

**FREQUENTLY ASKED QUESTIONS (“FAQ’S”) REGARDING BALL STATE
UNIVERSITY’S (the “UNIVERSITY”) OFFICE OF CHARTER SCHOOLS’
 (“OCS”) POLICY REGARDING CRIMINAL HISTORIES¹**

October 16, 2007

1. When is the University’s criminal history policy applicable to existing charter schools sponsored by Ball State University?

ANSWER: Existing charter schools must be in compliance with this policy by July 1, 2008 unless an extension is granted by the Director of the Office of Charter Schools.

2. Do charter schools still have to comply with applicable state laws concerning criminal history checks even though the University’s policy does not have to be implemented until July 1, 2008.

ANSWER: Yes.

3. In general terms, what does the University’s criminal history policy require of the charter school?

ANSWER: It requires the charter school to develop its own written policy regarding the obtaining of criminal histories for:

- Members of the Organizer’s Governing Body
- Administrators
- Teachers
- Other Staff
- Volunteers
- Independent contractors and their employees providing services to the charter school.

4. Can a current member of the Organizer’s governing body continue to serve if he or she has a criminal conviction for any of the offenses listed in I.C. 20-26-5-11(b)?

ANSWER: The Organizer cannot have a member of its governing body who has been convicted of any of the following offenses (herein collectively, “Covered Offenses”) unless the Director of OCS specifically permits it in writing.

¹ The OCS has prepared this document as an aid to Organizers and University sponsored charter schools. It should not be construed or relied upon as legal advice. In this regard, Organizers and their charter schools are specifically urged to seek independent legal advice from an attorney licensed to practice law in the State of Indiana in construing Indiana law, and in implementing the Ball State University Office of Charter Schools’ Policy Regarding Criminal Histories.

1. Murder;
2. Causing suicide;
3. Assisting suicide;
4. Voluntary manslaughter;
5. Reckless homicide;
6. Battery (unless ten (10) years have elapsed from the date the individual was discharged from probation, imprisonment, or parole, whichever is later);
7. Aggravated Battery;
8. Kidnapping;
9. Criminal Confinement;
10. A sex offense under I.C. 35-42-4;
11. Carjacking;
12. Arson (unless ten (10) years have elapsed from the date the individual was discharged from probation, imprisonment, or parole, whichever is later);
13. Incest;
14. Neglect of a Dependent or a Class B Felony (unless ten (10) years have elapsed from the date the individual was discharged from probation, imprisonment, or parole, whichever is later);
15. Child selling;
16. Contributing to the delinquency of a minor (unless ten (10) years have elapsed from the date the individual was discharged from probation, imprisonment, or parole, whichever is later);
17. An offense involving a weapon under I.C. 35-47 or I.C. 35-47.5 (unless ten (10) years have elapsed from the date the individual was discharged from probation, imprisonment, or parole, whichever is later);
18. An offense relating to controlled substance under I.C. 35-48-4 (unless ten (10) years have elapsed from the date the individual was discharged from probation, imprisonment, or parole, whichever is later);
19. An offense relating to material or a performance that is harmful to minors or obscene under I.C. 35-49-3 (unless ten (10) years have elapsed from the date the individual was discharged from probation, imprisonment, or parole, whichever is later);
20. An offense relating to operating a vehicle while intoxicated under I.C. 9-30-5 (unless five (5) years have elapsed from the date the individual was discharged from probation, imprisonment, or parole, whichever is later);
21. Theft;
22. Misappropriation of funds;
23. Embezzlement;
24. Misrepresentation;
25. Fraud;

26. An offense that is substantially equivalent to any of the Covered Offenses in which the conviction was entered under any other state or federal jurisdiction.

5. What happens if the criminal history reveals that an existing or prospective member of the Organizer's governing body has been convicted of a Covered Offense?

ANSWER: The policy must provide that unless the Director of OCS specifically permits in writing the existing or prospective member with a conviction to serve on the Organization's governing body, the existing member must resign immediately, and the prospective member must not be permitted to serve.

6. What does the University's policy require with regard to existing members of the Organizer's governing body?

ANSWER: If a national criminal history and a limited criminal history from the state law enforcement agency in the state where the person is currently residing has not previously been done, it should be completed by January 1, 2008.

7. What does the University's policy require with regard to prospective members of the Organizer's governing body?

ANSWER: A national criminal history and a limited criminal history from the state law enforcement agency in the state the person is currently residing should be completed at least fourteen (14) days prior to the approval by the governing body.

8. Does the charter school need the individual's consent to obtain these criminal histories?

ANSWER: Yes.

9. What happens if the individual refuses to consent?

ANSWER: The policy must provide that the individual cannot serve as a member of the Organizer's governing body.

10. What does the University's criminal history policy require as it concerns other individuals associated with the charter school?

ANSWER: It requires that the charter school's policy regarding the obtaining of criminal histories also apply to the following individuals if the individual is likely to have direct, on-going contact with children at the charter school:

1. Any person employed or seeking employment with the charter school;
2. Any person employed or seeking employment by an entity with which the charter school contracts for services;
3. Any person that is contracted, or who seeks to enter into a contract, to provide services to the charter school; and
4. Any individual volunteering or seeking to volunteer with the charter school,

11. What Indiana statute governs the scope of the Organizer’s policy as it applies to the individuals identified in Question #10.

ANSWER: The University’s criminal history policy requires that the Organizer adopt a criminal history policy that is consistent with both the University’s policy and the Indiana statute I.C. 20-26-5-10.

12. What if a criminal history reveals that an individual subject to the policy has been convicted of a Covered Offense.

ANSWER: The policy must provide that the individual may not be employed by, volunteer at, or be contracted (including employment of the individual by a contractor) with the charter school unless the Director of the OCS specifically permits it in writing.

13. Does an individual subject to the policy have to consent to the required criminal histories?

ANSWER: Yes.

14. What happens if the individual refuses to consent?

ANSWER: The policy must provide that the individual may not be employed by, volunteer at, or be contracted (including employment of the individual by a contractor) with the charter school.

15. Can the charter school’s policy also require an individual seeking employment, to volunteer or to contract for services to complete an application which includes questions regarding the individual’s criminal history?

ANSWER: Yes. In this regard, the charter school would be advised to seek the advice of an independent lawyer and/or human resources professional in developing this application.

16. What if the individual fails to answer honestly questions about the individual's criminal history?

ANSWER: The policy must provide that the failure to honestly answer these questions will constitute sufficient grounds for the termination of the individual's employment, contract or volunteer service.

17. Do individuals subject to the charter school's policy have any continuing obligation to report a conviction of a Covered Offense?

ANSWER: The charter school's policy must provide that individuals subject to the policy shall notify a specifically identified person if they are charged with or are convicted of a Covered Offense during their association with the charter school.

18. If an individual is convicted of a Covered Offense during the course of their service as a member of the governing body, employment, volunteering or contracting with the charter school, what must the policy provide?

ANSWER: It must provide that the individual convicted can no longer be a member of the governing body, or be employed by, volunteer at, or be contracted to (including employment of the individual by the contractor), the charter school in a manner that brings the individual into direct ongoing contact with children unless the Director of the OCS permits it in writing.

19. If an individual employed by an entity contracted to provide services to the charter school is convicted of a Covered Offense, must the charter school terminate the contract with the entity employing the individual?

ANSWER: No. The policy should provide that the individual's service at the charter school whereby he or she has ongoing direct contact with children must be terminated; however, the contract itself does not need to be terminated.

20. What must the policy provide with regard to individuals subject to the policy while charges of a Covered Offense are pending, but a conviction has not yet been entered?

ANSWER: This provision in the charter school's policy is left to the Organizer's appropriate discretion. This is an area where OCS would strongly encourage consultation with an independent lawyer in not only drafting this portion of the charter school's policy but also in addressing this circumstance should it arise.

21. Do the results of criminal history need to be provided to OCS?

ANSWER: Yes.

22. Does OCS need to be listed on the consent for the release of criminal history results?

ANSWER: Yes.

23. What if an individual subject to a criminal history refuses to consent to release of the results to OCS?

ANSWER: The policy should provide that they may not be associated with the charter school.

24. Does the charter school's policy have to provide that the results of criminal histories will be used in accordance with I.C. 10-13-3-29?

ANSWER: Yes.