



Regulation of the Chancellor

Number: **C-105**

Subject: **BACKGROUND INVESTIGATIONS OF PEDAGOGICAL AND ADMINISTRATIVE APPLICANTS AND PROCEDURES IN CASES OF THE ARREST OF EMPLOYEES**

Category: **PEDAGOGICAL PERSONNEL**

Issued: **February 11, 2003**

SUMMARY OF CHANGES

This Regulation has been revised to clarify the responsibilities of different offices within the Department of Education to investigate the circumstances of employees and other persons working for the Department who are arrested. For certain arrests, supervisors will now be directed to remove the employee from contact with children during the pendency of the arrest.

The February 2003 change to the regulation adds a reference to a provision of the Corrections Law that was inadvertently omitted from the last version of the regulation. All other provisions remain the same as the version posted on November 25, 2002.



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INTRODUCTION

Pursuant to Education Law, Section 2590-h, subdivision 20, the Chancellor of the City School District of the City of New York has the power and duty to ensure compliance with qualifications established for all personnel employed in the city district. This includes the taking of fingerprints as a prerequisite for licensure and/or employment of such personnel. The Education Law requires that every set of fingerprints be promptly submitted to the New York State Division of Criminal Justice Services (DCJS) for processing.

In addition, Chancellor's Regulation C-205 mandates that no applicant be granted any license or certificate except on certification that the person has been so fingerprinted and that the appropriate records do not reflect conduct unbecoming an employee of the school system. C-205 also restates the citizenship requirement for employment or authorization to teach in the public schools of New York State pursuant to Section 3001 of the Education Law and the employment eligibility verification required by 8 U.S.C.A., Section 1324.a et seq. (Immigration Reform and Control Act of 1986), as amended.

The purpose of this regulation is to establish procedures for the conduct of background investigations pursuant to the above statutes and regulations and to establish responsibility for the same within the Office of Personnel Investigation (OPI), in the Division of Human Resources (DHR). It also sets forth procedures in the case of the arrest of a person employed by or working in the New York City Department of Education or a person holding a New York City license or certificate and establishes reporting requirements related to such arrests. Violations of any of the reporting requirements set forth in this regulation will be considered grounds for disciplinary action.

This regulation supersedes and replaces Chancellor's Regulation C-105, revised March 23, 1992, and any other regulations which are inconsistent with the policies and procedures specified herein.

1. GENERAL

No one may be licensed, certified, employed by or work in the New York City Public School System without background investigation and clearance from either the OPI, or the Chief Executive of DHR. This restriction also applies to consultants who will serve more than 20 days during the fiscal year. The background investigation and clearance mandated by this

regulation is in addition to any other background investigation that may be required for specific classes of employees by other regulations of the Chancellor or the New York City Department of Personnel or that may be done by or on behalf of the supervisor of the prospective employee. For example, see Chancellor's Regulation, C-115, which requires additional background investigation by the Department of Investigation.

2. BACKGROUND INVESTIGATION PROCEDURES

The background investigation, when appropriate, shall include a review of any or all of the following:

- Criminal Record History, including the facts and circumstances concerning the particular conduct which formed the basis for any criminal convictions which are available from court records or prosecutor's office.
- Employment History
- Employment Eligibility
- Military Service
- Any other relevant information related to an applicant's character, conduct or background.

Strict confidentiality will be observed with respect to the maintenance, use or dissemination of information developed during the background investigation. All files will be maintained in a physically secure manner.

Information obtained from law enforcement agencies through DCJS will be subject to the Use and Dissemination Agreement between the Department of Education and DCJS.

If, prior to the conclusion of any background investigation, information of a derogatory nature is obtained which may result in denying the application for license, certification or employment, an applicant will be given an opportunity to review such information with the OPI and to include in the investigatory file, any written statements or documents which refute or explain such information. Applicants may be accompanied by a representative of their choice at any interview with staff of the OPI.

3. FINAL ACTION

At the conclusion of the background investigation, the OPI may approve the application for licensure or employment or recommend that licensure or employment be denied. A recommendation by the OPI to deny an application shall be referred to the Chief Executive of DHR or his/her designee in OPI. The Chief Executive of DHR or his/her designee shall have the authority to make the final decision to approve or deny the application.

The applicant will receive notice of the final decision in writing. In the event the final decision is to deny the application, such written notice will contain the reason(s) for the denial.

4. FACTORS TO BE CONSIDERED CONCERNING A PREVIOUS CRIMINAL CONVICTION

In reviewing an applicant's record which includes a previous criminal conviction, the New York City Public School System is bound by law to comply with Article 23-A of the New York State Corrections Law which is incorporated by reference into this regulation and appended hereto.

In reviewing whether the record of criminal convictions should be grounds for denial of licensure or employment, the New York City Public School System is particularly concerned with the following offenses:

- sexual misconduct, especially involving minors
- violent or assaultive behavior directed against persons or property which cause serious injury or damage.
- theft of public property
- bribe receiving or bribe offering
- possession or use of lethal weapons of any kind
- possessing, distributing or selling controlled substances
- acts which have a direct relationship to the particular position sought, or which involve an unreasonable risk to property or to the safety or welfare of students or other employees.

Where the nature of any conviction so warrants, the review will include an investigation of the facts and circumstances related to the conviction. Such information will be sought from law enforcement and prosecutorial agencies.

5. APPLICANT QUALIFICATIONS AND PRIOR EMPLOYMENT HISTORY

Where appropriate, the OPI will verify educational credentials, certification status, and previous work history. Applicants will be asked to explain the circumstances related to any unsatisfactory ratings or disciplinary actions in prior employment. Intentional falsification of credentials or information regarding qualifications or credentials will constitute grounds for denial of any application and may result in prosecution under the Penal Law.

If the OPI finds that such falsification constitutes grounds for the denial of an application, it shall submit this finding and a recommendation to deny to the Chief Executive of DHR or his/her designee who shall act on this finding and recommendation in the manner described in Section 3.

6. CHARACTER

The OPI will investigate or refer for investigation any credible information which comes to its attention concerning an applicant's character or conduct which is unbecoming a school system employee. Examples of unbecoming conduct for these purposes include:

- Distribution of pornography to students or minors
- Sexual relations with students or minors
- Prostitution or pimping
- Giving or selling alcohol to persons under 21
- Distributing, selling or possessing controlled substances
- Any actions which endanger the health or welfare of minors

If the OPI find that an applicant's character or conduct is unbecoming of a school system employee, it shall submit this finding and recommendation to the Chief Executive DHR or his/her designee who shall act on this finding and recommendation in the manner described in Section 3.

7. OPERATION AND COMPOSITION OF REVIEW PANELS

The Chief Executive of DHR may, in the exercise of his/her discretion, convene a panel to review the recommendation of OPI whether or not to approve an application for employment. Prior to the establishment of any panel to review the findings and recommendations of the OPI, an applicant will be asked to consent in writing to disclosure of this information to a review panel. Unless such consent is obtained, the findings and recommendations of the OPI will be acted upon without referral to review panel.

All panelists will be selected by the Chief Executive of DHR based on their knowledge of the New York City school system and its needs.

Upon their assignment to a review panel, the Chief Executive of DHR will designate one of the panelists as the chairperson.

Panel members will serve without salary. Employees of the New York City Public School System who serve as panelists will be excused with pay on the day they meet.

Panels will meet promptly with the applicant and a representative of the OPI. Applicants may be accompanied by a representative of their choice and may introduce any additional information or documentation they wish to present on their behalf. Within 10 days of the conclusion of the meeting, the chair of the panel will transmit a majority recommendation to the Chief Executive of DHR. Any dissenting members of the panel may at that time transmit a dissenting recommendation. Upon receipt of the recommendation of the majority of the panel, the Chief Executive of DHR will make a final decision as described in Section 3.

8. REAPPLICATION

Any applicant denied licensure or employment pursuant to the findings and recommendations of the OPI may reapply for licensure or employment no sooner than 12 months after denial. The Chief Executive of DHR or his/her designee may permit an applicant to re-apply earlier than 12 months after denial based upon the applicant's particular circumstances. The individual's record in the intervening period, including any

significant activities, accomplishments or other mitigating factors, will be assessed at the time of reapplication.

9. PROCEDURES IN CASES OF THE ARREST OF EMPLOYEES, PERSONS HOLDING NEW YORK CITY LICENSES OR CERTIFICATES, OR PERSONS PROVIDING SERVICES TO THE DEPARTMENT OF EDUCATION

a. Requirement to Notify Department of Education of Arrest

Any person employed by or in the Department of Education, or employed by a Department of Education employee to provide services in Department facilities (i.e., custodial helper) who has been arrested and charged with a felony, misdemeanor or violation must immediately notify the OPI and his/her building or office supervisor in writing and provide a copy of the criminal court complaint. Notification to a supervisor alone does not satisfy this reporting requirement. OPI must be notified separately in writing. Custodial helpers must agree in writing to comply with the terms of this regulation as a condition of eligibility for employment with a Department custodian. Failure to notify should be the subject of appropriate disciplinary action.

b. OPI Notification

While the Department of Education is concerned with all arrests, it is particularly concerned with conduct which indicates that an individual may pose a threat to children or affects job performance.

Upon receipt of any report of an employee arrest, the OPI will notify the following:

- Chief Executive, Division of Human Resources
- General Counsel, Office of Legal Services
- Director, Office of Special Investigations
- Superintendent/Director of the arrested employee's district or division
- Special Commissioner of Investigation of the City School District of the City of New York

When warranted by the nature of the arrest, the OPI notification shall include a directive or recommendation that the employee be removed from contact with children pending a resolution of the arrest. If OPI directs that the employee be removed from contact with children pending a resolution of the arrest, this action must be taken immediately. If the supervisor has additional information which he/she believes warrants a different action during the pendency of the arrest, the supervisor must contact the Deputy Executive Director of the Division of Human Resources, but the removal must be implemented until a revised directive is given.

c. Reassignment/Suspension

1. Employees

Where warranted by the nature of the arrest, the OPI notification shall include a directive or recommendation to the employee's responsibility center that the employee be removed from contact with students. The responsibility center shall inform OPI within five (5) days of the action taken. If an employee is suspended, such suspension shall be with or without pay depending on the employee's rights under law and applicable collective bargaining agreements. An employee's refusal to accept and report to a reassignment, pending a disposition of the arrest, may be made the subject of disciplinary charges or action that may be brought thereafter.

2. Contractors

For persons who are not employees of the Department of Education, such as providers of related services, for whom the OPI receives arrest notifications, in addition to the above listed Department of Education offices, the OPI will notify the designated liaison (or the agency if there is no designated liaison) of the arrest and, if warranted by the nature of the arrest, direct or recommend that the employee be removed from contact with students. The liaison will notify the contractor and the contractor will be asked to notify the liaison within five (5) days of the action taken. Any person removed from contact with students pursuant to this paragraph will not be permitted to have contact with students until the disposition of the arrest is reviewed by OPI and a decision is made that contact with students may be resumed.

3. Custodial helpers

For custodial helpers not employed by the Department, the OPI will make an initial determination whether the worker should be made ineligible for continued employment in any Department of Education facility pending further review. The determination will be communicated to the custodian in charge of the custodial helper by notifying the DSF. The custodian will investigate the circumstances and will notify OPI and DSF within two (2) days of the action taken. DSF will notify OPI within two (2) days of the action taken with respect to the custodial helper. Upon written request of the custodian supervising the custodial helper, this determination may be reviewed and modified by DSF, upon DSF's review of the circumstances of the arrest.

d. Investigation

Upon receipt of an arrest notification, OSI will review the notification and other information it has about the employee/worker. In the case of arrests involving sexual misconduct, violent crimes or which are known to involve students or a school, OSI will contact law enforcement authorities to obtain additional information about the underlying conduct. This information may be shared with the superintendent/supervisor to assist in determining whether to reassign the employee. OSI will also advise OLS of arrests known to involve students or a school.

- e. In cases involving tenured teachers or permanent civil servants charged with sexual misconduct, violent crimes or which are known to involve students or a school, OLS will monitor the arrest and criminal proceeding.
- f. Disposition

Upon final disposition of any criminal charges, the employee/worker must provide the OPI with an original certificate of disposition, or its equivalent within three (3) business days. The failure to submit a written disposition in a timely manner may result in additional action affecting the person's eligibility to work, pending the provision of the disposition or verification that the criminal case is still pending.

The final disposition will be reviewed together with available information from law enforcement and prosecutorial agencies, as appropriate, and, if necessary, a disciplinary recommendation will be forwarded to the Chancellor or the appropriate superintendent or supervisor. Nothing in this regulation shall preclude a decision to recommend disciplinary action prior to the final disposition of the criminal charges.

- g. Persons holding Public School Licenses but not employed by the Department

Holders of licenses or certificates issued by the New York City Public School System who are not employees, and who have been arrested and charged with any felony, misdemeanor or violation must immediately notify the OPI in writing. Upon receipt of this information the OPI may recommend, to the Chief Executive of DHR, that any licenses or certificates held by the individual be suspended until final disposition of the criminal charges.

The OPI shall review the final disposition and either approve the reissuance of such licenses or certificates or recommend to the Chief Executive of DHR that they be revoked. The Chief Executive of DHR shall act upon such recommendation in the manner described in Section 3 of this regulation.

10. INQUIRIES

Inquiries pertaining to this regulation should be addressed to:

Administrator, Office of Personnel Investigations

N.Y.C. Department of Education

65 Court Street – Room 223

Brooklyn, NY 11201

Telephone: 718-935-2666/2668

Fax: 718-935-4366

**APPENDIX
NEW YORK STATE CORRECTION LAW**

ARTICLE 23-A

**LICENSURE AND EMPLOYMENT OF PERSONS PREVIOUSLY CONVICTED OF MORE THAN
ONE CRIMINAL OFFENSE**

Section

- 750 Definitions.
- 751 Applicability.
- 752 Unfair discrimination against persons previously convicted of one or more criminal offenses prohibited.
- 753 Factors to be considered concerning a previous criminal conviction; presumption.
- 754 Written statement upon denial of license or employment.
- 755 Enforcement.
- 750 DEFINITIONS
- For the purposes of this article, the following terms shall have the following meanings:
- (1) "Public agency" means the state or any local subdivision thereof, or any state or local department, agency, board or commission.
 - (2) "Private employer" means any person, company, corporation, labor organization or association which employs ten or more persons.
 - (3) "Direct Relationship" means that the nature of criminal conduct for which the person was convicted has a direct bearing on his fitness or ability to perform one or more of the duties or responsibilities necessarily related to the license or employment sought.
 - (4) "License" means any certificate, license, permit or grant of permission required by the laws of this state, its political subdivisions or instrumentalities as a condition for the lawful practice of any occupation, employment, trade, vocation, business, or profession. Provided, however, that "license" shall not, for the purposes of this article, include any license or permit to own, possess, carry, or fire any explosive, pistol, handgun, rifle, shotgun, or other firearm.
 - (5) "Employment" means any occupation, vocational or educational training. Provided, however, that "employment" shall not, for the purposes of this article, include membership in any law enforcement agency.
- 751 APPLICABILITY

The provisions of this article shall apply to any application by any person who has previously been convicted of one or more criminal offenses, in this state or in any other jurisdiction, to any public agency or private employer for a license or employment, except where a mandatory forfeiture, disability or bar to employment is imposed by law, and has not been removed by an executive pardon, certificate of relief from disabilities or certificate of good conduct.

752 UNFAIR DISCRIMINATION AGAINST PERSONS PREVIOUSLY CONVICTED OF ONE OR MORE CRIMINAL OFFENSES PROHIBITED

No application for any license or employment, to which the provisions of this article are applicable, shall be denied by any reason of the applicant's having been previously convicted of one or more criminal offenses, or by reason of a finding of lack of "good moral character" when such a finding is based upon the fact that an applicant has previously been convicted of one or more criminal offenses, unless:

- (1) there is a direct relationship between one or more of the previous criminal offenses and the specific license or employment sought; or
- (2) the issuance of the license or the granting of the employment would involve an unreasonable risk to property or to the safety and welfare of specific individuals or the general public.

753 FACTORS TO BE CONSIDERED CONCERNING A PREVIOUS CONVICTION; PRESUMPTION

1. In making a determination pursuant to section seven hundred fifty-two of this chapter, the public agency or private employer shall consider the following factors:
 - a. The public policy of this state, as expressed in this act, to encourage the licensure and employment of persons previously convicted of one or more criminal offenses.
 - b. The specific duties and responsibilities necessarily related to the licensure or employment sought.
 - c. The bearing, if any, the criminal offense or offenses for which the person was previously convicted will have on his fitness or ability to perform one or more such duties or responsibilities.
 - d. The time which has elapsed since the occurrence of the criminal offense or offenses.
 - e. The age of the person at the time of occurrence of the criminal offense or offenses.
 - f. The seriousness of the offense or offenses.
 - g. Any information produced by the person, or produced on his behalf, in regard to his rehabilitation and good conduct.

h. The legitimate interest of the public agency or private employer in protecting property, and the safety and welfare of specific individuals or the general public.

2. In making a determination pursuant to section seven hundred fifty-two of this chapter, the public agency or private employer shall also give consideration to a certificate of relief from disabilities or a certificate of good conduct issued to the applicant, which certificate shall create a presumption of rehabilitation in regard to the offense or offenses specified therein.

754 WRITTEN STATEMENT UPON DENIAL OF LICENSE OR EMPLOYMENT

At the request of any person previously convicted of one or more criminal offenses who has been denied a license or employment, a public agency or private employer shall provide, within thirty days of a request, a written statement setting forth the reasons for such denial.

755 ENFORCEMENT

1. In relation to actions by public agencies, the provisions of this article shall be enforceable by a proceeding brought pursuant to article seventy-eight of the civil practice law and rules.
2. In relation to actions by private employers, the provisions of this article shall be enforceable by the division of human rights pursuant to the powers and procedures set forth in article fifteen of the executive law, and concurrently, by the New York City Commission on human rights.