



# POLICY

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Series 700: Personnel

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## CRIMINAL BACKGROUND PROCESS

**MTC 745**

### Definitions

**Authorized Persons:** Individuals determined by the Vice President of Finance & Operations or designee to need access to or need to view criminal history record information in their official capacity with the College.

**Criminal History Record Information (CHRI):** A criminal history of an individual obtained through the South Dakota Division of Criminal Investigation (SDDCI) and/or the Federal Bureau of Investigation (FBI) using the individual's fingerprints. CHRI includes information on the arrest, detention, complaint, indictment or former criminal charge of an individual as well as the disposition of any charges. The FBI rules differ from the DCI rules regarding the disclosure of criminal history record information.

**Criminal Justice Information Services (CJIS):** The FBI's Criminal Justice Information Services Division, or CJIS, provides a range of state-of-the-art tools and services to law enforcement, national security and intelligence community partners, and the general public. Its purpose is to equip law enforcement, national security, and intelligence community partners with the criminal justice information needed to protect the United States and the public. The CJIS Division was established in 1992 to serve as the focal point and central repository for criminal justice information services in the FBI. It is the largest division in the FBI.

**Local Agency Security Officer (LASO):** liaison with SDDCI to ensure the agency is in compliance with security procedures. The LASO shall (1) maintain a list of users who have access to CHRI, (2) identify and maintain a list of persons who are authorized to use the approved hardware, software and firmware to access CHRI and ensure no unauthorized individuals have access to this technology, (3) identify and document how the equipment is connected to the state system, (4) ensure that personnel security screening procedures are being followed, (5) ensure that approved and appropriate security measures are in place and working as expected, (6) promptly notify the SDDCI of any security incidents, and (7) support any security audits.

**Noncriminal Agency Coordinator (NAC):** primary contact person for the College who serves as the liaison between the College and SD Division of Criminal Investigation, responsible for notifying SDDCI when a new employee starts or an employee leaves so SDDCI can keep CJIS Security training records current and such other duties as required.

**Point of Contact (POC):** The College's contact person when SDDCI sends out Audit information, the contact person when an onsite Audit is scheduled.

**Security Incident:** An act of violating an explicit or implied security policy regarding CHRI including, but not limited to (1) attempts (either failed or successful) to gain unauthorized access to a system or its

data, (2) unwanted disruption or denial of service, (3) the unauthorized use of a system for the processing or storage of data, and (4) changes to system hardware, firmware or software characteristics without the College's knowledge, instruction or consent.

### **Policy Statement**

The College is committed to providing a safe learning and working environment. The College will require each person over eighteen years of age hired by the College, to submit to a criminal background investigation by means of fingerprint checks by the Division of Criminal Investigation and the Federal Bureau of Investigation. The College and its employees, officers and agents will only obtain CHRI when authorized by law and will only use CHRI, or the personally identifiable information first obtained by the College in CHRI, for the purposes of determining whether a person should be employed by the College.

In accordance with law and to protect the College's students, criminal background checks on persons who are employed in the College The criminal background investigation shall be done by means of fingerprint checks by the Division of Criminal Investigation. If no disqualifying record is identified at the state level, the fingerprints shall be forwarded by the Division of Criminal Investigation to the Federal Bureau of Investigation for a national criminal history record check. The College and district employees will comply with state and federal law, rules, procedures and policies regarding the receipt, use and dissemination of criminal history record information of any individual.

### **Designations**

The Vice President of Finance & Operations, as the Agency Representative, is responsible for signing the SD Division of Criminal Investigation (SDDCI) User Agreement on behalf of the College.

The Vice President of Finance & Operations shall be the College's Point of Contact (POC) and Noncriminal Agency Coordinator (NAC) to act as the primary contact person for the College, shall serve as the liaison between the College and SD Division of Criminal Investigation, and will fulfill all responsibilities of the POC/NAC, including but not limited to being the contact person when SDDCI sends out Audit information, shall be the contact person when an onsite Audit is scheduled, and responsible for notifying SDDCI when a new employee starts or an employee leaves so SDDCI can keep CJIS Security training records current.

The Vice President of Finance & Operations is designated to be the Local Agency Security Officer (LASO) to act as liaison with SDDCI to ensure the agency is in compliance with security procedures. The LASO shall be knowledgeable in CHRI, policies and mandated rules and regulations as well as knowledge of IT security procedures. The LASO shall actively represent the College in all matters pertaining to information security, dissemination of information security alerts and other material within the College, and responsible for contacting SDDCI if there has been misuse of CHRI.

### **Criminal Background Checks**

Each person over eighteen years of age hired by the College shall be required to submit to a criminal background investigation.

The college shall submit completed fingerprint cards to the Division of Criminal Investigation before the prospective new employee enters into service.

If no disqualifying record is identified at the state level, the fingerprints shall be forwarded by the Division of Criminal Investigation to the Federal Bureau of Investigation for a national criminal history record check.

Any person hired to officiate, judge, adjudicate, or referee a public event sponsored by a school district or technical college is not required to submit to a criminal background investigation.

Any person whose employment is subject to the requirements of this section may enter into service on a temporary basis pending receipt of results of the criminal background investigation. The College may, without liability, withdraw its offer of employment or terminate the temporary employment without notice if the report reveals a disqualifying record.

The criminal investigation required by this section with respect to a student teacher completing requirements for teacher certification shall be conducted by the College, and the College may rely upon the results of that investigation for employment of that person as an employee of the College. Results of a criminal background investigation conducted by another South Dakota public school district of a student teacher, hired by the College, may be relied upon by the College.

A College employee who is employed simultaneously with another technical college or school district is only required to obtain one criminal background investigation, if the background investigation was conducted less than five years before the person was first employed by the College.

No person may be employed by the College, either directly or by contract, if the person has been convicted of a crime of violence (murder, manslaughter, rape, aggravated assault, riot, robbery, burglary in the first degree, arson, kidnapping, felony sexual contact, felony child abuse, or any other felony in the commission of which the perpetrator used force, or was armed with a dangerous weapon, or used any explosive or destructive device), sex crimes (including but are not limited to, rape, felony sexual contact with a minor under sixteen, sexual contact with a person incapable of consenting, possessing, manufacturing, or distributing child pornography, and sexual exploitation of a minor), or distribution or trafficking in controlled substances or distribution of marijuana.

The College may also refuse to employ a person who has been convicted of a crime involving moral turpitude. "Moral turpitude" is defined "an act done contrary to justice, honesty, principle, or good morals, as well as an act of baseness, vileness, or depravity in the private and social duties which a person owes to his fellow man or to society in general.

The College may consider any criminal conviction in making a hiring decision. The College has the sole and absolute discretion to determine whether the results of a criminal background investigation disqualify a person from employment within the College.

For purposes of this policy, the term conviction means a plea or verdict of guilty or a conviction following a plea of nolo contendere (no contest) in this state or any other state.

The College's employment application form shall inform applicants that if no SD statutorily disqualifying conviction is identified at the state level the fingerprints will be forwarded by the S.D. Division of Criminal Investigation to the Federal Bureau of Investigation for a national criminal history record check.

The application form shall also inform applicants that if the applicant believes the criminal background result is incorrect or incomplete in any respect and the applicant wishes changes, corrections or updating of the alleged deficiency, the applicant should make application directly to the agency which contributed the questioned information or direct the applicant's challenge as to the accuracy or completeness of any entry on the applicant's record to the FBI, Criminal Justice Information Services (CJIS) Division, ATTN: SCU, Mod. D-2, 1000 Custer Hollow Road, Clarksburg, WV 26306. The applicant has 30 days to provide evidence of errors or omissions related to the background check.

Should an applicant be disqualified from employment due to the results of a criminal background check, The College shall inform the applicant that the criminal background check results prohibit The College from employing the person. The College will not delay the employment hiring decision solely because the applicant seeks to correct his or her FBI criminal history record information (CHRI).

Before a person's conditional employment is terminated as a result of the person's CHRI, the College shall inform the person whose conditional employment is subject to termination that the criminal background report reveals a conviction which prohibits the College from employing the person, and inform the person of his or her right to appeal the accuracy or completeness of the CHRI to the SDDCI or FBI. Employees shall be afforded procedural due process consistent with their employment status (i.e., whether the person is an employee-at-will, a school-year employee, or a ten month or twelve month employee) should termination of conditional employment be a possibility following the College's receipt of the CHRI. All employees and other persons required to submit to a criminal background check pursuant to this policy must notify The College in writing if they are convicted of any offense of domestic violence, child abuse, sex offense, drug (including marijuana) or any felony offense. This notification must be made as soon as possible, but no later than five business days after the event.

The College reserves the right to require any employee to submit to additional criminal background checks at the College's expense.

As required by state law, SDCL 13-10-15, if, as the result of a criminal conviction the school board suspends an employee without pay, or an employee resigns, or an employee is terminated, the Vice President of Finance & Operations shall within ten days of the date of the suspension or the date the employment is severed report the circumstances and the name of the employee to the S.D. Board of Technical Education.

### **Training**

The College will ensure that all employees who have access to CHRI shall be trained by SDDCI on the rules and responsibilities for the confidentiality, receipt, use and dissemination of the CHRI.

### **Confidentiality**

Before requesting CHRI on any individual, the College will give the individual written notification that his or her fingerprints will be used to obtain the CHRI of the individual, and the College will provide the individual a copy of the statement "Noncriminal Justice Applicant's Privacy Rights."

Information received by the College pursuant to a criminal background check is confidential. Only authorized persons within the College may access, view or use CHRI. Authorized persons may not share or otherwise disclose information contained in CHRI to unauthorized persons unless explicitly allowed for in this procedure.

Unless otherwise allowed by law, the College will only use this information for the College's internal purposes in determining the suitability of an applicant, employee, or other worker on college property. The College will note in an employee's or applicant's personnel file that the background check was completed and if the person was disqualified by the CHRI for employment or assignment. The College will keep the CHRI in a separate file in a location that is only accessible to persons who need to know the information to carry out their responsibilities with the College.

Individuals that have access to CHRI will receive CJIS security training provided by SD DCI. Once the individual has completed the CJIS online training and has taken the test each individual will receive and acknowledge in writing the receipt of the following:(1) User Rules of Behavior Acknowledgement form,

(2) CHRI Disciplinary Policy, and (3) Acknowledgment Statement of Misuse. The College will keep a copy of the signed documents in each individual's personnel file.

### **Access and Retention**

The College may print or electronically share records when necessary to determine whether the person is authorized to work for the College. In those situations, the physical or electronic copy will be destroyed immediately after the decision is made.

If the College runs a background check on employees of a contractor that does business with the College, The College will not provide the CHRI to the contractor. Instead, the College will provide a clearance letter notifying the contractor whether the employee is cleared to provide services in the College.

The College will not disseminate CHRI across state lines.

Upon request, the College will provide a copy of the SDDCI and FBI CHRI to the person who is the subject of the background check as long as the individual provides a valid photo id. The SDDCI and FBI CHRI will only be released to the individual and not to relatives, spouses or friends. The College will note in the dissemination log that a copy was provided to the individual.

The results of the background investigation done by the College shall be transferred to another South Dakota public school district or technical college if the other school, or current employee, submits a written request to the College that the results be transferred to the other public school district or technical college. The College employee who was the subject of the criminal background investigation must sign a written release authorizing the transfer. The information will be sent by U.S. Mail or encrypted email.

The College will retain CHRI records during the period of the individual's employment or service to the College and will retain for 5 years after employment or service has ended or no employment has been offered. All documents will be destroyed by shredding or incineration.

### **Recordkeeping**

A Secondary Dissemination Log shall be maintained in which all authorized disseminations of FBI and State DCI criminal background check results are recorded. The following shall be recorded in the College's Secondary Dissemination Log:

- name of College;
- name of person subject to the criminal background check review;
- date of birth of person subject to the criminal background check review;
- SD technical college requesting FBI and DCI criminal background check results and person/title requesting on behalf of the SD technical college;
- written request signed by person subject to the criminal background check review for a copy of the SDDCI criminal background check results, attached to the Secondary Dissemination Log;
- date of release of criminal background check results; description of the record that was shared;

- how the record was sent or received person to whom criminal background check results were disseminated;
- signature of College employee disseminating the criminal background check review pursuant to a valid request.

The Secondary Dissemination Log shall be maintained until the onsite audit is complete and the College receives from the SD Division of Criminal Investigation written notice of a successful Policy Compliance Review, unless the log is needed or required for other purposes.

### **Security**

The College will provide for the security of any CHRI received, including the appropriate administrative, technical and physical safeguards to provide for the security and confidentiality of the information. This includes, but is not limited to, the following:

The LASO shall maintain a list of authorized persons who have access to CHRI.

In those cases when the College has physical copies of CHRI, the College will restrict access to authorized persons only. Physical copies of CHRI, if any, will be maintained in a controlled, secure environment, such as a locked cabinet in a room that is free from public or unauthorized access. The room or the locked cabinet will include an "Authorized Personnel Only" sign.

The College will not routinely maintain electronic copies of CHRI; however, in the rare instance where the College has electronic copies of CHRI, the College will restrict access to authorized persons only. Electronic data will be protected with encryption as designated by the state or federal government or will only be accessible by individual password. Computers, printers and monitors used to access CHRI must be situated to prevent unauthorized viewing of the information.

CHRI cannot be accessed using computers available to the general public or personal devices. CHRI will not be stored on a server that is unprotected or accessible by an unauthorized entity. CHRI will not be relocated, transmitted or transported outside a secure location unless encrypted according to FBI standards or transported in a locked container or in folders where the information is not visible to the public. A log must be kept if electronic information systems, such as a laptop, flash drive or CD with CHRI information on it, leaves a secured area.

The College will dispose of records securely. Physical records will be cross-shredded or incinerated. If the College contracts out for record destruction, the destruction must be supervised. The College shall notify SDDCI of the entity with whom the College contracts for records destruction and must receive SDDCI approval to use the contractor for purposes of disposing of CHRI. Electronic records will be deleted and overwritten as required by the SDDCI or FBI.

The College will not provide auditors access to CHRI unless the auditor is authorized by the SDDCI or the FBI.

### **Security Incident Response Plan**

All College employees will immediately report to the LASO information security incidents such as the theft or loss of physical records or the hacking or failure of electronic systems or suspicions that an incident has or will take place. The LASO will document receipt of all reports, investigate incidents and report incidents to SDDCI. LASO documentation will include (1) date of security incident, (2) location of

security incident, (3) systems affected, (4) method of detection, (5) nature of security incident, (6) description of security incident, (7) actions taken/resolution, (8) current date, and (9) contact information for LASO.

### Consequences

Employees who fail to keep background check results confidential or fail to follow this policy or any laws or rules regarding the access, receipt, use or dissemination of CHRI as required by law will be subject to disciplinary action up to and including termination. Unauthorized requests, receipts, release, interception, dissemination or discussion of CHRI may also result in criminal prosecution.

**Notes:** State law requires criminal background checks for all school employees over eighteen (18) years of age. Background checks on volunteers and employees of independent contractors that provide student services for the College are addressed by separate policy.

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**Policy References:** Legal references indicate the basis or authority for the board to enact this policy, and policy cross-references identify additional policies related to the subject matter of the above policy.

#### State Description

SD DCI Guide for Noncriminal Justice Agency  
 SD DCI Non-Criminal Justice Agency User Agreement  
 SDCL 13-10-12 Criminal background investigation  
 SDCL 13-10-13 Criminal conviction as factor in hiring decision  
 SDCL 13-10-14 Persons continuously employed exempt  
 SDCL 13-10-15 Suspension or Resignation for Criminal Conviction  
 SDCL 13-10-16 "Conviction" defined  
 SDCL 22-1-2 (25) "Moral turpitude" defined  
 SDCL 22-1-2(9) "Crime of violence" defined  
 SDCL 22-24B-1 "Sex crimes" defined

#### Federal Description

CFR Title 28 §16.34 Procedure to obtain, change, correction or updating identification record  
 CFR Title 28 §50.12 Exchange of FBI identification records

#### Cross References

#### Code Description

GCDBC Criminal Background Checks- Volunteers and Employees of Contractors

6/26/17- Updated the reference for the codified law which defines sexual offenses. Clarified that adjunct faculty are required to undergo background checks.

8/25/25 – Added that anyone given access to secure systems containing personally identifiable information is required to undergo a criminal background check.

6/8/26 – Overhauled policy using the policy for criminal background checks provided by the Associated School Boards of South Dakota.