

## **EFFECT OF CRIMINAL CONVICTION OR ARREST OR FOUNDED COMPLAINT OF CHILD ABUSE OR NEGLECT**

It is the policy of the Albemarle County School Board (“School Board”) not to employ or to continue the employment of any employee who may be deemed unsuited for service by reason of arrest and/or criminal conviction or information appearing in the registry of founded complaints of child abuse and neglect maintained by the Department of Social Services. Although an arrest or conviction of a crime, in and of itself, may not be an automatic bar to employment, if an arrest or conviction relates to suitability of the individual to perform duties in a particular position, such person may be denied employment or in the case of current employees, may face disciplinary action, up to and including termination. Albemarle County Public Schools (“School Division” or “ACPS”) shall have the sole discretion to determine whether any convictions are related to the duties of the position for which application is made or whether they affect the fitness of the applicant to work for the School Division.

### **I. Applicants for Employment**

#### **A. Criminal Convictions**

As a condition of employment for all its employees, the School Board requires on its application for employment certification of whether the applicant has been convicted of any violent felony set forth in the definition of barrier crime subsection A of Virginia Code § 19.2-392.02; any offense involving the sexual molestation, physical or sexual abuse or rape of a child; or any crime of moral turpitude.

The School Board does not employ any individual who has been convicted of any violent felony set forth in the definition of barrier crime in subsection A of Virginia Code § 19.2-392.02 or any offense involving the sexual molestation, physical or sexual abuse, or rape of a child.

The School Board may employ any individual who has been convicted of any felony crime or crime of moral turpitude that is not set forth in the definition of barrier crime in subsection A of Virginia Code § 19.2-392.02 and does not involve the sexual molestation, physical or sexual abuse, or rape of a child, provided that in the case of a felony conviction, such individual’s civil rights have been restored by the Governor.

Pursuant to state law, individuals applying for employment with the School Division for any position shall be required to disclose prior criminal convictions and any criminal charges that have not been dismissed or finalized, other than minor traffic violations or juvenile offenses. Applicants must also disclose being the subject of a founded case of child abuse and/or neglect. Information provided by applicants may be verified by work history, personal reference, or criminal record inquiries to determine the applicant’s acceptability for employment.

Where a prior conviction is ascertained, the School Division will consider, at a minimum, the nature of the offense, the date of the offense, and the relationship between the offense and the position for which application is sought. If an applicant or employee makes any misrepresentation or willful omission of fact regarding prior criminal history, such misrepresentation or omission shall be sufficient cause for disqualification of the applicant or termination of employment.

As a condition of employment, any applicant who is offered or accepts employment with the School Division shall submit to fingerprinting and provide personal descriptive information. Applicants may be required to pay for costs associated with background checks. The information and fingerprints shall be forwarded through the Central Criminal Records Exchange to the Federal Bureau of Investigations for the purpose of obtaining criminal history record information on applicants who are offered or accept employment. Employment shall be delayed until satisfactory results have been received by the Department of Human Resources.

An offer of employment may be rescinded based on the results of a background check. If an applicant is denied employment because of information appearing on the applicant's criminal history record, the School Division shall provide a copy of the information provided by the Central Criminal Records Exchange to the applicant.

Any person making a materially false statement regarding any such offense shall be guilty of a Class I misdemeanor, and may subject such person to other penalties as provided by law and/or the Virginia Board of Education. In addition, any person who misrepresents or omits information regarding criminal history or child abuse/neglect information shall be, at the School Board's sole option, disqualified for consideration for employment or terminated from employment, whichever is applicable.

B. Founded Complaints of Child Abuse or Neglect

The School Board requires, as a condition of employment, that any applicant who is offered or accepts employment whether full-time or part-time, regular or temporary, to provide written consent and the necessary personal information for the School Board to obtain a search of the registry of founded complaints of child abuse and neglect. The registry is maintained by the Department of Social Services. The School Board shall ensure that all such searches are requested in conformance with the regulations of the State Board of Social Services. In addition, where the applicant has resided in another state within the last five (5) years, the School Board requires, as a condition of employment, that such applicant provide written consent and the necessary personal information for the School Board to obtain information from each relevant state as to whether the

applicant was the subject of a founded complaint of child abuse and neglect in such state. The School Board shall take reasonable steps to determine whether the applicant was the subject of a founded complaint of child abuse and neglect in the relevant state. The Department of Social Services shall maintain a database of central child abuse and neglect registries in other states that provide access to out-of-state school boards for use by local school boards. The applicant may be required to pay the cost of any search conducted pursuant to this subsection at the discretion of the School Board. However, the School Board may pay for part or all of such costs as funds are available.

If the information obtained pursuant to the preceding paragraph indicates that the applicant is the subject of a founded case of child abuse and neglect, such applicant shall be denied employment, or the employment shall be rescinded.

If an applicant is denied employment because of information appearing on the record in the registry, the School Board shall provide a copy of the information obtained from the registry to the applicant. The information provided by the Department of Social Services to the School Board shall be confidential and shall not be disseminated by the School Board.

## II. Employee Charges and Convictions

### A. Criminal Proceedings

It is the policy of the School Board to terminate or refuse to employ any person who may be deemed by the School Board to be unsuitable by reason of criminal conviction, or who has been the subject of a founded case of child abuse or neglect. While evidence that a person has been convicted of a crime or has been the subject of a founded case of child abuse or neglect may not be, in and of itself, an automatic bar to employment, the School Board shall retain its sole discretion to determine whether such evidence shall render the person unfit for employment consideration, or whether (in the case of an existing employee) termination of employment is warranted.

In the event that any employee, whether full-time or part-time, regular or temporary, is arrested; charged by a magistrate; served with an arrest warrant; or summoned by a law enforcement officer for a criminal violation of any kind, whether misdemeanor or felony, the employee is required to report such arrest promptly to the employee's supervisor or department head within one (1) business day unless mitigating circumstances exist. This reporting requirement applies regardless of whether such arrest has occurred on-duty or off-duty. This reporting requirement also applies to employees during summer breaks, intersession periods, while on leave, and between temporary assignments. Failure to comply with this reporting requirement shall be grounds for disciplinary action, up to and including termination. Supervisors or department heads shall contact the Director

of Human Resources/designee upon receiving notification that an employee has been arrested. The Superintendent shall inform the School Board of any notification of arrest of a School Board employee received pursuant to Virginia Code § 19.2-83.1.

An employee who is charged by summons, warrant, indictment, or information with the commission of a felony or a misdemeanor specified in Virginia Code §22.1-315 may be suspended in accordance with Policy GCBA, *Employee Discipline*. The School Division reserves the right to determine appropriate disciplinary action, up to and including termination, depending upon the facts and circumstances surrounding the situation.

The employee shall submit to fingerprinting and provide personal descriptive information to be forwarded along with the employee's fingerprints through the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining criminal history record information regarding such employee. The employee may be required to pay for the costs of such search. The contents of the employee's criminal record shall be used only to implement dismissal, suspension or probation in accordance with Virginia Code §§ 22.1-307 and 22.1-315.

If a current employee is suspended or dismissed because of information appearing on the employee's criminal history record, the School Board shall provide a copy of the information provided by the Central Criminal Records Exchange to the employee.

**B. Founded Complaints of Child Abuse or Neglect**

Any employee of the School Board will be dismissed if the employee is or becomes the subject of a founded complaint of child abuse and neglect and after all rights to an appeal provided by Virginia Code § 63.2-1526 have been exhausted. The fact of such finding, after all rights to an appeal provided by Virginia Code § 63.2-1526 have been exhausted, shall be grounds for the School Board to recommend that the Virginia Board of Education revoke such person's license to teach if held.

In addition, no employee, contractor or agent of the School Board may assist another School Board employee, contractor, or agent in obtaining a new job, apart from the routine transmission of administrative and personnel files, if the employee, contractor, or agent knows, or has probable cause to believe, that such school employee, contractor, or agent engaged in sexual misconduct regarding a minor or student in violation of law. This prohibition does not apply if the information giving rise to probable cause:

1. A. has been properly reported to a law enforcement agency with jurisdiction over the alleged misconduct and

B. has been properly reported to any other authorities as required by federal or state law, including Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 et. seq.) and the regulations implementing it and

2. A. the matter has been officially closed or the prosecutor or police with jurisdiction over the alleged misconduct has investigated the allegations and notified the School Board that there is insufficient information to establish probable cause that the school employee, contractor, or agent engaged in sexual misconduct regarding a minor in violation of law;

B. the school employee, contractor, or agent has been charged with, and acquitted or otherwise exonerated of the alleged misconduct; or

C. the case or investigation remains open and there have been no charges filed against, or indictment of, the school employee, contractor, or agent within four (4) years of the date on which the information was reported to a law enforcement agency.

### III. Court Ordered Probation

For purposes of this policy, a court’s placing an individual on probation pursuant to Virginia Code § 18.2-251 is treated as a conviction and finding of guilt.

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Code of Virginia, 1950, as amended, §§ 18.2-251; 19.2-83.1; 19.2-389; 19.2-392.02; 22.1-78; 22.1-79.8; 22.1-296.1, 22.1-296.2, 22.1-296.4; 22.1-307; 22.1-315; 63.2-1515.

Cross Ref: GCA, *Personnel – Definitions*  
 GBCA, *Employee Discipline*

**PROCEDURE FOR COMPLIANCE –  
EFFECT OF CRIMINAL CONVICTION OR ARREST OR FOUNDED  
COMPLAINT OF CHILD ABUSE OR NEGLECT**

Applicants for all School Division positions, including those seeking transfer from non-School Division positions within Albemarle County Local Government, will be required to have a criminal conviction investigation performed using fingerprints, and a satisfactory outcome of the investigation is a condition of employment.

A statement to that effect set forth below shall appear on applications for all positions:

*I authorize you to make such investigations and inquiries of my personal references, previous employers, and other legally related matters as may be necessary in arriving at an employment decision. I hereby release employers, schools, or other persons from all liability in responding to inquiries in connection with my application.*

If an applicant for employment with the School Division refuses to submit fingerprints for processing and permit a criminal history record search, that applicant will be removed from further employment consideration. Applicants who omit, misrepresent, or provide inaccurate information regarding convictions on the application form and/or additional employment forms may be denied employment for falsification of the application. A new application may be accepted after three (3) calendar years from the time of discovery if the applicant, at that time, lists all convictions.

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