Chapter 293, 2019 General Session

**53G-11-405 Due process for individuals--Review of criminal history information.**

- (1)
  - (a) In accordance with Section 53-10-108, an authorized entity shall provide an individual an opportunity to review and respond to any criminal history information received under this part.
  - (b) If an authorized entity decides to disqualify an individual as a result of criminal history information received under this part, an individual may request a review of:
    - (i) information received; and
    - (ii) the reasons for the disqualification.
  - (c) An authorized entity shall provide an individual described in Subsection (1)(b) with written notice of:
    - (i) the reasons for the disqualification; and
    - (ii) the individual's right to request a review of the disqualification.
- (2)
  - (a) An LEA or qualifying private school shall make decisions regarding criminal history information for the individuals subject to the background check requirements under Section 53G-11-402 in accordance with:
    - (i) Subsection (3);
    - (ii) administrative procedures established by the LEA or qualifying private school; and
    - (iii) rules established by the state board.
  - (b) The state board shall make decisions regarding criminal history information for licensed educators in accordance with:
    - (i) Subsection (3);
    - (ii) Title 53E, Chapter 6, Education Professional Licensure; and
    - (iii) rules established by the state board.
- (3) When making decisions regarding initial employment, initial licensing, or initial appointment for the individuals subject to background checks under this part, an authorized entity shall consider:
  - (a) any convictions, including pleas in abeyance;
  - (b) any matters involving a felony; and
  - (c) any matters involving an alleged:
    - (i) sexual offense;
    - (ii) class A misdemeanor drug offense;
    - (iii) offense against the person under Title 76, Chapter 5, Offenses Against the Individual;
    - (iv) class A misdemeanor property offense that is alleged to have occurred within the previous three years; and
    - (v) any other type of criminal offense, if more than one occurrence of the same type of offense is alleged to have occurred within the previous eight years.

Amended by Chapter 430, 2022 General Session

**53G-11-406 Self-reporting requirement.**

- (1) Individuals subject to the background check requirements under this part shall self-report conviction, arrest, or offense information in accordance with rules established by the state board.
- (2) An LEA shall report conviction, arrest, or offense information received from licensed educators under Subsection (1) to the state board in accordance with rules established by the state board.

Amended by Chapter 293, 2019 General Session

**53G-11-407 Update criminal background check rules and policies.**

On or before September 1, 2015:

- (1) the state board shall update the state board's criminal background check rules consistent with this part; and
- (2) an LEA shall update the LEA's criminal background check policies consistent with this part.

Amended by Chapter 293, 2019 General Session

**53G-11-408 Training provided to authorized entities.**

The state board shall collaborate with the bureau to provide training to authorized entities on the provisions of this part.

Amended by Chapter 293, 2019 General Session

**53G-11-409 Legislative audit.**

After the conclusion of the 2018-2019 school year, subject to the prioritization of the Legislative Audit Subcommittee, the legislative auditor general shall conduct a review and issue a report on the extent to which the criminal background check procedures and ongoing monitoring described in this part adequately detect and identify the criminal histories of individuals who are employed by or volunteering in public schools.

Renumbered and Amended by Chapter 3, 2018 General Session

**53G-11-410 Reference check requirements for LEA applicants and volunteers.**

- (1) As used in this section:
  - (a) "Child" means an individual who is younger than 18 years old.
  - (b) "LEA applicant" means an applicant for employment by an LEA.
  - (c) "Physical abuse" means the same as that term is defined in Section 80-1-102.
  - (d) "Potential volunteer" means an individual who:
    - (i) has volunteered for but not yet fulfilled an unsupervised volunteer assignment; and
    - (ii) during the last three years, has worked in a qualifying position.
  - (e) "Qualifying position" means paid employment that requires the employee to directly care for, supervise, control, or have custody of a child.
  - (f) "Sexual abuse" means the same as that term is defined in Section 80-1-102.
  - (g) "Student" means an individual who:
    - (i) is enrolled in an LEA in any grade from preschool through grade 12; or
    - (ii) receives special education services from an LEA under the Individuals with Disabilities Education Act, 20 U.S.C. Sec. 1400 et seq.

- (h) "Unsupervised volunteer assignment" means a volunteer assignment at an LEA that allows the volunteer significant unsupervised access to a student.
- (2)
- (a) Before hiring an LEA applicant or giving an unsupervised volunteer assignment to a potential volunteer, an LEA shall:
    - (i) require the LEA applicant or potential volunteer to sign a release authorizing the LEA applicant or potential volunteer's previous qualifying position employers to disclose information regarding any employment action taken or discipline imposed for the physical abuse or sexual abuse of a child or student by the LEA applicant or potential volunteer;
    - (ii) for an LEA applicant, request that the LEA applicant's most recent qualifying position employer disclose information regarding any employment action taken or discipline imposed for the physical abuse or sexual abuse of a child or student by the LEA applicant;
    - (iii) for a potential volunteer, request that the potential volunteer's most recent qualifying position employer disclose information regarding any employment action taken or discipline imposed for the physical abuse or sexual abuse of a child or student by the potential volunteer; and
    - (iv) document the efforts taken to make a request described in Subsection (2)(a)(ii) or (iii).
  - (b) An LEA may not hire an LEA applicant who does not sign a release described in Subsection (2)(a)(i).
  - (c) An LEA may not give an unsupervised volunteer assignment to a potential volunteer who does not sign a release described in Subsection (2)(a)(i).
  - (d) An LEA shall request information under Subsection (2)(a)(ii) or (iii) before:
    - (i) hiring an LEA applicant; or
    - (ii) giving an unsupervised volunteer assignment to a potential volunteer.
  - (e) In accordance with state and federal law, an LEA may request from an LEA applicant or potential volunteer other information the LEA determines is relevant.
- (3)
- (a) An LEA that receives a request described in Subsection (2)(a)(ii) or (iii) shall respond to the request within 20 business days after the day on which the LEA received the request.
  - (b) If an LEA or other employer in good faith discloses information that is within the scope of a request described in Subsection (2)(a)(ii) or (iii), the LEA or other employer is immune from civil and criminal liability for the disclosure.

Amended by Chapter 262, 2021 General Session