

POLICY #318	SUBJECT: Conducting Pre-Employment Checks and Responding to Employment Check Requests
EFFECTIVE DATE: December 15, 2016 REVISION DATE:	Page 1 of 8
Approved By: Carla Benson-Green, Cabinet Secretary	

Delaware Children's Department Policy

I. Policy

Department hiring managers are expected to conduct pre-employment checks as part of the employee selection process. These checks ensure DSCYF is in compliance with legally required checks (e.g. criminal background check). In addition, they can protect the investment made in those hired and selected and help reduce disruptive and costly operational impact, staff turnover or retention burdens associated with bad selection decisions. Finally, they foster security, safety, protection, and optimal, appropriate and professional services for the children, youth and families served by DSCYF.

Designated Department employees are also expected to respond to requests for pre-employment checks by external sources. With regard to providing pre-employment checks, in some cases, such as a Service Letter request, the Department is legally required to do so. State policy requires background checks be provided as outlined in the *Guidelines for Reference Checks, Human Resources Management, State Labor Relations & Employment Practices*. Delaware has laws that protect employers who disclose accurate, documented, and truthful information about current or former employees. See 19 Del.C. §709.

II. Purpose

This purpose of this policy is to establish the requirements for obtaining pre-employment checks as well as responding to employment check requests from external sources.

III. Applicable Law/Enforceability

The Merit Rules and union contracts and state and federal law provide the basis for this policy.

IV. Definitions

- A. Adult Abuse Registry Check (AAR) - An internet search of the Department of Health and Social Services Adult Abuse Registry to determine if a person active on the registry for any civil cases of abuse, neglect, mistreatment, financial exploitation, or a combination of those findings. 11 Del.C. 8564. AAR checks are only conducted for candidates for employment at DPBHS state operated facilities.
- B. Child Protection Registry Check (CPR) - A computer search of the Division of Family Services Child Protection Registry to determine if a person is active on the Registry as a perpetrator in any substantiated case of child abuse or neglect. 31 Del.C. 309(d)(3), 16 Del.C. 921 et. seq., 11 Del.C. 8550 et. seq.

POLICY #318	SUBJECT: Conducting Pre-Employment Checks and Responding to Employment Check Requests
EFFECTIVE DATE: December 15, 2016 REVISION DATE:	Page 2 of 8

- C. Employee - All Department employees, including Merit and casual/seasonal, and paid/unpaid trainees/interns and volunteers, etc.
- D. Pre-Employment Check – A computer search of the CPR, AAR and the Delaware Justice Information System (DELJIS).
- E. Prison Rape Elimination Act (PREA) - PREA requires pre-employment reference checks for covered employees to determine whether the candidate: (1) Has engaged in sexual abuse in a prison, jail, lockup, community confinement facility, juvenile facility or other institution; (2) Has been convicted of engaging or attempting to engage in sexual activity in the community facilitated by force, overt or implied threats of force, or coercion, or if the victim did not consent or was unable to consent or refuse; and/or (3) Has been adjudicated in civil court or administratively adjudicated (substantiated) in employment related hearings.
- F. Service Letter – A form provided by the Department of Labor, Office of Labor Law Enforcement. It contains information about the type of work performed by the employee, the duration of the employment, the nature of the employee's separation from employment and any reasonably substantiated incidents involving violence, threat of violence, abuse, or neglect, by the person seeking employment toward any other person, including any disciplinary action taken as a result of such conduct. 19 Del.C. 708 et seq. (Source: Regulations, Special Employment Practices Relating to Health Care and Child Care Facilities, (19 Del.C. §708 and 11 Del.C. §8563); Adult Abuse Registry Check, (11 Del.C. §8564); Delaware Department of Labor, Division of Industrial Affairs, January 9, 1998.)
- G. Sex Offender Registry Check – A Sex Offender Registry check includes both the National Sex Offender Registry and Delaware Sex Offender Registry. The Department does not conduct a separate, independent check of these registries. However, if this information is revealed through another appropriate means, such as a background check, the Department reserves the right to act on it. If this information is revealed, it will be evaluated as a part of the criminal background check.

V. General Guidance for Pre-Employment Checks

- A. All pre-employment checks are limited to those described above and must be completed within the timeframes and manner outlined in the DSCYF Manager's Hiring Guide, Hiring Checklist, and Employment Reference Guide which can be found on the extranet. Pre-employment checks **must** be considered in hiring decision-making.
- B. Any and all information provided on the employment application, resume, reference and pre-employment check materials may be verified, including but not limited to, contacting current and former employers. (Reference Policy #319)
- C. Any false, misleading, or substantive omission of information provided by an applicant during any phase or by any means may be cause for rejection of the application,

POLICY #318	SUBJECT: Conducting Pre-Employment Checks and Responding to Employment Check Requests
EFFECTIVE DATE: December 15, 2016 REVISION DATE:	Page 3 of 8

rescinding an offer, repeating all or part of the hiring process, or dismissal if employed by the State.

- D. Unless otherwise specified, after references (and where applicable the Adult Abuse Registry check) are obtained, a verbal, conditional offer of employment must be made and accepted prior to conducting any pre-employment checks.
- E. The Hiring Manager is responsible to obtain, process, and maintain all required releases, waivers and permissions to conduct respective pre-employment checks.
- F. The Hiring Manager must provide job-related, non-discriminatory, appropriate and documented reasons for selecting or deselecting a candidate based on pre-employment checks, which are subject to review and assent by Human Resources.
- G. Failure to obtain or conduct pre-employment checks may result in rejection of the application, rescinding of an offer, repeating all or part of the hiring process, and/or other appropriate remedies. It may also result in discipline, up to and including dismissal, and/or other appropriate remedies of the Hiring Manager.
- H. All pre-employment checks must be completed and evaluated and appropriate action initiated, if any, within 60 calendar days of the date of hire. When a person is determined ineligible or prohibited due to the results of the background check, appropriate action shall be initiated immediately.
- I. All aspects of the pre-employment check process are confidential. Information may be disclosed only to decision-makers and Human Resources staff. Everyone involved in the hiring process is required to maintain and protect confidentiality.
- J. All pre-employment check documentation must be stored and retained properly in a secure location (locked cabinet or in a locked room).
- K. References for the policy include the: OMB Merit Systems Hiring User's Guide, Reference Checking Guidelines, and Recruitment Procedures Manual and the following documents which are available on the Department's extranet: DSCYF Manager's Hiring Guide, Hiring Checklist, and Employment Reference Guide.

VI. Pre-Employment Check

- A. No pre-employment name-based check or fingerprinted background check is required for DSCYF employees being considered for a position in the same Division as long as the employee had a previous fingerprinted check through the Department without any break in employment. A pre-employment name-based check is required for a DSCYF employee being considered for a position in another Division. All other candidates require the entire pre-employment check.
- B. The background check results must be assessed in accordance with the law and Delacare Regulations. If there is a prohibited conviction or substantiation, the selected candidate is prohibited for employment with DSCYF. If there are other ineligible convictions or substantiations, written approval to hire must be obtained from the Division Director, which should be maintained in the confidential file. The CHU and HR may monitor and comment on the process and individual decisions to ensure compliance and consistency.

POLICY #318	SUBJECT: Conducting Pre-Employment Checks and Responding to Employment Check Requests
EFFECTIVE DATE: December 15, 2016 REVISION DATE:	Page 4 of 8

- C. The cost of fingerprinting for the SBI and FBI check is the responsibility of the selected candidate.
- D. No employee may begin work until written documentation of fingerprinting is provided to HR.
- E. Use the Criminal History and Child Abuse and Neglect Background Check Request Form which is available on the Department extranet page under Services/Human Resources/Manager Resources/Selection and Background Screening.
- F. Only DSCYF Criminal History Unit staff may conduct and provide background checks in accordance with its law, regulations and policies. If background check results disclose that a person has been convicted of a sexual offense, the Criminal History Unit may conduct a Sex Offender Registry check to obtain further information.
- G. Background check results are confidential. Under federal and Delaware law and regulations, background check results are only to be used for the purpose requested and are not to be disseminated outside of DSCYF.

VII. Child Protection Registry (CPR) Check

- A. No CPR check is required for DSCYF employees being considered for a position in the same Division. A CPR check is required for DSCYF employees being considered for a position in another Division. All other candidates require a CPR check.
- B. The CPR check is done using the Criminal History and Child Abuse and Neglect Background Check Request Form.
- C. The CPR results must be assessed in accordance with the law, regulations and policy. If the candidate is active on the Child Protection Registry at Levels III or IV, the candidate is prohibited from employment with DSCYF.
- D. Only DSCYF Criminal History Unit staff may conduct and provide Child Protection Registry Checks as prescribed in the Delacare Regulations – Background Checks for Child-Serving Entities and DSCYF Policies.

VIII. Drug Screening Test

- A. No pre-employment drug screening test is required for current DSCYF employees being considered for a DSCYF position. All other candidates require the drug screening test.
- B. Only DSCYF Human Resources staff are authorized to approve the initiation of the pre-employment drug screening test process.
- C. Other staff are permitted to schedule and process testing documentation in accordance with practices, policies and procedures.
- D. Tests must be conducted by an approved State-contractor. Other tests or results will not be accepted.
- E. The cost of the drug screening test is the responsibility of DSCYF. (Reference: DSCYF Policy 310 – Pre-Employment Drug Screening)
- F. Only DSCYF Human Resources staff are authorized to obtain test results from the State contractor or communicate results.

POLICY #318	SUBJECT: Conducting Pre-Employment Checks and Responding to Employment Check Requests
EFFECTIVE DATE: December 15, 2016 REVISION DATE:	Page 5 of 8

- G. The drug screening test results must be assessed in accordance with the law and policies. If there is a positive or invalid drug screening test or the candidate fails to appear to be tested timely, the selected candidate is ineligible for employment with DSCYF.
- H. The results should be maintained in the confidential file. HR may monitor and comment on the process and individual decisions to ensure compliance and consistency.

IX. Service Letter

- A. Service Letters are required for all candidates being considered for positions in DPBHS residential facilities.
- B. The Hiring Manager must obtain a Service Letter from the candidate's current or most recent previous employer. In addition, if the person seeking employment was employed in a health care and/or child care facility within the past five (5) years, the employer shall also obtain a Service Letter from each such employer(s). If the person seeking employment has not been previously employed, or was self-employed, then the employer must require the person seeking employment to provide letters of reference from two adults who are familiar with the person, but are not relatives.
- C. The employer must obtain the required Service Letter (s) by sending a Service Letter form (to all of the current or previous employers named by the person seeking employment. Service Letters must be completed using the Service Letter form. No other means is acceptable.
- D. If an in-state employer fails to provide a Service Letter within 10 business days of the request, the Hiring Manager or designee must follow-up. If after two attempts and twenty work days there has been no response, the Hiring Manager should confer with HR for potential intervention by the Delaware Department of Labor.
- E. The Service Letter results must be assessed in accordance with the law and policies. If there is negative information or a Service Letter cannot be obtained, the selected candidate may be ineligible for employment or continued employment with DSCYF; DPBHS should consult with HR. Service Letters should be maintained in the confidential file. HR may monitor and comment on the process and individual decisions to ensure compliance and consistency.
- F. The DPBHS employee replying to a Service Letter request must provide a Service Letter for current and former employees employed at a DPBHS residential facility within the past five (5) years.
- G. Service Letters must be completed using the Service Letter form which is available at <https://dia.delawareworks.com/labor-law/special-employment-practices.php> . No other means is acceptable.
- H. The DPBHS staff must complete the Service Letter and return it to the requestor within 10 business days of receipt of the request.
- I. The Service Letter results must be completed accurately and completely in accordance with the law and policies. If there is negative information or a Service Letter cannot be provided; DPBHS should consult with HR. Service Letters should be maintained in the

POLICY #318	SUBJECT: Conducting Pre-Employment Checks and Responding to Employment Check Requests
EFFECTIVE DATE: December 15, 2016 REVISION DATE:	Page 6 of 8

confidential file. HR may monitor and comment on the process and individual decisions to ensure compliance and consistency.

X. Adult Abuse Registry Check

- A. An Adult Abuse Registry Check is required for all candidates being considered for positions in DPBHS state operated residential facilities. This includes any candidate who was previously employed in a state operated residential facility but left facility employment and is now a candidate for a position within a state operated residential facility.
- B. DPBH informs candidates in writing of the Adult Abuse Registry check and obtains a written acknowledgement from the candidate that they are aware that a check of the Adult Abuse Registry will be completed.
- C. The DPBH designated staff must complete the Adult Abuse Registry Check at: <http://dhss.delaware.gov/dhss/dlcrp/default.aspx>. A copy of the Registry check is maintained by the facility.
- D. DPBH consults with Human Resources if a candidate appears on the registry prior to making offer of employment.

XI. Prison Rape Elimination Act (PREA) Check

- A. A PREA Check is required for all candidates being considered for all positions in DYRS, including community services and secure care. All candidates are required to sign a *PREA Statement*.
- B. A PREA Check is obtained by the Hiring Manager reviewing the candidate's resume/application to identify prior employment in a prison, jail, lockup, community confinement facility, juvenile facility, or other institution (defined as any residential facility/program that houses juveniles (pre-trial and post adjudicated), seniors, disabled or chronically ill or handicapped) and then contacting the prior employer to verify the information on the PREA Statement. The Hiring Manager and DYRS conducts this check rather than Human Resources.
- C. The PREA Check results must be assessed in accordance with the law and policies. If there is negative, inaccurate, or omitted information on a PREA Check, the selected candidate may be ineligible for employment or continued employment with DSCYF; DYRS should consult with HR. PREA Checks should be maintained in the confidential file. HR may monitor and comment on the process and individual decisions to ensure compliance and consistency.
- D. Both DSCYF HR and DYRS staff are authorized to respond to a request for a PREA check. HR and DYRS should confer before responding to a request for a PREA check.
- E. DYRS must continually notify HR of PREA-covered infractions.

XII. Credentials, licenses, certifications, and degrees

POLICY #318	SUBJECT: Conducting Pre-Employment Checks and Responding to Employment Check Requests
EFFECTIVE DATE: December 15, 2016 REVISION DATE:	Page 7 of 8

- A. Credentials, licenses, certifications, and degrees can be checked at the same time as a reference – when the selected candidate is identified.
- B. If a credential, license, certification or degree is a minimum job requirement of the position, the Hiring Manager must verify that the candidate possesses a current, valid, unrestricted credential, license, certification or degree. The credentials, licenses, certifications, and degrees of: Teachers and positions in the DMSS, Education Unit; Psychologists; licensed health-care providers such as nurses; Trades, such as electricians; and others credentialed by a Delaware Board of Professional Regulation, MUST be verified. Verification of a credential, licenses, certification, and degree is obtained by the Hiring Manager by viewing an original source document and/or contacting the issuer. The Hiring Manager conducts this verification rather than Human Resources.
- C. If a driver's license is a job requirement for the position, a driver's license may be validated by visual inspection and via Fleet Services as part of the application as an authorized driver.
- D. The credentials, licenses, certifications, and degrees verification results must be assessed in accordance with the law and policies. If there is negative, restricted, false, misleading, inaccurate or omitted information on any of these checks, the selected candidate may be ineligible for employment or continued employment with DSCYF; the Hiring Manager should consult with HR. Credentials, licenses, certifications, and degrees should be maintained in the personnel file. HR may monitor and comment on the process and individual decisions to ensure compliance and consistency.
- E. Human Resources, Center for Professional Development (CPD) and supervisors/managers with documented proof are authorized to respond to a request for verification of credentials, licenses, certifications, training, and degrees.
- F. HR may use information contained in personnel files. CPD may use information from the Delaware Learning Center.
- G. The verifier must confirm that information is current.

XIII. Tuberculosis Test

- A. A tuberculosis test is required for all new hires for all positions in 24/hour, residential care facilities. All covered-employees are required to be tested and the results obtained prior to the first day worked (Reference Policy 103 Communicable Disease).
- B. Tuberculosis tests are administered by DSCYF staff or contractors. The Nurse or DSCYF contractor conducts this test rather than Human Resources. DSCYF may accept results from a qualified, third party provider for a tuberculosis test with results within one year, at its sole discretion.
- C. If the preliminary test reads positive, the employee is required to obtain a chest x-ray at his/her own expense, and present results within 15 workdays of the positive preliminary test. If the chest x-ray is positive, the employee may be required to treat and be medically cleared before returning to work or separated from employment.

POLICY #318	SUBJECT: Conducting Pre-Employment Checks and Responding to Employment Check Requests
EFFECTIVE DATE: December 15, 2016 REVISION DATE:	Page 8 of 8

- D. The tuberculosis test results must be assessed in accordance with standard medical practices and law and policies. If tuberculosis test is positive or incomplete or the employee fails to provide results, the employee may be ineligible for continued employment with DSCYF; DPBHS or DYRS should consult with HR. Tuberculosis test results should be maintained in the confidential, medical file. HR may monitor and comment on the process and individual decisions to ensure compliance and consistency. Reference: DSCYF Policy 103 – *Communicable Diseases*.
- E. If an employee requests the results of a tuberculous test, DSCYF medical staff or contracted staff may release the information in accordance with its procedures and practices.

XIV. Adherence to Policy

- A. All employees are responsible for being aware of and complying with the content of this policy.
- B. Failure to comply with any provision in this policy may result in:
 - 1. Any remedy described herein;
 - 2. References and background checks being redone, rejected or deemed ineligible;
 - 3. Any part of the hiring process being redone, rejected or deemed ineligible;
 - 4. Offers of employment being rescinded or withdrawn;
 - 5. Discipline or dismissal, if a candidate is employed;
 - 6. Training or retraining;
 - 7. Disciplinary action, up to and including dismissal, for the individual committing an infraction;
 - 8. Any remedy or consequence associated with a specific reference or background check process;
 - 9. Any combination of these actions; and/or
 - 10. Other appropriate actions.
- C. This policy is not intended to create any individual rights or cause of action not already existing or recognized under state or federal law.

Responsibility for the Policy

DSCYF Human Resources staff are responsible for providing guidance regarding this policy.