

ADMINISTRATIVE PROCEDURES

SUBJECT: Adjudication of Existing Staff with Criminal Records

As part of the “safe schools” initiative, on January 1, 2002, Regulation 521/01, the “Collection of Personal Information” Regulation came into force. The Regulation was intended by the Ministry of Education to provide school boards with another “tool” to promote students’ education in a safe environment. The Regulation requires school boards to collect a criminal background check from all employees and from service providers who have direct and regular contact with students.

The following provides guidelines for the assessment to determine whether an employee with a positive criminal background check is currently a risk to the safety of students and staff.

Upon notification to the Human Resources Manager that an existing employee either has a criminal record or has advised through the Offences Declaration of a criminal record or criminal charges:

1. The Human Resources Manager verifies the authenticity of the report either through examination of an original document or an interview with the employee.
2. The Human Resources Manager initiates an investigation into the evidence provided to determine whether the Threshold test as set out in Schedule C below, has been met. The nature and extent of the investigation will depend on the circumstances of each case. The Human Resources Manager will gather sufficient information to make an informed decision. Union representation is to be present during interviews in the case of unionized employees.
3. The Human Resources Manager will obtain a letter of explanation (Schedule D) and/or conduct an interview (Schedule B) with the employee.
4. The Human Resources Manager will contact the Bargaining Agent in the case of a unionized employee.
5. The Human Resources Manager shall after considering the letter of explanation and/or interviewing the employee, or at any other time, it is determined that the **Threshold Test** has not been met, the employee will receive a letter explaining that the criminal record or charges have been reviewed and that it has been determined at this time, no action will be taken as a result of the criminal record (Schedule “E”). A copy of this letter should be retained in the same separate location as the criminal record report.

After receiving the letter of explanation and/or interviewing the employee, if the Human Resources Manager is still unable to determine whether the **Threshold Test** has been met, further investigation is required that will include obtaining

information from the employee directly when possible or the employee's consent to the release of information from third parties (Schedule "F"). Employees should be encouraged to co-operate fully with the investigation, which may include seeking information from various sources, including:

- a) the court registrar's file where the conviction and sentencing occurred;
 - b) police division where the offence was investigated, including working files of officers in charge;
 - c) Crown Attorney who conducted the prosecution;
 - d) school board records;
 - e) victim, provided such an approach can be made appropriately and without adversely affecting the "healing process" and/or victim impact statements, particularly if the offences are of a violent and/or sexual nature. In no case should an employee be asked to contact a victim for this information;
 - f) health care institutions where employee has received treatment/counselling/rehabilitation or similar services;
 - g) letters of reference from specified people including, but not limited to doctors, practitioners, parole officers, professors, lawyers, employee's superiors; and
 - h) other individuals identified by the employee.
6. The Human Resources Manager shall after consideration of all the evidence advise the Director of Education if the evidence demonstrated that the Threshold Test has been met.
7. Student Protection Act Requirement: If it is learned that an employee has been convicted of:
- a. an offence which involves sexual conduct and minors; or
 - b. an offence which indicates that pupils may be at risk;

The Manager of Human Resources should refer to the appropriate board procedures [A-OP-428-03]. Actions include prompt steps to ensure that an employee charged with or convicted of one of the above classes of offence performs no duties in the classroom and no duties involving contact with pupils until completion of the investigation and/or disposal of the charge. The act obligates the Board to report promptly in writing to the Registrar of the Ontario College of Teachers when a teacher has been so charged or convicted.

Schedule A - Guiding Steps in the Investigation

In conducting this further investigation a number of areas of inquiry should be pursued to determine the likelihood of offence(s) being repeated. These include:

- (a) full circumstances of the charge(s) in question, including their disposition in the courts, any penalty imposed and impact on any victims;
- (b) a complete personal history of the employee including family, social and professional matters and age when offence(s) committed;
- (c) if more than one conviction or repeated convictions, the length of time between convictions and whether a pattern of behaviour is evident;
- (d) steps taken by the employee to rehabilitate including any medical, psycho-psychiatric treatment and any other relevant treatment obtained;
- (e) a determination whether the offence(s) involved or could have involved children or adversely affected children;
- (f) if drugs and/or alcohol were involved during the commission of the offence(s) and what, if any, treatment the employee has received for such;
- (g) the employee's attitude to the offence(s), including the degree of remorse shown, understanding of circumstances giving rise to the offence;
- (h) "relevance" of the offence(s) to the duties of the employee; and
- (i) any other information that may be relevant to the particular circumstances of the offence(s) and the information shared by the employee either directly or indirectly.

Schedule B – Guiding questions for the employee adjudication Interview

In respect of each offence in question, have the employee describe the full circumstances of the offence, including its disposition, penalty imposed, and identify any potential victims?

Did the offence involve children? If so, how?

Did the offence involve sexual activity and/or violence and/or dishonesty?

Were drugs and alcohol involved in respect of the offence(s)? If so, has any treatment been obtained in this regard?

Do you understand the circumstances arising in respect of the offence(s), and do you feel remorse in this regard?

Please provide a complete personal history including family, social and professional matters and age when offence committed.

What steps have you taken to rehabilitate, including medical, psycho-psychiatric treatment or other relevant treatment?

Please give reasons why you believe the circumstances of your conviction(s) and sentence(s) do not pose a risk to students and do not affect your ability to perform your job responsibilities (if employee is a teacher, “job responsibilities” is replaced by “duties as a teacher”).

Please explain why you feel that based on your present circumstances, you should be permitted to continue to perform your duties.

Please explain why you believe that you will not commit another offence in the future.

Do you have any further information you believe is relevant and which you feel is important for you to share?

Schedule C - Threshold Test

When all of the information is received, the Human Resources Manager in determining whether a risk exists should apply **the test of whether in all of the circumstances, on a balance of probabilities, the continued employment of the employee represents a continuing risk to the well being of any of the Board's students or staff.** If that test is met, then a decision, which either a) imposes appropriate conditions on the employment of; or b) dismisses the employee from employment, must be made. In the assessment of the evidence the Human Resources Manager will, as the investigation dictates, legal counsel and whoever else might provide direction concerning the criminal charges.

In determining whether the Threshold Test has been met, the Human Resources Manager should consider at least the following factors:

- (a) number of offences and length of time since offence(s);
- (b) did the offence(s) involve children and/or sexual activity and/or violence and/or acts of dishonesty;
- (c) employment history;
- (d) employee's attitude towards offence(s);
- (e) treatment, counselling or other services received since offence(a);
- (f) other steps taken to rehabilitate;
- (g) likelihood offence(s) will be repeated;
- (h) was alcohol or illegal drugs a factor in commission of offence(s);
- (i) degree of co-operation with this investigation;
- (j) was offence(s) committed while employed by the Board;
- (k) if employee is a teacher, relevance of offence(s) to teacher duties as set out in the *Education Act* and Regulations;
- (l) if employee is not a teacher, relevance of offence(s) to their employment duties; and
- (m) does offence(s) require any action pursuant to the *Student Protection Act* (including notification of the Ontario College of Teachers).

Schedule D – initial investigation of report of a criminal record (Letter of Explanation)

[insert school board letterhead]

[name and address]

Dear _____:
(employee)

Re: Employee Request for Further Information

As you are aware, the _____ District School Board (“the Board”) is required by law to obtain and review criminal background information of its employees. You will recall having completed documentation in this regard. The Board has obtained information from you that you have been convicted of the following *Criminal Code (Canada)* offence(s):

(insert Criminal Code offence(s))

The Board is required to consider the particulars of the above offence(s), and consequently, the Board requests that you kindly provide to _____ at _____, a letter which outlines the details of the conviction(s)/ Charge(s) set out above **within 7 WORKING DAYS of the date of this letter.**

Kindly provide information explaining details of the infraction(s) and why you feel that the circumstances of the conviction(s)/Charge(s) do not affect your ability to perform your duties and that you do not pose a safety risk to students.

We will review your response carefully. It may be necessary to request that you attend a personal interview with representatives of the Board, accompanied if you wish by Federation/Union representation and/or legal counsel, following review of your response.

Please contact me if you have any questions regarding the above.

Yours very truly,

Manager Human Resources

Schedule E –No further action to be taken

[insert school board letterhead]

[name and address]

Dear _____:
(employee)

Re: Criminal Background Information

As you are aware, the _____ District School Board (“the Board”) is required by law to obtain and review criminal background information of its employees. You will recall having completed documentation in this regard. The Board has received information from you that you have been convicted of the following *Criminal Code (Canada)* offence(s):

(insert Criminal Code offence(s))

The Board has considered the circumstances of the above conviction(s) and no action will be taken at this time.

Yours very truly,

Manager Human Resources

**Schedule F – Employee Consent Form to release information to a third party,
Disclosure of a Criminal Record**

TO:

*(Name of Organization in Possession of
Information pertaining to Criminal Offence(s))*

(Address)

Please release to the _____ District School Board (“the Board”)
attention: _____ (Board
Designated Contact) at _____
_____ *(address)*, or to

Legal Representative of the Board, any and all information pertaining to any *Criminal
Code (Canada)* convictions for which I have not been granted a pardon, including but
not limited to the following particular documentation:

(Insert specific documentation sought).

Dated this _____ day of, _____ 20__

Employee Signature

Witness

Implementation Date: September 20, 2003
Revised: April 11, 2016
Reference: LKDSB Policy
Ontario Regulation 521/01