

BOARD OF EDUCATION OF THE CITY OF NEW YORK
DIVISION OF SCHOOL FACILITIES
OFFICE OF BUILDING SERVICES

PLANT OPERATIONS CIRCULAR NO. 13 – 1999/00

NOTE: All Circulars are to be kept in a permanent file

TO SCHOOL CUSTODIAN ENGINEERS AND SCHOOL CUSTODIANS

1. FINGERPRINTING

No custodial employee, including casual, seasonal, or other part-time employees, may start work until he/she has been fingerprinted and his/her records have been cleared. New employees must report to 65 Court Street, Room 406, Brooklyn, New York, to be fingerprinted and submit a postal money order for \$80. Only postal money orders will be accepted.

If the schedule for fingerprint clearance would result in diminished services due to staffing shortages, a custodian may request conditional fingerprint clearance for a prospective employee. Such a clearance would allow an employee, who has been fingerprinted, to start work after receiving New York State fingerprint clearance, but before receiving Federal fingerprint clearance.

To obtain conditional fingerprint clearance, the prospective custodial employee must complete Form OPI-7 "Request for Conditional Fingerprint Clearance." A copy is enclosed with this circular. When this form has been notarized, the custodian forwards it to the Borough Plant Manager, who, in turn, forwards it to the Office of Personnel Investigation. The Office of Personnel Investigation generally grants conditional fingerprint clearance when the prospective employee's fingerprints are cleared at the state level. The entire process takes approximately ten (10) days. No custodial employee, under any circumstances, may begin work until he/she is fingerprinted and is either cleared, or has received conditional fingerprint clearance. The Borough Plant Managers will request conditional clearance only to avoid serious disruptions of custodial services.

2. CHANCELLOR'S REGULATION C-105

Chancellor's Regulation C-105 and Section 2590-h of the New York State Education Law mandate that all custodial employees must be fingerprinted and duly cleared prior to the first day of work. A copy of Chancellor's Regulation C-105 is attached for your convenience.

2. ARREST OF A CUSTODIAL EMPLOYEE

Board of Education policy requires an arrested custodial employee to report the details of the arrest and the nature of the charges to the custodian as soon as possible. Upon notice of an arrest of a custodial employee, the custodian will report the arrest to the Office of Building Services. Following notice of the arrest, the Office of Building Services will obtain formal arrest information from the Office of Personnel Investigations. The Office of Building Services will review the nature of the charges and the employee's overall record to decide whether the custodial employee should remain employed with the Board of Education. The decision of the Office of Building Services will be sent in writing to the custodian.

If a custodial employee is arrested for a serious offense, a representative of the Office of Building Services may verbally direct the custodian to terminate the employee. In the

BOARD OF EDUCATION OF THE CITY OF NEW YORK
DIVISION OF HUMAN RESOURCES
OFFICE OF PERSONNEL INVESTIGATION
65 COURT STREET – ROOM 406
BROOKLYN, NEW YORK 11201

REQUEST FOR CONDITIONAL FINGERPRINT CLEARANCE FOR CUSTODIAL EMPLOYEES

Instructions: When completed, this form should be delivered to the attention of the Director of Personnel Investigation at the above address. Any incomplete application will be returned to the applicant.

AFFIDAVIT

STATE OF)
COUNTY OF) ss:

_____, being duly sworn, deposes and says:
(PRINT FULL NAME)

1. I now reside at _____
Street Address

CITY STATE ZIP CODE () Telephone Number
2. My Social Security Number is ____/____/____. My date of birth is ____/____/____
MONTH DAY YEAR
3. I have applied for employment with the Custodian Engineer of _____.
4. I understand that the Board of Education (Board) will conduct an investigation to determine whether I have any criminal record and will evaluate that record. I make this affidavit in consideration of the Board allowing me to be employed in the time between the execution of this affidavit and the completion of the Board's investigation and evaluation.
5. I understand that if I have been convicted of a criminal offense or if any criminal charges are pending against me, my employment may be terminated until the investigation and evaluation have been completed and a determination has been made that my criminal record does not disqualify me from the employment I am seeking.
6. I have not been convicted of any criminal offense.
7. There are no criminal actions pending against me.
8. I understand that any omission and/or misstatement of material facts may result in termination of employment and will be incorporated into my record for review in connection with any future application.

WARNING: KNOWINGLY MAKING AN APPARENTLY SWORN FALSE STATEMENT IS A PUNISHABLE OFFENSE UNDER THE PENAL LAW OF NEW YORK STATE.

Sworn before me this

Affiant (Sign Name In Full) Date

Notary Public

----- OFFICE USE ONLY -----

Approved: _____ Date _____ Data Input _____ Operator _____ Date _____
Director, OPI

THE CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK

Chancellor's Regulation Governing Background Investigations of
Pedagogical and Administrative Applicants and Procedures in Cases
of the Arrest of Employees.

CHANCELLOR'S REGULATION C-105

Revised March 23, 1992

Supersedes and Replaces C-105, Issued December 28, 1981

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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 1324a 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 same within the Office of Personnel Investigation (OPI), in the Division of Human Resources (DHR). It also sets forth procedures in cases of the arrest of an employee or 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, issued December 28, 1981, and any other regulations which are inconsistent with the policies and procedures specified herein.

1. General

No one may be licensed, certified or employed by the New York City Public School System without background investigation and clearance from either the OPI, or the Executive Director 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. For example, see Chancellor's Regulation, C-115, which requires additional backgrounding 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 Board 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 Executive Director DHR. Should the Executive Director DHR believe that further review is necessary before a final decision is issued, a referral to a review panel may be made. In any event, the Executive Director DHR shall have the authority to make the final decision to approve or deny the application.

The applicant will receive notice of the Executive Director's final decision in writing. In the event the final decision of the Executive Director 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 sale of controlled substances
- possession or use of lethal weapons of any kind
- 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

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 denial of an application it shall submit this finding and a recommendation to deny to the Executive Director DHR who shall act on this finding and recommendation in the manner described in Section 3.

6. Character

The OPI will investigate 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 finds that an applicant's character or conduct is unbecoming a school system employee, it shall submit this finding and recommendation to the Executive Director DHR who shall act on this finding and recommendation in the manner described in Section 3.

7. Operation and Composition of Review Panels

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 a review panel.

All panelists will be drawn from a roster of individuals who have been selected by the Executive Director DHR based on their knowledge of the New York City School System and its needs. In addition, panelists will be required to participate in a training program prior to their assignment.

The Executive Director DHR will draw, at random, three individuals from the roster to serve on the review panel. No two panel members may be selected from the same district or division.

Upon their assignment to a review panel the Executive Director 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. The statements of all participants will be electronically recorded and copies of the recording made available at cost. Within 10 days of the conclusion of the meeting, the chair of the panel will transmit a majority recommendation to the Executive Director 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 Executive Director 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 the same title, no sooner than 12 months after denial. 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 or Persons Holding New York City Licenses or Certificates

Any employee of the Board of Education who has been arrested and charged with a felony, misdemeanor or violation must immediately notify the OPI in writing.

While the Board 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 Board of Education officers:

Executive Director, Division of Human Resources
Executive Director, Division of School Safety
Director, Office of Legal Services
Director, Office of Special Investigations
Director, Office of Appeals and Reviews
Superintendent/Director, of the arrested
employee's district or division

In addition, notification of the arrest must also be made to the Special Commissioner of Investigation of the City School District of the City of New York.

Where warranted by the nature of the arrest, such notification shall include a recommendation to the employee's responsibility center that the employee be removed from contact with students or other employees.

The Office of Legal Services and the Office Special Investigations will monitor the arrest, assemble and assess the available evidence and determine whether a recommendation should be made to the Chancellor, or the appropriate superintendent, to temporarily reassign or suspend the employee. 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 which may be brought thereafter.

Upon final disposition of any criminal charges the employee must provide the OPI with an original certificate of disposition, or its equivalent. The Office of Legal Services and the Office of Special Investigations will then review the final disposition and, if necessary, formulate a disciplinary recommendation which will be forwarded to the Chancellor or appropriate superintendent.

In their review of any arrest or conviction the Office of Legal Services and the Office of Special Investigations will investigate the facts and circumstances surrounding the arrest or conviction which may be available from law enforcement and prosecutorial agencies.

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 Executive Director 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 Executive Director DHR that they be revoked. The Executive Director DHR shall act upon such recommendation in the manner described in Section 3 of this regulation.

Questions concerning policies and procedures set forth in this regulation should be addressed to:

Director, Office of Personnel Investigation
Division of Human Resources
65 Court Street, Room 406
Brooklyn, New York 11201
Telephone No. (718) 935 - 2663
Fax No. (718) 935 - 5778

APPENDIX
NEW YORK STATE CORRECTION LAW

ARTICLE 23-A

LICENSURE AND EMPLOYMENT OF PERSONS PREVIOUSLY
CONVICTED OF ONE OR MORE CRIMINAL OFFENSES

Section

- 750 Definitions.
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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.
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§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, vocation or employment, or any form of 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 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 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 license 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.

- (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.