

**University Policy 5-130: ~~Policy on Criminal and Other Background Checks on~~ University Employees.** Revision 1. Effective date [October 1, 2017]

I. Purpose and Scope

Purpose: ~~A. To provide for criminal and other background checks of certain prospective and existing University employees as required and permitted by Utah law and applicable policies of the Utah State Board of Regents and Utah System of Higher Education. The original version of this Policy took This Policy takes effect as of May 1, 2009. The Policy is intended to be implemented through associated University Regulations, including a University Rule or Rules, which shall describe and govern specific aspects of the scope and manner of implementation. The Policy and associated regulations are to be implemented in conjunction with other regulations applicable for proceedings for disciplinary actions for existing employees, including those applicable for faculty, other academic personnel, or staff employees.~~

~~B.~~ This Policy and associated regulations are to be interpreted to further core principles of the University as an academic institution and an equal opportunity employer, including principles of academic freedom and freedom of expression, non-discrimination and promotion of diversity, safety of persons and property, fair and equitable treatment of employees, students, and other members of the University community, and maintenance of a physical environment and intellectual climate conducive to successful performance of the university's threefold mission: instruction, research, and public service.

Scope: This Policy applies to all academic and administrative units of the University, and to all employees of such units. As specifically provided in this Policy and associated University Rules, the requirements of the Policy and Rules are applied differently to specified categories of employees.

The Policy is intended to be implemented through associated University Regulations, including a University Rule or Rules, which shall describe and govern specific aspects of the scope and manner of implementation. The Policy and associated regulations are to be implemented in conjunction with other regulations applicable for proceedings for disciplinary actions for existing employees, including those applicable for faculty, other academic personnel, or staff employees. Background checks of University personnel in addition to or different from those required under this Policy may be required under other University Policies. See Policy 1-015: Safety of Minors Participating in University Programs or Programs Held on University Premises (applicable for other employees, and students and volunteers in certain circumstances).

II. Definitions

The following definitions are intended to apply for the limited purposes of this Policy and any Rule, Guideline or Procedure implementing this Policy.

A. **Final 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.

**B. Criminal Background Check (CBC)** - a 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 University may choose to specify a longer time period, search in one or more foreign countries, or seek additional information such as arrests or other evidence of character issues as part of a Background Check, and the contents and methods of a Background Check may be further specified through an associated University Rule or other Regulation.

**C. 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.

**D. Employee** - a faculty member, classified or professional 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. Relevant employee category definitions are defined in Policy 5-001.

**E. Faculty** – ~~for the limited purposes of this policy and any rule, guideline or procedure implementing this policy, faculty is defined to include regular and auxiliary~~ includes all faculty categories, and all ranks, as are described in policy 6-300 (including the Tenure-line, Career-line, Visiting, Adjunct and Emeritus categories) ~~and librarians, including the following academic personnel: the university president, vice presidents, deans, and directors of libraries. professors (including distinguished presidential and university professors), associate professors, assistant professors, instructors, librarians, associate librarians, and assistant librarians.~~

**F. Full-time** - full-time positions are those that require a minimum of 0.75 FTE, 75% of full time effort. An individual who at any given time holds two or more part-time positions at the University which together result in at least 0.75 FTE employment is considered a fulltime employee for purposes of this policy.

**G. Minor** - a person younger than 21 years of age.

**H. Other Academic Personnel** - ~~for the limited purposes of this policy and any rule, guideline or procedure implementing this policy, this term is defined to include~~ academic personnel (other than faculty as defined herein), including part-time teachers, post-doctoral fellows, visiting lecturers, graduate assistants, academic staff, and professional staff members of businesses, industries, and other agencies and organizations appointed by the University to serve in other part-time instructional, research or public service positions.

**I. Reasonable Cause** - where the known facts and circumstances are sufficient to warrant a person of reasonable prudence in the belief that the existing employee in his or her capacity as a University employee poses, or the applicant would pose, an unreasonable risk of significant physical, emotional, or financial hard to persons or property and/or the belief that a background

search will reveal a history or report of a crime of a type that poses such an unreasonable risk of harm.

**J. Security Sensitive Positions** - positions designated by the University as security sensitive whose duties require, provide for, or encompass the potential to incur human, financial or property loss or other harm to the University and members of the University community. In addition to University-wide designations of security sensitive positions, positions may be designated as security sensitive when individual departments are subject to further restrictions, requirements, laws or regulations. 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 and 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.

**K. 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.

### III. Policy

**A. Required Background Checks for Applicants** - A final applicant for any employee position at the University that involves significant contact with minors or is considered to be security sensitive by the University, must submit to a criminal background check as a condition

of employment. The University may by rule specify types of positions to which this requirement applies, or exempt applicants for certain academic positions, or for temporary or part time positions, from this requirement, so long as such exemptions are not inconsistent with Utah law and policies of the Utah State Board of Regents. The University may require such exempted applicants to self-disclose any criminal background and to sign an agreement to conform to University regulations on sexual harassment and information, financial, health, and physical security as may be specified by Rule.

**B. Optional Background Checks for Applicants** - The University may by rule allow or require final applicants for positions other than those described in III.A above, including certain academic positions, temporary or part time positions, to submit to a criminal background check as a condition of employment.

**C. Background Checks for Existing Employees** - An existing employee (or a final applicant for whom a background check would not otherwise be required) must submit to a criminal background check, when the University finds that reasonable cause exists. The University may by Rule establish procedures for determining that reasonable cause exists.

**D. Written Release of Information for Self-Disclosure –**

1. From applicants for employment, the University shall obtain a written and signed release of information for a background check.
2. From existing employees, when a background check is determined to be required based on reasonable cause, the University shall request a written and signed release of information for a background check. If the existing employee does not provide such release, a background check shall nevertheless be conducted and the employee shall receive written notice that the background check has been requested.
3. From an applicant or an existing employee who has been determined to be subject to a background check, the University may request that the applicant or employee complete a self-disclosure of criminal history and/or other background information. In such cases an individual's failure to complete such disclosure and/or the providing of materially false information as part of such disclosure, may be considered in making a risk assessment regarding that applicant or employee.

**E. Fingerprint Background Check** – As shall be further specified by Rule, the University may require each applicant or employee subject to a criminal background check under this policy to be fingerprinted and consent to a fingerprint background check by the Utah Bureau of Criminal Identification, the Federal Bureau of Investigation or another government or commercial entity.

**F. Payment of Costs** – As shall be further specified by Rule, the University may require an applicant to pay the costs of a criminal or other background check as a condition of employment.

**G. Risk Assessment** - Based on the information disclosed by the criminal or other background check, the University will assess the overall risk to persons and property. The University may by Rule designate an officer or establish a background review committee to participate in making such risk assessments and participate in other aspects of managing background checks and related decision-making.

**H. Financial/Credit Check** - 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 University may require an additional financial/credit check to be performed.

**I. Degree Transcripts or License Documentation** - If the position requires a degree or license, the University may obtain a copy of the applicant's or employee's degree transcripts or license documentation, or require similar documentation of educational or professional credentials, as may be specified by Rule.

**J. Student Loan Status** – As may be specified by Rule, if an applicant or employee has a student loan, the University may check on the loan status and the University may deny employment or take adverse employment action if the applicant or employee has a delinquent or defaulted student loan.

**K. Opportunity to Respond** - Before an applicant is denied employment or an existing employee is subjected to an adverse employment action based on information obtained in the criminal or other 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/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 background check. If an applicant disagrees with the accuracy of any information in the report and notifies the University's through the [Department of Human Resources-Division Management] within three (3) business days of his/her receipt of the report, the University shall provide a reasonable opportunity to address the information contained in the report. This process may be further specified by Rule.

**L. Limitations on the Use of Information-Protection of Privacy and Confidentiality** - The information contained in the criminal history or other background check will be available only to those persons involved in making employment, promotion or disciplinary decisions or performing the background investigation, and the information will be used only for the purpose of making an employment or promotion decision and shall be treated as confidential information.

**M. Concurrent Enrollment Faculty** – University employees, whether in faculty positions or in other academic positions, who are concurrent enrollment instructors, as defined in Regents' Rule 165-9, with unsupervised access to K-12 students shall complete a criminal background check consistent with Utah Code §53A-3-410. The University will determine the need for the criminal background check consistent with the law, shall satisfy this requirement, and shall maintain appropriate documentation.

[Note: Parts IV-VII of this Regulation (and all other University Regulations) are Regulations Resource Information – the contents of which are not approved by the Academic Senate or Board of Trustees, and are to be updated from time to time as determined appropriate by the cognizant Policy Officer and the Institutional Policy Committee, as per Policy 1-001 and Rule 1-001.]

#### IV. Rules, Procedures, Guidelines, Forms and other related resources.

##### A. Rules

Rule 5-130A (Faculty and Academic Personnel)

Rule 5-130B (Staff Employees)

##### B. Procedures

Procedure 5-130A (Verifying Exclusion Status of Employees)

##### C. Guidelines

##### D. Forms

##### E. Other related resource materials.

#### VII. References:

A. Utah Code § 53A-3-410 (Criminal background checks on school personnel -- Notice -- Payment of cost -- Request for review)

B. Utah Code § 53B-1-110 (Higher Education Criminal Background Checks)

C. Utah State Board of Regents and Utah System of Higher Education Policy and Procedure R165, Concurrent Enrollment

D. Utah State Board of Regents and Utah System of Higher Education Policy and Procedure R481, Academic Freedom, Professional Responsibility and Tenure

E. Utah State Board of Regents and Utah System of Higher Education Policy and Procedure R847, Criminal Background Checks

F. The Fair Credit Reporting Act (FRCA) 15 United States Code § 1681 et seq.

#### VIII. Contacts:

Policy Owners: Questions from faculty and other academic personnel about this Policy and any related Rules, Procedures and Guidelines should be directed to the Associate Vice President for Faculty and the Associate Vice President for Health Sciences. Questions from staff employees about this Policy and any related Rules, Procedures and Guidelines should be directed to the Director of Employee Services for Human Resources Management.

Policy Officers: For faculty and other academic personnel, ~~only the Policy Officers are the~~ Sr. Vice President for Academic Affairs and the Sr. Vice President for Health Sciences ~~or their designees have the authority to grant exceptions to this Policy.~~ For staff employees, ~~only the Chief Human Resource Officer is the Policy Officer or his/her designee has the authority to grant exceptions to this Policy.~~

These officials are designated by the University President or designee, with assistance of the Institutional Policy Committee, to have the following roles and authority, as provided in University Rule 1-001: "A 'Policy Officer' will be assigned by the President for each University Policy, and will typically be someone at the executive level of the University (i.e., the President and his/her Cabinet Officers). The assigned Policy Officer is authorized to allow exceptions to the Policy in appropriate cases.... "  
"The Policy Officer will identify an 'Owner' for each Policy. The Policy Owner is an expert on the Policy topic who may respond to questions about, and provide interpretation of the Policy; and will typically be someone reporting to an executive level position (as defined above), but may be any other person to whom the President or a Vice President has delegated such authority for a specified area of University operations. The Owner has primary responsibility for maintaining the relevant portions of the Regulations

Library... . [and] bears the responsibility for determining -requirements of particular Policies... ."  
University Rule 1-001-III-B & E

VII. History:

Renumbering: [None].

Revision History:

Current Version: Revision 1.

Approved by the Academic Senate: [date in 2017]

Approved by the Board of Trustees: [date in 2017] with the designated effective date of [date in 2017]

Legislative History for Revision 1.

{[http://regulations.utah.edu/academics/appendices\\_6/6-301.2009-5-7.pdf](http://regulations.utah.edu/academics/appendices_6/6-301.2009-5-7.pdf)}

Earlier Versions:

Revision 0 {<http://regulations.utah.edu/human-resources/5-130.php>}

Effective Dates: May 1, 2009 to [October 1, 2017?]

Background information for Revision 0.

{[http://regulations.utah.edu/academics/appendices\\_6/6-301.2009-5-7.pdf](http://regulations.utah.edu/academics/appendices_6/6-301.2009-5-7.pdf)}

2009 Proposal for Criminal Background Checks Regulations