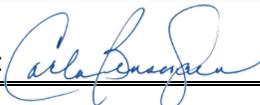


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<b>AUTHORIZED SIGNATURE:</b> 	

## **DELAWARE CHILDREN'S DEPARTMENT POLICY**

### **I PURPOSE**

The Department, as chief advocate for and a provider of care to children/youth of Delaware must ensure the safety of such children/youth and ensure that no individual will be hired or retained if he/she poses a potential for risk or harm to children/youth served by the Department. The purpose of this policy is to provide a uniform standard of guidance and expectations relative to criminal charges/convictions and child abuse/neglect investigations/substantiations of prospective or current employees. subsequent to an employee's initial hire and by setting forth guidelines for employee conduct.

### **II POLICY**

The Department utilizes an array of interactive policies, procedures and regulations to ensure the safety of children in its care. This policy is applicable to all Departmental employees, interns, casual/seasonal personnel and volunteers, subsequently referred to as "employee/s". Department contractors are required to conduct background checks of employees as outlined in the Operating Guidelines which are located on the Department's website.

### **III. APPLICABLE STATUTES/ENFORCEABILITY**

Title 31, Chapter 3, Section 309 of the Delaware Code requires a check of SBI and FBI records and a review of the Department's Child Protection Registry be conducted on employees of the Department hired after September 1, 1989 who have regular direct access or unsupervised direct access to children and/or adolescents under the age of 18. Background Checks For Child-Serving Entities apply Title 31, Chapter 3, Section 309 to all Departmental employees hired after September 1, 1989. The checks are completed by the Department's Criminal History Unit prior to employment or during a conditional period of employment. Based on established criteria, the Criminal History Unit makes a determination as to whether or not a prospective employee or current employee is "eligible", "ineligible" or "prohibited" from employment. The Delaware Regulations Background Checks For Child-Serving Entities and the Department's Decision Making Protocol contain a listing of convictions and substantiations that prohibit employment with the Department and those that are discretionary.

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Title 16, Chapter 9 of the Delaware Code applies to acts of child abuse/neglect that are alleged to have occurred on or after August 1, 1994. Level II, III and IV substantiations carry with them the legal presumption that the person substantiated is respectively, a moderate, high, or highest risk of future harm to children. The Levels determine the length of time an individual is reported out to potential employers as being on the Registry and whether or not an individual is eligible for employment within a child-serving entity.

***Child Protection Registry Levels***

Level I	Not reported out to employers/potential employers as being on the Registry.
Level II	Reported out for 3 years; is eligible for employment in a child-serving entity.
Level III	Reported out for 7 years; is not eligible for employment in a child-serving entity while on the Registry.
Level IV	Reported out forever; is not eligible for employment in a child-serving entity while on the Registry unless ordered for removal by Family Court.

**IV. BACKGROUND CHECK PROCESS**

- A. The Department shall require each person subject to the law, as soon as that person has accepted a position as an employee to schedule a fingerprint appointment and be fingerprinted by the SBI before the start of employment/volunteer activity.
- B. Individuals will go to a designated Delaware State Police Troop and have fingerprints taken. The employee shall provide the State Bureau of Identification receipt of fingerprinting to the hiring manager or volunteer coordinator.
- C. The Delaware State Police follow established procedures to obtain criminal history information from the State Bureau of Identification and Federal Bureau of Investigation. A report of the person's criminal history record or a statement that there is no criminal history information relating to that person is forwarded to the Criminal History Unit.
- D. The Criminal History Specialist reviews the background check results from the State
  1. Bureau of Identification, child protection registry, Federal Bureau of Investigation
  2. and the "Background Check Request" form. This review is guided by the criteria
  3. specified in the Delaware Regulations--Background Checks For Child-Serving Entities, regulations 6.1-7.2.
- E. When the background check review is completed and all further investigation is
  1. conducted, the Criminal History Specialist shares the results with the criminal history
  2. unit supervisor when the recommendation is ineligible or prohibited. The
  3. supervisor makes the eligibility determination based on the criteria specified in
  4. regulations 6.1-7.2. Upon making a determination of ineligible or prohibited, the

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5. Criminal History Unit shall provide notification to the applicable division director, Human Resources and the employee.

- F. In the event the employee has reason to challenge the accuracy or completeness of
1. the background check results, an administrative review will be provided, as
  2. explained in the determination letter to the employee.

## **V. ADMINISTRATIVE REVIEW**

- A. The background check is only one factor being considered in the hiring or approval process. If the Department makes an adverse judgment before the check is completed or based on any criterion other than the background check, this administrative review does not apply.
- B. Any person who is determined ineligible or prohibited as a result of an adverse judgment made by the Criminal History Unit on the basis of the criminal background check results, shall be entitled to an administrative review for reconsideration.
- C. If the person believes the criminal background check information resulting in a determination of ineligible or prohibited is inaccurate or incomplete, the person may request an administrative review. The request must be submitted in writing to the Criminal History Unit within 10 business days of receiving written notification of the determination of ineligible or prohibited. When a person has requested an administrative review, the following shall apply:
1. The person shall be removed from direct access to children or provisions made for on-site supervision of the person during working hours pending the results of the review.
  2. In the case of an administrative review of a decision involving a Department operated facility or Department employee, the applicable Division Director or designee shall conduct the review in conjunction with personnel and within the context of these regulations, merit rules and labor agreements, and the employment status of the person.

## **VI. SUBSEQUENT OFFENSES**

- A. The Department's Criminal History Unit will receive SARs (Subsequent Arrest Reports) from the Delaware Justice Information System (DELJIS) and the Division of Family Services, Office of Children's Services will notify the Criminal History Unit when an employee is being investigated for child abuse/neglect subsequent to the initial employment

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check. The Criminal History Unit shall share this information with the appropriate Division Director and Human Resources. The information will include the specifics of the arrest and/or allegation of abuse/neglect including:

<b><i>Arrests</i></b>	<b><i>Allegations of Abuse/Neglect</i></b>
<ul style="list-style-type: none"> <li>• Date of arrest</li> <li>• Charge(s)</li> <li>• Arraignment date if known</li> <li>• Other pertinent information related to the charge(s)</li> </ul>	<ul style="list-style-type: none"> <li>• Date of complaint</li> <li>• Age of child</li> <li>• Relationship of child</li> <li>• Other pertinent information related to the incident/complaint</li> </ul>

- B. The Supervisor/Manager shall meet with the employee to discuss the specifics of the charges and report to the Division Director and Human Resources. Aspects of an employee’s work (including but not limited to work duties, ability to interact with children, work location, etc.) may be changed with the approval of the Division Director based on consideration of the information provided by the employee, the employee’s work history and whether a conviction and/or substantiation of child abuse/neglect could result in a prohibited or ineligible determination. Furthermore, based on the charge(s) and the employee’s explanation of the events that led to the charges, immediate removal from the work place could result (reference DSCYF Policy 309 – Removal of Employees from the Workplace).
- C. Upon adjudication of a criminal offense or final outcome of a child abuse/neglect investigation and placement on the Registry, the Criminal History Unit will advise the respective Division Director and Human Resources as to its recommendation regarding the employee’s eligibility for continued employment based on the applicable statutes, regulations and Department policy.
- D. If the offense is not a prohibited offense under the Delacare Regulations, the Criminal History Unit will be guided primarily by the Child Protection Registry Levels in substantiations of child abuse/neglect. For non-prohibited criminal offenses, the Criminal History Unit will utilize the Department’s Criminal History Unit Decision-Making Protocols in formulating an eligible/ineligible recommendation.
- E. Division Directors, in consultation with Departmental Human Resources, will make final eligible/ineligible determinations by utilizing the following criteria:
1. The recommendation of the Criminal History Unit
  2. Job relatedness and job assignment
  3. Severity of the offense(s)

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4. Nature of the offense(s)
5. Employment record
6. Policies of the Department

- F. If there is an ineligible/prohibited determination, the Division Director in conjunction with Departmental Human Resources, will formulate the necessary course of action utilizing applicable Merit Rules, Collective Bargaining Agreements and due process requirements.
- G. If as a result of a prohibited offense, ineligible determination or a substantiation of child abuse/neglect determination, a recommendation for termination is warranted, the employee may be immediately removed from having direct contact with children and/or restricted to no unsupervised contact with children while the employee is offered a pre-decision meeting. A representative of the Criminal History Unit may be called upon as a witness in any subsequent adversarial proceedings.
- H. Any employee who is being investigated for abuse/neglect against a child may immediately be removed from having direct and/or unsupervised contact with children. If the findings of the investigation are unsubstantiated or substantiated at Level I or Level II, the employee may be returned to his/her function without restrictions unless criminal charges are pending in which case such employee may be removed from the workplace or transferred/restricted to no unsupervised contact with children.
- I. Any employee substantiated for abuse/neglect against a child resulting in a Level III or Level IV placement on the Child Protection Registry shall be prohibited from continuing employment with the Department and termination proceedings will ensue.
- J. If the findings of the investigation are an intent to substantiate at Level III or Level IV, the employee may be removed from the workplace or transferred from direct contact with children pending results of the substantiation hearing. This could result in a temporary change of work duties and/or location. If the child abuse/neglect substantiation is overturned or the Level reduced to a Level I or Level II, the employee may be returned to duty and made whole, if applicable.

## **VII. CRIMINAL CHARGES/WORKPLACE RELATED ACTIVITY**

- A. When an employee has been charged with criminal misconduct as a result of activity related to the workplace, an administrative investigation will be conducted by the Manager/Supervisor to determine whether the conduct meets the just cause standard for discipline. The investigation will be separate and detached from the criminal proceedings

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and the decision to discipline will be based solely on the outcome of the administrative investigation.

### **VIII. EMPLOYEE RESPONSIBILITIES**

- A. Employees of the Department have certain responsibilities to assure the safety of children and be positive role models for Delaware's children. As such, Department employees must:
1. Be free from criminal activity or involvement in substantiated cases of abuse/neglect that may lead to harm of any child/youth.
  2. Each employee shall have an affirmative duty to immediately inform their Supervisor/Manager of any criminal convictions, arrests, investigations or indictment of themselves or of any investigation of child abuse/neglect or entry onto the Child Protection Registry. Failure to immediately notify their Supervisor/Manager of any of the above, including final disposition, could result in discipline, up to and including termination.

### **IX. CONFIDENTIALITY**

- A. The Department shall ensure that the use of the criminal history record information is restricted to its purpose of determining eligibility for employment and/or continued employment and will further ensure confidentiality of all files of criminal background checks and child protection registry checks.

### **RESPONSIBILITY FOR THIS POLICY**

The Criminal History Unit and Human Resources are responsible for addressing questions related to this policy.