



## **Background Check Policy**

**Purpose:** The purpose of this Policy is to assure compliance with all applicable laws regarding background checks, as well as, to help ensure the safety of Technology Leadership High School (“School”) students and staff.

### **Definitions:**

1. “Background Check” or “Background Investigation” means the process, in compliance with all applicable laws, by which a person is reviewed for eligibility for unsupervised access to students.
2. “Ethical Misconduct” means the following behavior or conduct by school district personnel, school employees, school volunteers, contractors or contractors' employees:  
(1) discriminatory practice based on race, age, color, national origin, ethnicity, sex, pregnancy, sexual orientation, gender identity, mental or physical disability, marital status, religion, citizenship, domestic abuse reporting status or serious medical condition;  
(2) sexual misconduct or any sexual offense prohibited by Chapter 30, Article 6A or 9 NMSA 1978 involving an adult or child, regardless of a child's enrollment status;  
(3) fondling a child or student, including touching private body parts, such as breasts, buttocks, genitals, inner thighs, groin or anus; or  
(4) any other behavior, including licentious, enticing or solicitous behavior, that is reasonably apparent to result in inappropriate sexual contact with a child or student or to induce a child or student into engaging in illegal, immoral or other prohibited behavior.
3. “School Employee” or “Employee” means any licensed or non-licensed employee of the School.
4. "School Premises" means: (1) the buildings and grounds, including playgrounds, playing fields and parking areas and a school bus of a public school, in or on which school or school related activities are being operated under the supervision of a local school board, charter school or state agency; or (2) any other public buildings or grounds, including playing fields and parking areas that are not public school property, in or on which public school-related and -sanctioned activities are being performed.
5. “School Volunteer” or “Volunteer” means a person, including a relative of a student, who commits to serve on a regular basis at a school district, charter school or other educational entity without compensation.

6. "Unsupervised contact with children or students" means access to or contact with, or the opportunity to have access to or contact with, a child or student for any length of time in the absence of: (1) a licensed staff person from the same school or institution; (2) a school volunteer who has undergone a background check pursuant to Section 22-10A-5 NMSA 1978; or (3) any adult relative or guardian of the child or student.

### **Policies and Procedures:**

1. The School will conduct background checks of all persons who may have unsupervised contact with children or students on school premises.
2. An applicant for initial licensure shall be fingerprinted and shall provide two fingerprint cards or the equivalent electronic fingerprints to the department or superintendent to obtain the applicant's federal bureau of investigation record. Convictions of felonies or misdemeanors contained in the federal bureau of investigation record shall be used in accordance with the Criminal Offender Employment Act. Other information contained in the federal bureau of investigation record, if supported by independent evidence, may form the basis for the denial, suspension or revocation of a license for just cause. Records and related information shall be privileged and shall not be disclosed to a person not directly involved in the licensure or employment decisions affecting the specific applicant. The applicant for initial licensure shall pay for the cost of obtaining the federal bureau of investigation record.
3. An applicant who has been offered employment or a school volunteer, contractor or contractor's employee who may have unsupervised contact with children or students on school premises shall provide two fingerprint cards or the equivalent electronic fingerprints to the superintendent to obtain the applicant's, school volunteer's, contractor's or contractor's employee's federal bureau of investigation record. The public school shall pay for an applicant's background check. A school volunteer, contractor or contractor's employee may be required to pay for the cost of obtaining a background check.
4. Convictions of felonies or misdemeanors contained in the federal bureau of investigation record shall be used in accordance with the Criminal Offender Employment Act; provided that other information contained in the federal bureau of investigation record, if supported by independent evidence, may form the basis for the employment decisions for just cause. Records and related information shall be privileged and shall not be disclosed to a person not directly involved in the employment, volunteering or contracting decision affecting the specific applicant, volunteer, contractor or contractor's employee who has been offered employment, a volunteer position or a contract and may have unsupervised access to students on school premises.
5. The Executive Director shall report immediately to the department any known conviction of any felony or misdemeanor involving moral turpitude of school district personnel, a school employee, a school volunteer, a contractor or a contractor's employee.
6. For employees not licensed by the Public Education Department, the background check may consist of:
  - Professional or personal reference checks;
  - Confirmation of education or certificates (if applicable);
  - A criminal background check;

- Driving record history; and/or
  - Any other information or data, as allowed by law, deemed required by the School.
7. Employees are authorized to have unsupervised contact with students or children on school premises based on satisfactory background check results. All offers of employment are contingent upon a satisfactory background check.
  8. Convictions of felonies or misdemeanors contained in the records provided by the Department shall be used in accordance with the Criminal Offender Employment Act (New Mexico Statutes Annotated 1978, Chapter 28, Article 2) and except as provided in this policy, any such convictions shall not serve as an automatic bar to employment unless required by law.
  9. A finding in a background check related to child abuse or neglect or a finding related to criminal sexual penetration or contact shall unconditionally preclude a person from becoming or remaining an employee at the School.
  10. Background checks are kept on file for twenty-four months following separation from the School.
  11. Once employed or contracting with the School, all employees must self-report to the Head Administrator any arrest, charge and/or conviction of a criminal offense other than a minor traffic infraction.
  12. School officials, who in the course of their background checks of employment applicants, discover that a licensed applicant or applicant pending a license has a conviction of a felony or misdemeanor of moral turpitude that results in any kind of action against that individual, shall share that information with the professional licensure and educator ethics bureaus of the PED. 6.60.8.9(D) NMAC (2006).

### **Investigations of Ethical Misconduct:**

A superintendent may appoint a designated representative to act on the superintendent's behalf. The superintendent or the designated representative shall investigate all allegations of ethical misconduct about any school district personnel, school employee, school volunteer, contractor or contractor's employee who resigns, is being discharged or terminated or otherwise leaves employment after an allegation has been made. If the investigation results in a finding of ethical misconduct by a licensed school employee, the superintendent or the superintendent's designated representative shall report the identity of the licensed school employee and attendant circumstances of the ethical misconduct on a standardized form to the department and the licensed school employee within thirty days following the separation from employment or immediately if the finding of ethical misconduct is sexual misconduct with an adult or child. The superintendent or the superintendent's designated representative shall also report allegations of sexual assault or sexual abuse involving any school district personnel, school employee, school volunteer, contractor or a contractor's employee to the appropriate law enforcement agency. No agreement between a departing school employee and the governing authority or superintendent shall diminish or eliminate the responsibility of investigating and reporting the alleged ethical misconduct to the department or, if legally mandated, to law enforcement, and any such agreement to the contrary is void.

**Criminal History Record Information (CHRI):**

All record storage of CHRI shall be printed directly from the CHRI website by a Human Resources Representative who has first completed the CHRI training. The background check reports shall be kept in a locking cabinet in the Human Resource Representative's office. Only the Human Resource Representative and the Executive Director can have access and view these reports.

If intentional misuse of the CHRI by an employee is discovered by the School the School shall take personnel action against the employee misusing CHRI. The misuse of CHRI may result in loss of access to CHRI, loss of employment, and criminal prosecution. Misuse will be reported to the proper authorities.