

Davis Applied Technology College: A Utah College of Applied Technology Campus Criminal Background Checks

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1. Purpose

The "Davis Applied Technology College: a Utah College of Applied Technology Campus (College Campus)" strives to create an environment where all persons may safely learn, work and visit. Some persons' prior criminal records, however, create an unreasonable risk. The College Campus shall regulate the employment of persons whose criminal background demonstrates that they should not be employed by the school. The purpose of the policy is to establish a requirement for criminal background checks on final job applicants, current employees, and volunteers at the College.

2. References

2.1. Utah Code Annotated, Section 53A-6-103 State System of Public Education, Criminal Background Checks

2.2. Utah Code Annotated, Section 53A-6-401 Criminal Background Checks for Licensing

2.3. Utah Code Annotated, Section 53A-3-410 Criminal Background Checks on School Personnel

2.4. Utah Code Annotated, Section 53B-1-110 Higher Education Criminal Background Checks

2.5. Utah State Board of Regents Policy and Procedure R-847 Criminal Background Checks

2.6. Utah State Board of Regents Policy and Procedure R-165 Concurrent Enrollment

2.7. Utah Administrative Code, Rule R686-101 Alcohol Related Offenses

2.8. Utah Administrative Code, Rule R686-102 Drug Related Offenses

2.9. Utah Administrative Code, Rule R686-103 Professional Practices and Conduct for Utah Educators

2.10. Utah Administrative Code, Rule R686-104 Denial of License Due to Background Check Offenses

2.11. Davis Applied Technology College Disciplinary Sanctions of Personnel Policy

2.12. Utah College of Applied Technology Policy, Criminal Background Checks

3. Definitions

3.1. Felony – A serious crime declared to be a felony by the common law or statute regardless of the punishment actually imposed. A crime which was charged as a felony at the time of conviction, but which has been reduced to a misdemeanor, or expunged, by a court of competent jurisdiction, shall not be considered a felony.

3.2. Misdemeanor (Serious Misdemeanors) – Crimes less serious than felonies, including crimes which may have originally been charged as felonies, but which have been reduced from felonies by the court. For purposes of this policy, only the following four categories of misdemeanors are included: 1) Crimes of Violence: offenses that involve a substantial risk of physical injury to another person; 2) Drug Offenses: offenses involving manufacturing, distributing, possessing or using a controlled substance; 3) Property Offenses: offenses, not in the categories of sex or drug offenses, that involve the unlawful taking, destruction, sale and/or receipt of

property; and 4) Sexual Misconduct/Moral Turpitude: offenses that involve any illegal act of a sexual nature, involving illegal physical contact and/or engaging in other specific activities for the purpose of sexual gratification.

3.3. Unacceptable criminal background check – A background check result which shows conviction for a felony or misdemeanor in an area which causes concern for the safety and well-being of students and staff or protection of College property.

3.4. 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 College Campus such as financial/credit checks, degree transcripts or license documentation. Faculty employees receiving a promotion in rank are not considered applicants.

3.5. Background Check – a commercial or governmental process of searching public records to determine whether an individual has been convicted of criminal conduct anywhere in the United States of America within no less than the last seven years.

3.6. 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.

3.7. Employee – any individual who receives compensation for work or services from funds controlled by the College Campus, regardless of the source of the funds, the duties of the position, the amount of compensation paid, or the percent of time worked.

3.8. Minor – a person younger than 21 years of age.

3.9. Reasonable Cause – where the known facts and circumstances are sufficient to warrant a person of reasonable prudence in the belief that the employee poses an unreasonable risk to persons or property and/or a history or report of a crime will be found.

3.10. Security Sensitive Positions – positions whose duties require, provide for, or encompass the potential to incur human, financial or property loss or other harm to the College Campus and its constituents. A security sensitive position includes at least one of the following elements:

3.10.1. access to and significant contact with minors, or to diminished capacity adults;

3.10.2. relationships with students where exceptional trust and responsibility are involved, such as instructors, counselors, and health care providers;

3.10.3. responsibility for providing direct medical care, treatment, or counseling and/or access to pharmaceuticals, toxins, hazardous or controlled substances;

3.10.4. 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;

3.10.5. decision making authority for committing College Campus 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, College Campus property, disbursements or receipts;

3.10.6. access to building master control and key systems;

3.10.7. access to confidential information or sensitive personal information such as employment, health, donor, financial and other records, including data that could facilitate identity theft;

3.10.8. access to and responsibility for the maintenance, upgrading, and repair of the College Campus' computer networks and/or information technology systems;

3.10.9. Besides Campus-wide designations of security sensitive positions, individual departments may be subject to additional restrictions, requirements, laws or regulations.

3.11. Significant Contact - an employee position involves significant contact with persons under the age of 21 if there is a reasonable expectation that in the course of the normal, routine responsibilities of the position, the employee and a person under the age of 21 would interact on a one-on-one basis. For example, teachers with office consultations, mentors, counselors, test center employees, 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 persons under the age of 21 during the course of their employment.

4. Policy

All applicants for employment, promotion and/or volunteer service may be fingerprinted and have their records checked in State and National Bureaus. Before appointment, further investigation may be made of the applicant's background by the HR Department to establish that the applicant's character is above reproach and that the applicant has not committed any felony, serious misdemeanor, or is not a habitual petty law violator. An evaluation of criminal history will be a factor in determining employment eligibility.

4.1. Administration of Background Investigation – The Human Resources Director shall be responsible for administering applicant criminal background checks on volunteers and the final job candidate for full- and part-time employment.

4.1.1. The College shall establish and maintain a contract with a qualified federal, state, or local agency or reputable subcontracted firm that provides criminal background checks. The agency/firm must be able to perform federal/nationwide criminal background checks on an individual for at least the last seven years.

4.1.2. Applicants for any position are required to truthfully disclose criminal convictions on their employment application, and this information may be considered in the selection process.

4.1.3. If a criminal background check result is unacceptable as outlined in section 5.6. below, the applicant shall not be considered for employment with the College or if currently employed may be terminated.

4.2. Required Background Checks for Applicants – An applicant for any position with the College Campus must submit to a criminal background check as a condition of employment.

4.2.1. Background Checks for Volunteers and Independent Contractors – All volunteers or contracted trainers who serve in any capacity which involves significant, unsupervised contact with minors, must submit to a criminal background check.

4.2.2. Exclusions – Certain positions may not require a pre-employment background investigation. This includes those positions which are adjunct, part-time, or temporary in nature, who in the course of their regular duties do not typically involve interaction with minors and are not security sensitive, such as instructors in custom fit, private contract training, apprenticeship, and community education programs. Adjunct faculty in regular programs are subject to background checks. In the event of reasonable cause for any current employee, a criminal background check may however be performed on any of these positions.

4.3. Processing Time of Background Investigations – Background investigations shall be completed prior to an applicant assuming any duties with the College. If it is necessary for the College to bring a selected applicant on-board immediately, the offer of employment shall note that a criminal background check is in process and that the offer and continued employment shall be contingent on the result of that check.

4.4. Background Checks for Existing Employees/Frequency – Employees shall, as a condition of employment, submit to a background check a minimum of once every six (6) years.

4.4.1. A current employee or volunteer must submit to a criminal background check, where the vice president over their department and the Director of Human Resources concur that reasonable cause exists. In order to remain eligible for employment the employee must meet the same requirements as a new applicant as defined in section 5.6, below.

4.4.2. If a current employee or volunteer is convicted of a felony or misdemeanor, they must report the conviction to the Director of Human Resources within one week. If an employee or volunteer fails to report the conviction, disciplinary action may result.

4.4.3. Human Resources shall initiate an investigation of the conviction and its impact on the College and provide a recommendation for action to the vice president/president. The College shall provide the employee or volunteer with written notice that the background check has been requested.

4.4.4. In the case of an incident in which an employee or volunteer is arrested or charged with an offense which causes concern for the safety and well-being of students, or concern for the protection of College property, or concern for the public image and reputation of the school, he/she is required to notify their vice president or president and/or HR director within 1 day. Until the charge has been disposed of, the employee or volunteer may be suspended from having any contact with students and/or property while on the job, or suspended from working entirely until the case is resolved. If a pending charge results in a conviction, disciplinary action, including continued suspension and/or termination, may result. Suspension, discipline and termination procedures described in the College Campus Disciplinary Sanctions of Personnel Policy will be followed.

5. Procedures

5.1. Applicants – At the time of application for employment, transfer or promotion, every applicant shall report any convictions for felonies or serious misdemeanors on their application form. The application shall also inform applicants that refusing to answer, or submitting false information shall be grounds for rejection or termination. Applicants who report having been convicted of felonies or serious misdemeanors shall be required to describe the situation on the application. The application shall state that this information will be reviewed for job relatedness, including the nature and gravity of the offense, the length of time since the conviction, and the nature of the job sought.

5.1.1 Current Employees – If a current employee is charged with or convicted of a felony or serious misdemeanor, she or he must report such information to the Human Resources office within one day of the occurrence, or before that employee is allowed to apply to return to work after incarceration.

5.2. Fingerprint Background Check – An applicant or employee subject to a criminal background check under this section may be required 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.

5.2.1. Fingerprint Procedures – The applicant, volunteer or employee will report to the College Campus designated location where their fingerprint impression will be digitally scanned and transmitted to the Utah Bureau of Criminal Identification.

5.2.2. Written Release of Information – The College Campus shall obtain a written and signed release of information form from applicants and volunteers, in order to conduct a criminal history background check and any other consumer report which may reasonably be required for the position. For existing employees, the school shall request a written and signed release of information form.

5.2.3. Notice A Background Check Has Been Requested – If an existing employee does not provide a written and signed release as requested pursuant to 5.2.2., the employee shall receive written notice that the background check has been requested.

5.3. Protection of Privacy – Information obtained from criminal background self-reports and criminal background checks will be handled to protect the privacy of those involved.

5.4. Payment of Costs – The College Campus shall pay the costs to the bureaus or agencies for fingerprinting and processing background history checks, of applicants, employees, and volunteers.

5.4.1. – As a service to students and others in the community who have a need, the College Campus may submit and process criminal background requests for them. The cost for this service will be paid by the requestor. The fees assessed to scan and transmit a digital fingerprint image, and to process the background history through the school will be determined and included on the College Campus fee schedule.

5.5. Consumer-Reporting Agency Criminal History Background Check – The College Campus may determine to use a consumer-reporting agency to conduct a criminal history background check instead of the fingerprint background check process. A consumer-reporting agency may also be utilized to conduct required financial/credit history checks as referenced in 5.8.

5.5.1. Minimum Requirements – At a minimum, the consumer-reporting agency must conduct an investigation to verify the applicant or employee's social security number, obtain information regarding past employment, and search the individual's criminal background nationwide in the individual's counties of residence for the last seven years.

5.6. Risk Assessment – Any background check results that contain a record of misdemeanor convictions not covered in section 3.2. will be reviewed by the Director of Human Resources and cognizant Vice President to determine employment eligibility. Any background results containing convictions for felonies or serious misdemeanors will be reviewed by the President's Council, including the campus president, vice presidents, and HR director, to determine if the applicant, volunteer, or employee will be eligible for employment. Based on the convictions disclosed by the criminal background check, the College Campus will assess the overall risk to persons and property. That risk assessment will include: (1) the number of crimes committed, (2) the severity or violent nature of those crimes, (3) the length of time since they were committed, (4) the likelihood of recidivism, (5) the involvement of students or minors in the offense, (6) the security sensitivity of the position sought by the applicant or held by the existing employee, and (7) other factors that may be relevant. The council will determine whether or not the individual with a criminal history should be considered eligible for employment. The council may also request and review additional documentation for consideration in making that determination. Other documentation which may be obtained includes a letter of explanation for each offense that details the circumstances and final disposition of the charges, and official documentation regarding each offense including court records and police reports.

5.6.1. Convictions – Applicants will not be considered for employment, promotion or volunteer service if they have been convicted of a felony or a misdemeanor involving moral turpitude within the last seven (7) years, or until such convictions are eligible for expungement, whichever is longer. Further, applicants will not be considered if they have been convicted of a serious misdemeanor within the last three (3) years, the commission of which is indicative of conduct or character inconsistent with that of those entrusted to perform services at the College Campus, or until such convictions are eligible for expungement, whichever is longer.

5.6.1.1. Alcohol Related Offenses – If an applicant or employee has been convicted of an alcohol related offense within five years of the date of the background check, the following minimum conditions will apply: a) One conviction – the individual may be eligible for employment following one year from the date of the arrest. b) Two convictions – the individual may be eligible for employment following two years from the date of the latest arrest and completion of a clinical treatment program. c) Three convictions – the individual may not be eligible for employment.

5.6.1.2. Drug Related Offenses – If an applicant or employee has been convicted of a drug related offense within ten years of the date of the background check, the following minimum conditions will apply: a) One conviction – the individual may be eligible for employment following one year from the date of the arrest. b) Two convictions – the individual may be eligible for employment following three years from the date of the latest arrest and completion of a clinical treatment program. c) Three convictions – the individual may not be eligible for employment.

5.6.2. Verification of Statements – During any background or character investigation, the Human Resources Department reserves the right to verify any statements or references made on the application form, or other supplemental forms necessary for employment. The Human Resources Director, Campus President, or their designee may, in their discretion, cause the truth of any applicant's statement in the application, or such supplementary data as may be voluntarily submitted or required, to be investigated. Any item on the application determined to be falsified may result in the employee being terminated from his present position with the College and an applicant will be removed from consideration for appointment to any Campus position.

5.6.3. If a job position, whether paid or volunteer, requires that an applicant work with minors, those convicted of offenses involving abuse or violence against a minor shall not be hired, regardless of when the conviction occurred.

5.7. Opportunity To Respond - Before an applicant is denied employment or an employee is subjected to an adverse employment action based on information obtained in the criminal background report, the applicant or employee shall receive a 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 criminal background check. If an applicant disagrees with the accuracy of any information in the report and notifies the human resources office of the College Campus within three (3) business days of his/her receipt of the report, the College Campus shall provide a reasonable opportunity to address the information contained in the report.

5.8. 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 College Campus or others, the vice president supervising that area may require an additional financial/credit check to be performed.

5.9. Degree Transcripts or License Documentation – If the position requires a degree, certification, or license, the College Campus may obtain a copy of the applicant's degree transcripts or license documentation.

5.10. Limitations on the Use of Information – The information contained in the criminal history background check will be available only to those persons involved in making employment decisions or performing the background investigation, and the information will be used only for the purpose of making an employment or promotion decision.

5.11. Effective Date – This policy will become effective as of February 1, 2008, or sooner, as the equipment and resources necessary for conducting fingerprinting and the background history checks becomes available.