



POLICY TITLE	Criminal Background Checks	Policy Number	333
Section	Human Resources	Approval Date	January 8, 2009
Subsection	Conditions of Employment	Effective Date	January 8, 2009
Responsible Office	Office of the Vice President of Planning, Budget, and Human Resources		

1.0 PURPOSE

1.1 Criminal background checks for prospective and existing employees of the University are mandated by Utah Code 53B-1-110 *Higher Education Criminal Background Checks* and Utah State Board of Regents' Policy R847 *Criminal Background Checks*.

2.0 REFERENCES

- 2.1** *Fair Credit Reporting Act (FCRA)*, 15 U.S.C. § 1681 et seq.
- 2.2** Utah Code 53A-3-410 *Criminal Background Checks on School Personnel—Notice—Payment of Cost—Request for Review*
- 2.3** Utah Code 53B-1-110 *Higher Education Criminal Background Checks*
- 2.4** Utah State Board of Regents' Policy R165 *Concurrent Enrollment*
- 2.5** Utah State Board of Regents' Policy R481 *Academic Freedom, Professional Responsibility and Tenure*
- 2.6** Utah State Board of Regents' Policy and Procedure R847 *Criminal Background Checks*

3.0 DEFINITIONS

*This policy uses the following terms as defined by Utah State Board of Regents' Policy R847.

3.1 Adjunct faculty: Part-time teachers, post-doctoral fellows, visiting lecturers, graduate assistants, and other professional staff members of businesses, industries, and other agencies and organizations who are employed by the University on a part-time basis to carry out instructional, research, or public service functions.



3.2 Applicant: The final applicant offered employment, transfer or promotion, contingent on acceptable results of a criminal background check and other reviews required for the position by the University such as financial/credit checks, degree transcripts or license documentation, or student loan status.

3.3 Background check: Commercial or governmental process of searching public records to determine no less than whether an individual has been convicted of criminal conduct anywhere in the United States of America within no less than the last seven years. The background check may include the search of public records outside the United States of America.

3.4 Diminished capacity adult: A person who lacks decision-making capacity which requires, to greater or lesser degree: (1) possession of a set of values and goals; (2) the ability to communicate and to understand information; and (3) the ability to reason and to deliberate about one's choices.

3.5 Employee: A faculty member, including adjunct faculty, or any exempt or non-exempt employee of the University who receives compensation for work or services from funds controlled by the University, regardless of the source of the funds, the duties of the position, the amount of compensation paid, or the percent of time worked.

3.6 Minor: A person younger than 21 years of age.

3.7 Reasonable cause: Where the known facts and circumstances are sufficient to warrant a person of reasonable prudence to believe that the employee poses an unreasonable risk to persons or property and/or that a history or report of a crime will be found. Reasonable cause may be established by, but is not limited to, the following criteria: arrest during period of employment, substantiated complaints of abuse or harassment, incidental discovery of history of criminal activity.

3.8 Risk Assessment Committee: Consists of the Associate Vice President of Human Resources, a permanent representative from each vice president's area, hiring manager, and dean or dean's designee or director (as designated by dean or vice president.) This is an ad hoc committee appointed by the vice presidents and approved by the President. The committee has access to legal counsel.

3.9 Security-sensitive position: Position where the job duties require, provide for, or encompass the potential to incur human, financial, or property loss or other harm to the University and its constituents. A security-sensitive position should include at least one of the following elements:

- 1) Access to children, including child care in a child care center, or to diminished capacity adults;



- 2) Relationships with students where exceptional trust and responsibility are involved, such as counselors, health care providers, coaches, and residence hall personnel;
- 3) Responsibility for providing direct medical care, treatment, or counseling and/or access to pharmaceuticals, toxins, hazardous, or controlled substances;
- 4) Direct access to laboratory materials and other property that have the potential of being diverted from their proper use either for financial gain or for harmful, dangerous, or illegal purposes;
- 5) Decision-making authority for committing university funds or financial resources through contracts and commitments and/or direct access to or responsibility for handling cash, checks, credit/debit cards or cash equivalents, university property, disbursements, or receipts;
- 6) Access to building and residence hall master control and key systems;
- 7) Access to confidential information or sensitive personal information such as employment, health, donor, financial and other records, including data that could facilitate identity theft;
- 8) Access to or responsibility for the maintenance, upgrading, and repair of the University's computer networks and/or information technology systems; and
- 9) Responsibility for police, security, guard forces, or other significant health or safety issues.

3.10 Significant contact: An employee position involves significant contact with minor persons if there is a reasonable expectation that in the course of the normal, routine responsibilities of the position, the employee and a minor would interact on a one-on-one basis. For example, teachers with office hour consultations, mentors, counselors, test center employees, coaches, and advisors could all reasonably expect to interact one-on-one with students as a normal, routine part of their work and hence would have "significant contact" with one or more minor persons during the course of their employment.

4.0 POLICY

4.1 The University will comply with Utah Code and Board of Regents' policy in conducting criminal background checks on employees. The University is committed to conducting criminal background checks in a manner that will ensure fairness and confidentiality to its prospective and existing employees.



5.0 PROCEDURES

5.1 Required Background Checks for Applicants

5.1.1 An applicant for any employee position at the University that involves significant contact with minors or is considered to be security sensitive by the University President or his or her designee must submit to a criminal background check as a condition of employment.

5.2 Background Checks for Adjunct Faculty, Temporary, or Part-time Applicants

5.2.1 Adjunct faculty, temporary, and part-time classifications of employees may be exempted from the requirement in section 5.1.1 by the President or his or her designee. The President or his or her designee shall require such exempted employees to self-disclose any criminal background and to sign an agreement whereby such exempted employee agrees to comply with any and all institutional rules and policies regarding sexual harassment, financial obligations, security issues, and health and safety requirements.

5.3 Optional Background Checks for Applicants

5.3.1 The President or his or her designee may require applicants for positions other than those described in section 5.1.1, including adjunct faculty, temporary, or part-time positions, to submit to a criminal background check as a condition of employment.

5.4 Background Checks for Existing Employees

5.4.1 An existing employee must submit to a criminal background check, where the University President or his or her designee finds that reasonable cause exists. For such existing employees, the University shall request a written and signed release of information for a criminal history background check. In the event the existing employee does not provide a written and signed release as requested, the University may proceed with obtaining a criminal history background check and provide the employee with written notice that the background check has been requested.

5.5 Written Release of Information

5.5.1 For applicants with a contingent offer of employment, the University shall obtain a written and signed release of information for a criminal history background check.

5.6 Fingerprint Background Check

5.6.1 The University may require each applicant or employee subject to a criminal background check under this section to be fingerprinted and provide a written consent to a fingerprint



background check by the Utah Bureau of Criminal Identification or the Federal Bureau of Investigation.

5.6.2 The University may request the Utah Bureau of Criminal Identification to conduct criminal background checks of prospective employees and, where reasonable cause exists, existing employees pursuant to university policy.

5.6.3 Except as provided in section 5.8, the University shall pay the actual cost of fingerprint background checks incurred by the Utah Bureau of Criminal Identification.

5.7 Consumer-reporting Agency Criminal History Background Check

5.7.1 The President or his or her designee may determine to use a consumer-reporting agency to conduct a criminal history background check instead of the fingerprint background check process provided in section 5.6. At a minimum, the consumer-reporting agency must conduct an investigation to verify the applicant or employee's social security number, obtain information regarding past employment, and search the individual's criminal background nationwide in the individual's counties of residence for the last seven years, and comply with all provisions of the *Fair Credit Reporting Act*.

5.8 Payment of Costs

5.8.1 The President or his or her designee may require an applicant to pay the costs of a criminal background check as a condition of employment.

5.9 Risk Assessment

5.9.1 Based on the convictions disclosed by the criminal background check, the Risk Assessment Committee will assess the overall risk to persons and property of employment or continued employment. That risk assessment will include:

- 1) The number of crimes committed,
- 2) The severity of those crimes,
- 3) The length of time since they were committed,
- 4) The likelihood of recidivism,
- 5) The security sensitivity of the position sought by the applicant or held by the existing employee, and
- 6) Other factors that may be relevant.



5.9.2 The Risk Assessment Committee is responsible to request or research additional information relevant to the risk assessment if needed and maintain strict confidentiality throughout the process.

5.9.3 The Risk Assessment Committee may determine that an individual with a criminal history should be considered eligible to obtain or retain the position, or that additional documentation should be required. When a decision is reached, the documentation must be reviewed by the Assistant Attorney General.

5.10 Opportunity to Respond

5.10.1 Before an applicant is denied employment or an employee is subjected to an adverse employment action based on information obtained in the criminal background report, the applicant or employee shall receive a copy of the report, written notice of the reasons for denial or the adverse action, a written description of his or her rights under the *Fair Credit Reporting Act*, and shall have an opportunity to respond to the reasons and any information received as a result of the criminal background check. If an applicant disagrees with the accuracy of any information in the report and notifies Human Resources within three business days of his or her receipt of the report, the University shall provide a reasonable opportunity to address the information contained in the report.

5.10.2 The Risk Assessment Committee will review and verify any new information provided by the applicant or employee and consult the divisional vice president who will make the final employment decision.

5.11 Financial/Credit Check

5.11.1 If an applicant is applying for, or an employee holds, a security-sensitive position with access to sensitive personal information or financial responsibilities over the funds of the University or others, the President or his or her designee may require an additional financial/credit check to be performed.

5.12 Degree Transcripts or License Documentation

5.12.1 If the position requires a degree or license, the University reserves the right to obtain a copy of the applicant's degree transcripts or license documentation.



5.13 Limitations on the Use of Information

5.13.1 The information contained in the criminal history background check report will be available only to those persons involved in making employment decisions or performing the background investigation, and the information will be used only for the purpose of making an employment or promotion decision. All criminal history background check reports, waivers, forms, and related documentation will be kept in a secure area in Human Resources. Access to the files will be limited to Human Resources personnel with a need to know.

5.14 Concurrent Enrollment Faculty

5.14.1 Employees of the University, who are concurrent enrollment instructors with unsupervised access to K-12 students, shall complete a fingerprint criminal background check consistent with Utah Code §53A-3-410. The hiring department will verify and document that concurrent enrollment faculty and contractual concurrent enrollment faculty have completed the required fingerprint criminal background check.

POLICY HISTORY		
Date of Last Action	Action Taken	Authorizing Entity