

Criminal Background Check

RATIONALE:

The Hamilton-Wentworth District School Board has the responsibility under law to provide a safe and secure working and learning environment for all students, employees and community partners.

In order to protect students, employees and community partners, the Board will screen the personal criminal history of employees and job applicants, as well as volunteers, service providers, student placements or others who will have direct and regular contact with students, in accordance with this Procedure.

All employees and any service provider, student placement, volunteer or others who are expected to have direct and regular contact with students, must provide the following in order to be approved by the Board to have school access:

- a satisfactory Criminal Background Check/Offence Declaration, or
- a Criminal Background Check with Vulnerable Sector Screening/Offence Declaration which has been adjudicated and found to present an acceptable risk to students and/or staff

Individuals under the age of eighteen (18) are exempted pursuant to the Youth Criminal Justice Act.

TERMINOLOGY:

Criminal Background Check: A document concerning an individual which:

- a) was prepared by a police force or service from national data on the Canadian Police Information Centre (CPIC) database within six months of receipt by the Board; and
- b) provides information concerning the individual's police record, including convictions under the *Criminal Code (Canada)*, *Controlled Drugs and Substances Act* or any other law of Canada, and which may include a Vulnerable Sector Check (including record suspension/pardoned sexual offences and all outstanding warrants and charges) where requested by the Board if the individual is/will be in a position of trust or authority toward children or other vulnerable people.

Searches completed by any private company or organization other than a police service will not be accepted.

Offence Declaration: A written declaration signed by an individual listing all of the individual's convictions for offences under the *Criminal Code (Canada)* up to the date of the declaration:

Criminal Background Check

- a) that are not included in a Criminal Background Check collected by the Ontario College of Teachers (OCT) after December 31, 1998 or in the last Criminal Background Check collected by the Board under this Operating Procedure; and,
- b) for which a pardon/record suspension under Section 4.1 of the *Criminal Records Act* (Canada) has not been issued or granted.

PROCEDURES:

1. General Requirements – New Employees

- 1.1. *New Employees*: All new employees are required to provide, at their own expense, an original Criminal Background Check that is satisfactory to the Board prior to the commencement of any employment duties.
- 1.2. If the job applicant is ordinarily a resident outside of Canada and/or is working outside of Canada at the time of application, they are also required to provide, at their own expense, an original Criminal Background Check from the jurisdiction where they are living and/or working. This Criminal Background Check must have been completed by the local authorities within the preceding six months of receipt and include a Vulnerable Sector Check, if applicable (“International Criminal Record Check”).
- 1.3. All offers of employment are conditional, pending Criminal Background Check and/or International Criminal Record Check, where applicable, and are satisfactory to the Board.
- 1.4. Where the individual leaves the employ of the Board for any period of time, then wishes to return to any employment capacity, the Board considers this individual to be a new employee and must collect a Criminal Background Check prior to the commencement of any employment duties and will also require Offence Declarations as outlined above.
- 1.5. The original Criminal Background Check should be hand delivered, if possible, to Human Resource Services in a sealed envelope marked confidential, and include the words “Criminal Background Check”. The Criminal Background Check must be dated within six months of the police search date.
- 1.6. The original copy of the Criminal Background Check and any additional information requested will become the property of the Board, and will not be returned, copied, or forwarded to any other institution or individual. Criminal Background Checks and any other related information will be filed in a separate and secure location.

Criminal Background Check

1.7. Where evidence is received of a criminal conviction stated on a Criminal Background Check or Offence Declaration or other relevant information, the designated Board contact will consider at least the following factors in determining an appropriate course of action:

- a) the specific duties and responsibilities of the position in question and the relevance of the criminal charges to the particular position;
- b) the length of time since the offence(s);
- c) rehabilitative or other efforts undertaken (treatment, counseling, etc.);
- d) a discharge or statements regarding probation if appropriate;
- e) appreciable risk to the safety or security of students, employees, volunteers or Board property and equipment;
- f) any involvement of children; sexual activity; violence, and/or acts of dishonesty in the offence(s);
- g) the individual's attitude towards the offence(s);
- h) the degree of co-operation with the investigation;
- i) any likelihood offence(s) will be repeated;
- j) if alcohol or illegal drugs were a factor in commission of the offence(s);
- k) the employment history (if applicable);
- l) if the offence(s) was committed while employed by the Board;
- m) if the employee is a teacher, relevance of offence(s) to teacher duties as set out in the *Education Act* and Regulations;
- n) if employee is not a teacher, relevance of offence(s) to their employment duties; and
- o) whether the offence(s) require any action pursuant to *The Student Protection Act* (including notification of the Ontario College of Teachers)

1.8. The course of action may include disciplinary action up to and including dismissal, and/or withdrawal of offer, and shall comply with other Board Policies, Collective Agreements and Legislation.

1.9. Potential new employees who fail to provide an original Criminal Record Check (and/or International Criminal Record Check, where applicable) and any additional supporting documentation requested, within the timelines prescribed by the Board, will have their start date delayed or their offer of employment withdrawn.

1.10. The Board will not knowingly offer employment to any person with a record of criminal conviction for which a pardon has not been granted or that would put students and/or staff at harmful risk. The following offences especially compromise the safety and well-being of its students, employees, and volunteers:

- any sexual offence under the Criminal Code;
- any violations under the Controlled Drug and Substances Act;
- any criminal offence involving minors;

Criminal Background Check

- crimes of violence which include, but are not limited to, threats, assaults and;
- use, possession or concealment of a weapon or imitation of a weapon;
- propagation of hate literature or incitement to hatred;
- possession, distribution or sale of any pornographic or violent material;
- other offences specifically related to the job.

1.11. While the conviction of any of the above-noted offences would, in the normal course, present a bar to employment, the Board does recognize the principle of rehabilitation and may therefore consider the hiring of a person after a full assessment based upon consideration of the following factors:

- the specific duties and responsibilities of the position in question and the relevance of
- the police records, criminal charge(s), and/or conviction(s) to that position;
- the length of time since the police record was established;
- rehabilitative efforts undertaken;
- the risk posed to the safety and security of students, staff, volunteers and/or Board property.

1.12. All costs for the above criminal background check documentation are to be paid by the prospective or current employee.

2. General Information – Active Employees

2.1. All current employees must complete the annual Offence Declaration through the HWDSB web portal by the timelines prescribed by the Board each year in which the individual is employed by the Board. Employees who fail to provide completed Offence Declaration forms by the timelines prescribed by the Board, and any other additional supporting documentation requested by the Board, may be suspended without pay until the documentation is received. The course of action may also include disciplinary action up to and including dismissal, and/or withdrawal of offer, and shall comply with other Board Policies, Collective Agreements and Legislation.

2.2. It would be an expectation that an employee reports any criminal conviction that may impact their ability to continue in their employment to the Superintendent of Human Resource Services/Designate immediately following any legal proceedings where convicted of an offence. This is in accordance with any professional designation, Professional Code of Conduct and Education Act.

2.3. The Board, in its discretion, may require an employee to submit an updated Criminal Background Check if the Board has reason to believe that there may have been a change to the last record on file, or if the employee changes from a position where a Vulnerable Sector Check was not required to one where a Vulnerable Sector Check is required (i.e. to a position of trust or authority toward children or vulnerable persons). This would be at the cost of the employer.

Criminal Background Check

- 2.4. Where evidence is received of a criminal conviction stated on a Criminal Background Check or Offence Declaration or other relevant information, the designated Board contact will consider at least the following factors in determining an appropriate course of action:
- a) the specific duties and responsibilities of the position in question and the relevance of the criminal charges to the particular position;
 - b) the length of time since the offence(s);
 - c) rehabilitative or other efforts undertaken (treatment, counseling, etc.);
 - d) a discharge or statements regarding probation if appropriate;
 - e) appreciable risk to the safety or security of students, employees, volunteers or Board property and equipment;
 - f) any involvement of children; sexual activity; violence, and/or acts of dishonesty in the offence(s);
 - g) the individual's attitude towards the offence(s);
 - h) the degree of co-operation with the investigation;
 - i) any likelihood offence(s) will be repeated;
 - j) if alcohol or illegal drugs were a factor in commission of the offence(s);
 - k) the employment history (if applicable);
 - l) if the offence(s) was committed while employed by the Board;
 - m) if the employee is a teacher, relevance of offence(s) to teacher duties as set out in the *Education Act* and Regulations;
 - n) if employee is not a teacher, relevance of offence(s) to their employment duties; and
 - o) whether the offence(s) require any action pursuant to *The Student Protection Act* (including notification of the Ontario College of Teachers)
- 2.5. The course of action may include disciplinary action up to and including dismissal, and/or withdrawal of offer, and shall comply with other Board Policies, Collective Agreements and Legislation.
- 2.6. Re-employed Employees: If an individual resigns or retires and immediately applies for and is granted employment in another position, without a break in service as an employee of the Board, the individual is required to provide an electronic Offence Declaration immediately when prompted via Board e-mail