

A. GENERAL PRINCIPLES

It is the policy of the Transylvania County Board of Education (the “board”) to provide all applicants for employment with equal employment opportunities and to provide current employees with training, compensation, promotion, and other benefits of employment without regard to race, color, religion, national origin, military affiliation, genetic information, sex (including pregnancy, childbirth, sexual orientation, and gender identity), age (40 or older), or disability, except when sex, age, or physical requirements are essential occupational qualifications. All candidates will be evaluated on their merits and qualifications for positions. All employment decisions will be consistent with the board’s objective of providing students with the opportunity to receive a sound basic education, as required by state law.

The board also is committed to diversity throughout the programs and practices of the school system. To further this goal, the recruitment and employment program should be designed to encourage a diverse pool of qualified applicants.

B. RECRUITMENT

Recruitment for a specific vacancy will be undertaken only after the need and qualifications for the position are established and proper authorization is obtained.

All vacancies must be adequately publicized within the school system so that employees will be informed of opportunities for promotion or transfer to new jobs; however, the superintendent or designee may forgo publicizing a vacancy if the position will be filled through a lateral assignment, reassignment, or promotion of a current employee or if exigent circumstances necessitate that the position be filled immediately. Vacancies also may be publicized externally to attract qualified applicants.

C. CRIMINAL HISTORY

In addition to reporting requirements applicable to applicants for positions classified as “child care provider” positions as provided in Section D of this policy, applicants must notify the director of human resources immediately if they are arrested, charged with, or convicted of a criminal offense (including entering a plea of guilty or *nolo contendere*) other than a minor traffic violation (i.e., speeding, parking, or a lesser violation). Notice must be in writing, must include all pertinent facts, and must be delivered to the director of human resources no later than the next scheduled business day following the arrest, charge, or conviction, unless the applicant is hospitalized or incarcerated, in which case the applicant must report the alleged violation within 24 hours after his or her release. Upon judicial action in the matter, the applicant must report the disposition and pertinent facts in writing to the director of human resources no later than the next business day following adjudication.

45 A criminal history check and a check of sex offender registries must be conducted on all
46 final candidates for employment with the school system. Criminal history checks must
47 be conducted in accordance with state law and any procedures established by the
48 superintendent. School officials shall not require candidates to disclose expunged arrests,
49 charges, or convictions, and shall not ask candidates to voluntarily disclose such
50 information without first advising that disclosure is not required. The superintendent or
51 designee shall report to the State Board of Education any licensed individual who is
52 found to have a criminal history, as required by State Board policy. Special requirements
53 are described in Section D of this policy for criminal history checks of candidates for
54 certain positions working with pre-school children or working in afterschool or
55 developmental day programs.

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57 A final candidate for employment or for hiring as an independent contractor will be
58 excluded from hiring on the basis of criminal conduct only when doing so is job-related
59 and consistent with business necessity. If a final candidate is found to have been
60 convicted (including entering a plea of guilty of *nolo contendere*) of a criminal offense,
61 other than a minor traffic violation, the superintendent shall determine whether the
62 individual is qualified for employment despite the criminal history by considering, among
63 other things, whether the individual poses a threat to the safety of students or personnel or
64 has demonstrated that he or she does not have the integrity or honesty to fulfill the duties
65 of the position. The following factors will be considered in making this determination:
66 (1) the nature and gravity of the offense or conduct; (2) the time that has passed since the
67 offense or conduct and/or completion of the sentence; and (3) the nature of the job
68 sought. Before the superintendent may exclude a final candidate based on his or her past
69 criminal convictions, the superintendent must give the candidate the opportunity to
70 demonstrate that the exclusion does not properly apply to him or her. The requirements
71 of this paragraph do not apply to a child care provider who is determined to be
72 disqualified by the Division of Child Development and Early Education on the basis of a
73 criminal history check conducted pursuant to G.S. 110-90.2, 42 U.S.C. 9858f, and 45
74 C.F.R. 98.43. (See Section D of this policy).

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76 The board has determined that every position with the school system, regardless of
77 whether the position is located in a school or elsewhere, potentially entails contact with
78 students, either on a regular, occasional, or emergency basis. For that reason, no
79 individual who is a registered sex offender subject to the provisions of policy 5022,
80 Registered Sex Offenders, will be hired for any position with the school system.

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82 In addition, each contract executed by the board with an independent contractor or for
83 services of independent contractors must require the contractor to check sex offender
84 registries as specified in policy 5022, Registered Sex Offenders.

85 86 **D. CRIMINAL HISTORY CHECKS OF CHILD CARE PROVIDERS**

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88 For purposes of this section, a “child care provider” is:

1. any person who works or is a final candidate seeking to work in a classroom or program licensed by the Department of Health and Human Services, Division of Child Development and Early Education (DCDEE); and
2. any person, including a volunteer, who has unsupervised contact with children enrolled in such classrooms or programs.

Before beginning initial employment or volunteer service and at least every ~~five~~ **three** years thereafter, each child care provider must complete a criminal background check that meets the requirements of G.S. 110-90.2, 42 U.S.C. 9858f, and 45 C.F.R. 98.43 and present a letter issued by DCDEE indicating that the individual is qualified to have responsibility for the safety and well-being of children based on the individual’s criminal history.

~~After September 30, 2019, n~~ No person shall (1) be employed, continue to be employed, or be permitted to volunteer as a child care provider, or to otherwise have unsupervised contact with students enrolled in a licensed classroom or program operated by the school system or (2) be counted in the staff/child ratio of such classroom or program, unless the person holds a current valid qualification letter issued by DCDEE. However, a child care provider with provisional status may be employed pending final results of the criminal background check but shall be subject to the restrictions established by 10A N.C.A.C. 09 .2703(f).

The application fee and cost of fingerprinting associated with the DCDEE criminal history check process shall be borne by the board.

A child care provider who has incurred any pending charges, indictments, or convictions (other than minor traffic offenses) since the last qualification letter was issued by DCDEE shall notify the assistant superintendent of human resources in writing of such charges within five business days or before returning to work, whichever comes first. The assistant superintendent of human resources shall notify DCDEE within one business day of being notified.

The superintendent or designee shall include the criminal history mandatory reporting requirement in all new employee orientation information for child care providers. The superintendent shall also be responsible for establishing effective recordkeeping methods and other processes as necessary to ensure compliance with all legal requirements pertaining to criminal history record checks of child care providers.

E. SELECTION

1. Qualifications

Candidates for employment must be selected based upon their likely ability to fulfill duties identified in the job description as well as performance standards established by the board. In making the determination, the following information must be considered:

- a. application;
- b. education and training;
- c. licensure and certification (when applicable);
- d. relevant experience;
- e. personal interviews; and
- f. references and/or background checks.

When several applicants for the same position are equally qualified and suitable for the position, employees within the school system will be given priority.

2. Nepotism

- a. For purposes of this subsection, the following definitions apply.
 - i. “Immediate family” means spouse, parent, child, brother, sister, grandparent, or grandchild. The term includes the step, half, and in-law relationships.
 - ii. “Central office staff administrator” includes directors, supervisors, specialists, staff officers, assistant superintendents, area superintendents, superintendents, and principals.
- b. Before any immediate family of any board of education member or central office staff administrator is employed by the board or engaged in any capacity as an employee, independent contractor, or otherwise, (1) the board member or central office staff administrator must disclose the familial relationship to the board and (2) the prospective employment or engagement must be approved by the board in a duly called open session meeting.
 - i. An employee who knowingly fails to disclose a familial relationship to the board as required will be subject to disciplinary action up to and including dismissal.

- 177 ii. Notification by the employee to the director of human resources
178 will be deemed disclosure to the board. The director of human
179 resources is responsible for conveying the disclosure to the board
180 before the board takes action on the prospective employment or
181 engagement.
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- 183 c. When making recommendations for the selection and assignment of
184 personnel, the superintendent shall attempt to avoid situations in which
185 one employee occupies a position in which he or she has influence over
186 the employment status, including hiring, salary, and promotion, of another
187 employee who is a member of the first employee's immediate family.
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- 189 d. No administrative or supervisory personnel may directly supervise a
190 member of his or her immediate family.

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192 3. Employment Procedures
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194 All applicants selected for employment must be recommended by the
195 superintendent and approved by the board. In situations in which the employee
196 must be hired between board meetings, the superintendent is authorized to
197 approve hiring such personnel, contingent upon approval by the board at its next
198 scheduled board meeting.
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200 State guidelines must be followed in selection and employment procedures. The
201 superintendent shall develop any other procedures necessary to implement this
202 policy.
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204 The superintendent shall develop procedures for verifying new employees' legal
205 status or authorization to work in the United States as required by law.
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207 Legal References: Age Discrimination in Employment Act of 1967, 29 U.S.C. 621 *et seq.*;
208 Americans with Disabilities Act of 1990, 42 U.S.C. 12101 *et seq.*; Equal Educational
209 Opportunities Act of 1974, 20 U.S.C. 1703; Equal Pay Act of 1963, 29 U.S.C. 206; Fair Credit
210 Reporting Act, 15 U.S.C. 1681 *et seq.*; Genetic Information Nondiscrimination Act of 2008, 42
211 U.S.C. 2000ff *et seq.*; Military Selective Service Act, 50 U.S.C. Appx. 453; Rehabilitation Act of
212 1973, 29 U.S.C. 794; Title VII of the Civil Rights Acts of 1964, 42 U.S.C. 2000e *et seq.*; Title IX
213 of the Education Amendments of 1972, 20 U.S.C. 1681 *et seq.*; Uniformed Services Employment
214 and Reemployment Rights Act of 1994, 38 U.S.C. 4301 *et seq.*; 8 U.S.C. 1101 *et seq.*; 42 U.S.C.
215 9858f; 45 C.F.R. 98.43; *Bostock v. Clayton County*, 590 U.S. ___, 140 S. Ct. 1731 (2020); *Green*
216 *v. Missouri Pacific Railroad*, 523 F.2d 1290 (8th Cir. 1975); *Enforcement Guidance on the*
217 *Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the*
218 *Civil Rights Act of 1964*, U.S. Equal Employment Opportunity Commission (April 25, 2012)
219 available at http://www.eeoc.gov/laws/guidance/arrest_conviction.cfm; G.S. 14-208.18; 15A-
220 153; 110.90.2; 115C-12.2, -36, -47, -276(j), -332; 126-7.1(i), -16; 127A-202.1 *et seq.*; 127B-10, -

221 12, -14; 143B-421.1, ~~-1209.11-934~~; *Leandro v. State*, 346 N.C. 336 (1997); 10A N.C.A.C. 09
222 .0102, -.2701, -.2702, -.2703; 16 N.C.A.C. 6C .0313; State Board of Education Policy BENF-
223 009
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225 Cross References: Board Authority and Duties (policy 1010), Registered Sex Offenders (policy
226 5022)
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228 Adopted: January 19, 2016
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230 Revised: February 19, 2018 (legal references only); July 16, 2018; July 15, 2019; December 16,
231 2019; August 2, 2021; December 20, 2021; [DATE]

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