

Washington West Supervisory Union Model Procedures

Procedure D1-P

**D1-P: CRIMINAL AND ABUSE REGISTRY CHECKS IN
VERMONT SCHOOLS**

Policy and Procedural Guide for School Officials *(see below)*

July | 2012

Criminal Record and Abuse Registry Checks in Vermont Public Schools

Policy and Procedural Guidelines for School Officials

This document was prepared by the Vermont Superintendents Association and the Vermont School Boards Association. This document, however, does not constitute legal advice. School district officials should consult with qualified legal counsel to obtain legal advice related to conducting criminal record or abuse registry checks.

What checks are required, recommended and optional?

The following chart illustrates the criminal record and abuse registry checks requirements by category of school employee or volunteer:

	Criminal Record Checks	Abuse Registry Checks	Sex Offender Registry
1. Prospective employees¹, or 2. Contractors who may have unsupervised contact with schoolchildren, or 3. Student-teachers	Required (FBI check) ²	Required ³	<i>Sex offender record will be reported in the criminal record check. Ineligible for employment.</i>
Volunteers	School board policy ⁴	Optional	Recommended
Work-study students	School board policy ³	Optional	Required
Bus Drivers	Required: Criminal record and abuse registry checks Optional: VT DMV Driver Record Check		

Questions and Answers Regarding Record Checks

Can the school district/supervisory union request a new criminal record or abuse registry check on a current employee for whom a check has already been completed?

Yes.⁵ A school employer may request a recheck for any criminal record or registry information available at any point during a person’s employment. Criminal record rechecks may be Name and Date of Birth checks of Vermont convictions or national, fingerprint supported FBI record checks.

¹ “**Prospective employee**” in this document refers to the “person a superintendent or headmaster is prepared to recommend for any full-time, part-time or temporary employment.” 16 V.S.A. §255(a)(1)

² 16 V.S.A. § 255(a)

³ 16 V.S.A. § 255(h)

⁴ 16 V.S.A. § 260

⁵ 16 V.S.A. § 256(a)(2)

Regarding a prospective employee, must a school district/supervisory union acquire completed criminal record checks and abuse registry checks from the prospective employee's prior or current school employer?

Yes, unless: a) the prospective employee refuses to authorize release of the information, b) the record no longer exists, or c) since the record check, there has been a period of one year or more since the person has worked for a Vermont school district or a recognized or an approved independent school.⁶ Note that although the school district/supervisory union is required to obtain the completed checks from prior or current employers under the conditions described, the district has the right to request new record checks at any time during the person's employment.

Must the school district/supervisory union obtain permission from the prospective employee to conduct criminal record and abuse registry checks?

No, the district is not required to obtain permission. However, the superintendent is required to inform a prospective employee that he or she will be subject to a record check on the job application form.⁷

Potential employees should be asked, as part of the application process, to disclose any prior criminal convictions or placement on abuse registries. If it is necessary for an employee to begin work before a criminal record or abuse registry check can be completed, the employee should be informed that his/her continued employment shall be conditioned upon acceptable background check results and that undisclosed convictions may result in termination of employment. Experience shows that merely notifying an individual that a record check will be conducted is enough to discourage some applicants from proceeding with their applications.

Are there special requirements for contractors and their employees?

Superintendents and headmasters are required to request criminal record and abuse registry checks for any person directly under contract or any employee of a contractor under contract who may have unsupervised contact with school children.⁸ All VCIC requests for contractors' employee checks shall be made through a superintendent or headmaster.

When a criminal record request is made by a superintendent on behalf of a contractor, the superintendent shall inform the contractor in writing whether or not a record exists. If a record exists, the specific nature of the record will NOT be disclosed to the contractor. The contractor shall then forward a copy of the notification to the applicant along with a notice relating to the school district's record check policies.⁹

What are the requirements for volunteers and work-study students?

Each school district is required to maintain a policy on supervision of volunteers and work-study students that will specify local record check requirements, if any. A person on the Vermont sex

⁶ 16 V.S.A. § 256(a)(1)

⁷ 16 V.S.A. § 258(b)

⁸ 16 V.S.A. § 255(a)(2) & (3)

⁹ 16 V.S.A. § 255(e)(2)

offender registry cannot act as a work-study student in a school, so it would be sensible to request a criminal record check for all prospective work-study students.

Even if the district policy does not mandate checks, school officials do have the option of running criminal record and/or abuse registry checks on prospective school volunteers.

How to Obtain an FBI-Supported Criminal Record Check

An FBI check (which requires fingerprinting) will disclose all in-state convictions and most out-of-state convictions. The check is typically processed in three to five weeks. Criminal conviction information cannot be reported over the telephone or faxed.

Before requesting a criminal record check, each school district, supervisory union or independent school must first sign user agreements (*A Title 16 User Agreement* and a *National Child Protection Act User Agreement*) with the Vermont Criminal Information Center (VCIC) and receive an “authorized agency code.” If your district or S.U. has not yet obtained an authorized agency code, call VCIC at (802) 241-5237. The user agreement template can be found at: http://vcic.vermont.gov/sites/vcic/files/Title_16_User_Agreement.pdf

The superintendent or headmaster is required to obtain and keep on file a release form signed by the applicant authorizing the release of his/her criminal history to the requestor.

Release forms for such purposes can be found at:

http://vcic.vermont.gov/sites/vcic/files/NCPA_Release_Form.pdf

The minimum amount of applicant information necessary to complete a record check is the applicant’s name and date of birth. A social security number or other identifying information is optional, but useful. The applicant should be required to sign the release form in the presence of a District or School official. The applicant’s signature should be verified against one or more pieces of identification. Out of state applicants who are unable to sign the release form in the presence of a school official must have the release notarized.

An applicant must provide fingerprint identification for the FBI criminal record check.

The fingerprinting must be done at a law-enforcement Identification Center. When submitting a request for a fingerprinted supported record check, a Fingerprint Authorization Certificate (FAC) must be submitted to VCIC in order to process the request. The applicant must obtain the FAC from the superintendent or headmaster, which shall include the school/district/supervisory union authorized agency code. The form is available at:

http://vcic.vermont.gov/sites/vcic/files/Fingerprint_Authorization_Form_FAC_.pdf

For information on Identification Centers in your region, visit:

http://vcic.vermont.gov/record_checks/vermont/Fingerprint+Identification+Center+Information

At the Identification Center, the applicant will be required to show two forms of identification. At least one form must be a valid government I.D. with photograph and birth date, other than a passport. More information on the two necessary forms of I.D. is available in Appendix A.

Criminal Record and Abuse Registry Checks in Vermont Public Schools
Policy & Procedural Guidelines for School Officials – July 2012

The Identification Center will mail the FAC weekly to VCIC. Once the FAC is received and logged, the prints then go to the fingerprint division then sent electronically to the FBI. The FBI processes the requests and returns the results to VCIC via email. VCIC logs the results into a database, then generates and mails letters weekly to the requesting school/district/supervisory union with the record check results. The superintendent or headmaster should provide VCIC with self-addressed, stamped 9 x 12 envelopes marked confidential on the back flap. **Record checks results will be delayed several days if there is no self-addressed, stamped envelope on file at VCIC.**

VCIC's mailing address is:

VCIC
Department of Public Safety
103 South Main St.
Waterbury, VT 05671
Attn: Tina Healy

The school/district/SU should maintain the results in a Criminal History Log, which should include the following information: 1) date of the request; 2) name and date of birth of the applicant; 3) name of the staff person who processed the request; and 4) the type of request submitted (employee, volunteer, work study student, e.g.). A sample criminal history log can be found here: http://vcic.vermont.gov/sites/vcic/files/Criminal_History_Log.pdf

Out-of-State Record Check Requests (Optional)

A standard FBI criminal record check, with fingerprinting, will disclose most criminal convictions in other states. However, there may be out-of-state convictions that do not require the individual to be fingerprinted and may not appear on a standard criminal record check.

Criminal conviction information may also be requested directly from other states. However, requests to other states will involve utilizing the appropriate procedure for the additional state(s) and additional fees (sometimes substantial). Please note that many states also require the applicant to submit fingerprints as part of their record check process.

To request an out-of-state record check, call VCIC at 802-241-5237 to determine:

- the fees charged by the other state;
- to whom checks should be made payable; and
- and whether or not fingerprints will be required.

How to Obtain Criminal Record Checks for Volunteers

Each school district is required to have a policy on the supervision of volunteers. Consult your school district policy for guidance on the minimum required record checking required. For volunteers, two tiers of criminal record checks are available, a Name and Date of Birth (N&DB) check, and a fingerprint-supported FBI check. An N&DB check discloses all criminal convictions in Vermont, but does not disclose any convictions in other states. An FBI check (which requires fingerprinting) will disclose all convictions in-state and most out-of-state. To

Criminal Record and Abuse Registry Checks in Vermont Public Schools
Policy & Procedural Guidelines for School Officials – July 2012

complete an FBI check, follow the instructions beginning on page 2 of this document. An N&DB check is free for school use, and can be processed online, with immediate turnaround.

To process a Name & Date of Birth check online, a school employer must first obtain an online username and password from VCIC for this specific purpose. Visit: <https://secure.vermont.gov/DPS/criminalrecords/vulnerable/>. Complete the form to obtain a username (usually one's email address) and password. Typically, the request for a username and password is processed within five working days. Each school district or supervisory union is entitled to up to five unique usernames, so several members of the staff can each apply for his or her own username.

Once you have obtained a username and password, visit: <https://secure.vermont.gov/DPS/criminalrecords/subscriber/>. Enter your username and password, click submit, and follow the instructions online. All Vermont criminal convictions will be disclosed immediately through this online process.

If applicable, it is good idea to notify potential volunteers that a criminal record check will be initiated, and to give them an opportunity to withdraw their applications for service as volunteers. Merely notifying an individual that a record check will be conducted is enough to discourage some applicants from proceeding with their applications.

It may not be possible to ensure that volunteers in settings such as field trips will have no unsupervised contact with students. The availability of criminal record information and abuse registry information increases the potential liability for school districts that choose not to access these sources prior to allowing volunteers to participate as chaperones at student events. Liability in this case would be based on the failure of a district to protect the safety of children by obtaining readily available information about the past conduct of potential employees or volunteers. To avoid this potential liability, school officials should notify volunteers that criminal record checks are routinely requested for individuals being considered for positions that could result in unsupervised contact with students, and signed releases from the same individuals should be requested in order to secure information from the child abuse registry and the adult abuse registry.

Confidentiality and Record Maintenance

Criminal records and criminal record information are designated confidential unless, under state or federal law or regulation, the record or information may be disclosed to specifically designated persons.¹⁰

A superintendent or headmaster who receives criminal record or registry information **must** maintain the record or information pursuant to the user agreement for maintenance of records. At the end of the time required by the user agreement, the superintendent or headmaster **must** destroy the information in accordance with the user agreement unless the person authorizes maintenance of the record. If authorized by the person, the superintendent or headmaster **must**, if the information is a notice of no criminal record, securely maintain the information

¹⁰ 16 V.S.A. § 253.

indefinitely; or if the information is a criminal record or notice of the existence of a criminal record, send it to the commissioner for secure maintenance in a central records repository.¹¹

Abuse Registry Checks

State law requires superintendents and headmasters to run Child Protection Registry and Adult Abuse Registry checks on all prospective employees, contractors who may have unsupervised contact with schoolchildren, and student teachers.¹² School officials may run abuse registry checks on volunteers but are not required to do so.¹³

The Department for Children and Families (DCF) maintains the State's **Child Protection Registry**, which is an electronic database of all substantiated reports of child abuse and neglect since January 1, 1992. A substantiated report means that DCF, after investigation, has determined that a report is based upon accurate and reliable information that would lead a reasonable person to believe that a child has been abused or neglected. An individual's Registry record includes his or her name, the date and nature of the abuse/neglect finding, and at least one other personal identifier.

The Department of Disabilities, Aging and Independent Living (DAIL) maintains an **Adult Abuse Registry** that contains names of individuals against whom an allegation of abuse, neglect or exploitation of a vulnerable adult has been substantiated.¹⁴ Vermont law authorizes DAIL to conduct a registry search for employers who provide care, custody, treatment, transportation or supervision of children or vulnerable adults through individuals who are retained either on a paid or voluntary basis. School districts would be considered employers for purposes of accessing information from the Adult Abuse Registry for volunteers, grantees, contractors and employees working with certain students with disabilities who are 18 years or older.

To conduct a single search of both the Child Protection Registry and the Adult Abuse Registry, visit <http://www.ahsnet.ahs.state.vt.us/abc/SubscriberHome.cfm>. You must first obtain an organization ID from AHS by clicking on the "request a subscription" link. After AHS approves your organization, you will be able to complete abuse registry checks online with an immediate turnaround.

Sex Offender Registry

School board policies on the supervision of volunteers and work study students must include a requirement that superintendents, headmasters, and their contractors check the names and birth dates of any work-study students with the Vermont Sex Offender Registry prior to allowing work study students unsupervised contact with students.¹⁵ The Vermont Criminal Information Center maintains a Sex Offender Registry.¹⁶ Parts of the Registry are freely available and searchable on

¹¹ 16 V.S.A. § 256(b).

¹² 16 V.S.A. §255(h)

¹³ 16 V.S.A. §260

¹⁴ The definition of "vulnerable adult" includes "... a person 18 years of age or older who...is impaired due to brain damage, infirmities of aging, or a physical, mental or developmental disability...that results in some impairment of the individual's ability to provide for his own care without assistance...or...to protect himself from abuse, neglect, or exploitation." 33 V.S.A. §6902(14).

¹⁵ 16 V.S.A. §260.

¹⁶ 33 V.S.A. §5411(a).

Criminal Record and Abuse Registry Checks in Vermont Public Schools
Policy & Procedural Guidelines for School Officials – July 2012

the Internet. The Internet Registry only contains high-risk offenders and represents only about 1/6th of the sex offenders in the Registry. All criminal sex offenses and any sex offender registry entries will be disclosed in a standard criminal background check. However, the high-risk Sex Offender Registry may still provide utility to school employers. While there are limits to when an employee may be subject to a new criminal record check, the Sex Offender Registry website is an open and accessible database for use at any time.

As in the case of record checks for volunteers and employees, school officials will limit potential school district liability and potentially provide better protection for children by informing current or prospective employees, contractors, grantees or volunteers that the district may request information from the Vermont Sex Offender Registry.

To access the VCIC Sex Offender registry, visit:
<https://secure.vermont.gov/DPS/sor/agreement.php>

About This Information Packet

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Appendix A: Identification Form Lists

At a fingerprinting Identification Center, applicants must show two forms of valid identification in either of the following combinations:

- Two forms of identification from the Primary List.
- One form of identification from the Primary List and one form of identification from the Secondary List.

Note: Two forms of identification from the Secondary List are not acceptable.

Primary List

- Valid Driver's license issued by a state or possession of the United States, provided it contains a photograph and other identification information such as name, date of birth, gender, height, eye color or address.
- Valid Non-Driver ID license issued by a state or possession of the United States, provided it contains a photograph and other identification information such as name, date of birth, gender, height, eye color, or address.
- Valid government ID card issued by a municipality, county, state, or possession of the United States including the federal government of the United States and the federal government of Canada, provided it contains a photograph and other identification information such as name, date of birth, gender, height, eye color, or address.

Secondary List

- Valid Passport
- Valid credit card with signature
- Valid Student ID issued by a school located in a state or possession of the United States provided it bears the name and signature of the applicant.
- Check Cashing Card with signature
- Valid document or card which contains the applicant's name and signature and is satisfactory to Identification Center staff.

(Source: Vermont Criminal Information Center)