

## Does Your School District's Job Application Properly Address Criminal History?

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### Education Law Notes

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From time to time, there is media coverage about a teacher or other public school employee who has been charged with a serious crime that occurred outside the school environment. If this employee had previous convictions or pending charges at the time of hire, the school district that employed the individual will invariably face a great deal of criticism. The decision to hire such a person may appear misguided in hindsight, but public schools cannot simply exclude all individuals with a criminal background from employment. It is not only impractical, but potentially illegal. This is why the school district's employment application must be carefully drafted to address the criminal background of job applicants.

Guidance from the U.S. Equal Employment Opportunity Commission asserts that employers should not automatically disqualify or exclude applicants who have a criminal history because this may result in disparate impact discrimination on the basis of race or national origin in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq.* [http://www.eeoc.gov/laws/guidance/arrest\\_conviction.cfm#VB2](http://www.eeoc.gov/laws/guidance/arrest_conviction.cfm#VB2) This does not mean that public schools must hire individuals regardless of their criminal background. Rather, employers must conduct individualized assessments. For applicants who have criminal convictions, the employer must consider the following factors: nature or seriousness of the offense, the amount of time that has passed since the offense or the completion of the sentence, and the nature of the job being sought. If there are pending charges, employers can consider the conduct underlying the arrest if the conduct makes the applicant unfit for the position being sought. The job application is a critical document to help an employer collect the kind of information that will assist it in making an individualized assessment.

#### Basic Questions

Under Connecticut law, applicants for a position in a public school must state whether they have ever been convicted of a crime or whether criminal charges are pending at the time of the application.[1] <http://www.cga.ct.gov/2011/pub/chap170.htm#Sec10-221d.htm> However, before an employer may ask about criminal history, applicants must be given notice of the type of criminal history that need not be disclosed.[2] <http://www.ctdol.state.ct.us/wgwkstnd/laws-regs/statute31-51i.htm> Public school job applications—whether submitted online or in paper form— should provide the required written notice about what need not be disclosed prior to asking questions about criminal history. A sample of this notice and questions is available here: [INSERT LINK TO PDF, content last page below] The questions about criminal history should elicit the kind of information that is salient to an individualized assessment. During the interview process, employers

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should be diligent in following up with information about pending charges and convictions. If an applicant has answered any of the questions about criminal history in the affirmative (or left the questions blank), the candidate should be asked to elaborate and explain the pending charges or convictions.

### Acknowledgement

Every application should have a section that requires the applicant to attest to the truth and accuracy of the information provided and to acknowledge notice that if the applicant provides any false or misleading information in the application, he or she may be disqualified from consideration for employment or dismissed if employed. The acknowledgement should also include notice that all school employees must submit fingerprints for a criminal history check within 30 days of employment and that any offer for employment is conditioned upon the results of such check being acceptable to the school district. The signed acknowledgement supports the school district's ability to withdraw an offer or terminate employment if the applicant fails to disclose pending charges or prior convictions or is otherwise misleading about information provided.

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[1] Conn. Gen. Stat. §10-221d

[2] Conn. Gen. Stat. §31-51i

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