

Criminal Background Checks and Arrest Reporting Policy

Definitions:

ABC is the BCI's Applicant Background Check system for performing criminal background checks.

ABC Report is a formal document generated by BCI from the Applicant Background Check system after a search of state, Western Identification Network (WIN) and FBI criminal history database files designated by applicable law.

Applicant is any non-licensed individual who is subject to a fingerprint criminal background check performed by Gateway Preparatory Academy through BCI's ABC system. Applicant may include a prospective non-licensed employee (applicant) or volunteer, non-licensed employees, board members, certain outside service providers, other employees and volunteers with significant unsupervised access to a student.

Background Check means a fingerprint criminal background check performed by BCI using the Applicant Background Check (ABC) system as authorized by UCA 53G-11-402. It is a school receiving information on an Applicant or employee that may include, but is not limited to, ABC Reports and Driving Record Reports.

BCI is the Utah Department of Public Safety, Bureau of Criminal Identification.

Driving Record Report means information on an applicant or employee that may include, but is not limited to, traffic-related offenses contained in a Motor Vehicle Record (MVR) of the Utah Department of Public Safety databases.

Job-Related Conviction means any conviction that directly relates to the duties of the employee or Applicant including, but not limited to, convictions that:

- May reduce employee credibility.
- May put students or others in an unsafe or at-risk environment.
- May undermine stakeholder confidence in the School

Licensed Educators or Licensed Employees are individuals who hold a valid Utah Educator License in any form. Licensed Educators include individuals who are authorized by the USBE while student teaching, enrolled in an alternative route to licensure program, on letters of authorization, hold conditional licenses, and School specific licenses. Licensed Educators may or may not be employed

in a position that requires an educator license.

Non-Licensed Employees are all other employees of Gateway Preparatory Academy. Non-Licensed substitute teachers are also non-licensed employees. Non-licensed employees do not include currently licensed educators; however, it does include those individuals holding an expired educator's license.

Prospective Employee means an individual who is selected as the "successful applicant" for a particular job or position in the School including but not limited to positions for licensed employees, non-licensed employees, substitutes, coaches, and volunteers.

Rap Back means a subscription to ongoing monitoring by BCI of criminal activity of each individual, including BCI reporting new certain activities on those subscribed back to schools. Rap Back allows pertinent information from "Records of Arrest and Prosecutions" to "come back" to the school. Rap Back.

SUAS means significant unsupervised access to a student in connection with an employee or other Applicant's assignment.

USBE means Utah State Board of Education, including the administrative offices.

Volunteer means any person who is not an employee of Gateway Preparatory Academy who provides uncompensated personal services to the school, its employees, students, parent community or elsewhere, rendered on behalf of or benefitting the school. Notwithstanding the above, an employee of the school (who has been the subject of a fingerprint criminal background investigation) may volunteer his or her services to the school if they are unrelated to their specific job function(s), uncompensated, and with the express permission of School administration. Under no circumstances will volunteer work of employees of the school be compensated.

Purpose

The Governing Board of Gateway Preparatory Academy is responsible to put in place policies to protect the health, safety and security of all students, employees, school visitors on campus; and to protect school property. State Board rules define persons working in K-12 educational institutions as role models for youth (R277-515). To help meet this responsibility, Gateway requires a fingerprint-based criminal background check pursuant to federal laws, state laws, administrative rules, and in accordance with this policy. This policy considers jurisdiction of the USBE over all persons holding a valid Educator's License and defers to state laws and rules already established governing background checks for these persons.

All prospective non-licensed employees being offered a position, current non-licensed employees, and volunteers with significant unsupervised access to students shall submit to fingerprint criminal background checks with Rap Back (defined below) as a condition of employment or service to achieve this purpose.

Determination of suitability to work in a school

The Board acknowledges that Utah law requires and authorizes fingerprint criminal background checks (with Rap Back) on all licensed educators (performed by the USBE). All non-licensed active employees (including substitutes, coaches, after school program coordinators, temporary or any other type of workers), prospective employees, and volunteers who have significant unsupervised access to students (collectively “Applicants”) also must submit to a fingerprint criminal background check with Rap Back. Gateway Preparatory Academy does require a background check for student employees under the age of eighteen (18) as there is no exclusion for the same in law or rule.

Applicants who drive school vehicles or who have driving as an essential job function must also submit a satisfactory and periodic official Driving Record Report/Motor Vehicle Record (MVR) as a condition of employment. The School shall update driving records every six (6) months for Bus Drivers and at least one (1) time per year for any employees or volunteer for whom driving is an essential job function.

Upon receipt of the results from BCI, Gateway Preparatory Academy shall review the ABC Report (if any) and determine if any action is warranted and if the Applicant is suitable for employment, continued employment, or volunteer opportunities at the School. A criminal conviction does not necessarily automatically disqualify an Applicant from employment or volunteering activities. The School has the sole and absolute discretion to determine whether the outcome of a criminal background check or an MVR is satisfactory or disqualifies an Applicant from employment, continued employment, or volunteering in the position held or sought.

The safety and security of school staff, students, and visitors will be the foremost consideration. School administrators shall consider each circumstance on a case-by-case basis and use the following factors outlined in UCA 53G-11-405(3) to determine an Applicant’s suitability to work, or continue working, in the School:

- (a) any convictions, including pleas in abeyance;
- (b) any matters involving a felony; and
- (c) any matters involving an alleged:
 - (i) sexual offense;
 - (ii) class A misdemeanor drug offense;

- (iii) offense against the person under Title 76, Chapter 5, Offenses Against the Person;
- (iv) class A misdemeanor property offense that is alleged to have occurred within the previous three years; and
- (v) any other type of criminal offense, if more than one occurrence of the same type of offense is alleged to have occurred within the previous eight years.

While the law prescribes the criteria that must be used, the school may consider in relation to and consistent with UCA 53G-11-405(3):

1. Frequency—the number of and time between criminal history records of an Applicant for the above infractions;
2. Repeat activity—a history of multiple records or convictions that suggests a pattern of behavior or poor judgment incongruent with educator standards detailed in R277-515 and R277-516 (as applicable).
3. The age of the Applicant at the time crime(s) were committed and convictions were made.
4. Distance—the length of time since conviction(s).
5. Relevance of a conviction compared to the Applicant’s position or proposed position (i.e. a prospective employee for a lunchroom cashier position who has multiple conviction(s) for financial fraud).
6. Evidence of rehabilitation.

The School shall consider only those convictions that are job-related. The Applicant shall have opportunity to respond to any information received as a result of a background check. If an Applicant is dismissed from employment or if a prospective employee is denied employment because of information obtained through a background check, the person shall receive written notice of the reasons for dismissal and have an opportunity to respond to the reasons for the dismissal.

Applicants under investigation (based on the content of an ABC Report as a result of a background check) shall report for work unless otherwise instructed.

An Applicant who is under investigation for alleged sex offense or other alleged offenses that could endanger students shall be immediately suspended from all student supervision responsibilities and shall not be given significant unsupervised access to students.

An Applicant who is under investigation for alleged drug or alcohol offenses shall be immediately suspended from driving school vehicles or transporting students.

An Applicant who is under investigation for alleged financial or theft offenses shall be immediately suspended from access to school property, specifically financial resources of any kind.

Gateway Preparatory Academy shall resolve any requests for review or appeal by Applicants through applicable administrative procedures established by Gateway and provided to Applicants on background check-related forms and documents.

Ongoing monitoring subscription (Rap Back)

In accordance with state laws and rules, and with school policy, ongoing monitoring (Rap Back subscription) by BCI of criminal activity of each individual Applicant, including BCI reporting new criminal activity on those subscribed to schools, will be performed. School administration shall log onto the ABC website as frequently as possible to receive notifications and check the status of pending background checks and for new criminal activity of Applicants reported through the ABC system.

Where reasonable cause exists, Gateway may require a current employee or any other type of Applicant to submit to a fingerprint criminal background check and/or review criminal history.

The School may require MVR reports for Applicants at any time; however, any person transporting students in a DOT certified school bus shall possess current appropriate licensure and must submit MVR's to maintain CDL licensure.

Discontinuance of ongoing monitoring (Rap Back)

The School shall cancel Rap Back subscriptions of Applicants when significant unsupervised access to students is no longer needed, and upon termination or separation, when Applicants are no longer employed by, working in, or volunteering at the School. It is a Class B misdemeanor to receive unauthorized criminal history information of former Applicants (UCA 53-10-108).

Employee self-reporting of arrests and convictions

According to law and rule, and as a condition of employment and continued employment or volunteer service, all Applicants must notify the school director within forty-eight (48) hours, or as soon as possible, if they are arrested, charged, or convicted; entered a guilty plea, a plea in abeyance, or diversion agreement; or are otherwise found guilty of the following crimes, regardless of the imposition of sentence:

1. Any matters involving arrests for alleged sex offenses.
2. Any matters involving arrests for alleged drug-related offenses.
3. Any matters involving arrests for alleged alcohol-related offenses.
4. Any matters involving arrests for alleged offenses against the person as outlined in UCA 76-5. This includes, but is not limited to, crimes where a person has assaulted, harassed, abused, neglected, exploited, endangered, kidnapped, murdered, trafficked, raped, sexually assaulted, etc. another person(s).
5. Any matters involving arrests for alleged offenses against property as outlined in UCA 76-6.
6. Any matters involving an alleged crime of domestic violence under UCVA 77-36.
7. Any matters involving an alleged crime under federal law or the laws of another state comparable to the violations listed herein or those detailed in law; and
8. For employees who drive School vehicles as part of their employment duties, matters relating to citations or arrests for violations of the motor vehicle code.

The employee shall report for work following any action outlined above and give notice to the director, unless directed not to report for work by the director or designee.

Gateway Preparatory Academy shall review any action outlined above and assess the employment status of the individual, considering school policies related to the action, including educator standards and role model status as defined in UCA 53E-6-604 and R277-515 and R277-516 ,and ethical considerations. The school shall also make employment decisions that protect both the safety of students, the confidentiality of Applicants/employees and rights of the Applicant/employee.

Other reporting of known arrests and convictions

Any individual with knowledge of any known infractions outlined in the *Employee self-reporting of arrests and convictions* section above of any Applicant shall report the information to the School director. Supervisors shall notify the director immediately if any Applicant informs them of any of the infractions or activities listed above in this section.

The director or his/her designee shall determine whether the report is accurate and determine if any appropriate internal action is required. As required by law or rule, the school director shall report arrests, convictions, or other offense information regarding Licensed Educators to the USBE Educator Quality and Licensing Department and the USBE's Utah Professional Practices Advisory Commission (UPPAC) within forty-eight (48) hours of receipt of such information, or as soon as possible. Gateway Preparatory Academy shall cooperate with a USBE/UPPAC investigation of Licensed Employees.

Behaviors of non-licensed Applicants are not reportable to the USBE; however, the director shall discipline employees and any other Applicants consistent with law, rule and school policies; and discipline or sever volunteering relationships with volunteers when appropriate.

Consequences for Applicants

Prospective applicants are subject to non-selection based on:

- Results of a background check.
- Refusal to submit to a background check; and/or
- Failure to disclose information relevant to the background check if requested to do so during the application and selection process.

Applicants currently employed or volunteering are subject to discipline, up to and including termination or other separation based on:

- Results of a background check.
- Refusal to submit to a background check; and/or
- Failure to report arrests and convictions as outlined in this policy.

The School shall exclude any person from employment or from volunteering, or shall take action to terminate employment or volunteering assignment(s) when a background check reveals that an individual has exhibited behavior that is violent or harmful to children or adults.

Applicants may view (and take notes from) the contents of the ABC Report provided to the school by BCI; however, the law prevents the school from providing a copy to an Applicant. Applicants desiring to receive a copy of their ABC Report must contact BCI (for state and WIN Reports) and request a copy of their Criminal History Report (bci.utah.gov) and the FBI (for federal Reports) for a copy of their Nationwide Report (www.fbi.gov).

Fees

Applicants shall pay the cost of fingerprints for a background check at the time of fingerprinting at a LiveScan location. The School shall pay processing fees charged to the school by BCI after the background check is completed. Currently licensed educators renewing their license shall pay the cost of the background check to the USBE as part of their periodic license renewal.

Confidentiality

School administrators (all ABC Users) shall review BCI's Agency Responsibilities Training for security standards periodically and keep current with background check procedures and responsibilities outlined by BCI. The School will use ABC Record information only for the School's internal purposes when determining the suitability for employment or service of an Applicant. The School will keep this information in a secure location that is accessible only to persons who are authorized to have access to the information in order to complete their employment duties. ABC Reports stored in paper or electronic form at the Utah State Archives must be sealed to prevent unauthorized access.

Record storage and retention

Records of arrests, convictions, determinations, and administrative actions for job-related offenses shall be placed in a separate Criminal History Personnel File (separate from the regular employment file) and accessed only by authorized persons. Electronic records, in any, must be stored in a secure and encrypted manner, with access granted only to authorized ABC Users or the Chief Administrative Officer. Such records will be maintained only as necessary to protect the safety of students and/or employees and will be retained in accordance with Utah State Archives record retention guidelines. Volunteer records may be held separately in a secure location with access only by authorized persons.

As per the law, all Qualified Entity Agreements and ABC User Applications (both past and present) shall be retained on file at the school for inspection by BCI at all times. All Applicant Consent and Transfer forms must be retained until three years after termination of employment or volunteering activities.

BCI ABC Section contact information

ABC Section, Utah Bureau of Criminal Identification
Phone: 801-965-4445, Option 6
Fax: 801-969-7072
E-mail: dpsabc@utah.gov
ABC Website: <https://abc.ps.utah.gov/abc-bci-web/>

Training and maintaining School contact information

The School director is responsible to ensure all ABC Users (including the director) access and receive initial and ongoing training from BCI on using the ABC System and properly administering background check responsibilities. Training PowerPoints and an ABC Users Guide is available at any time from BCI. Updates and/or BCI training shall be implemented immediately at the School. The director shall

ensure updated ABC User contact information and agency (School) contact information is provided to BCI to ensure access to new resources, training, changes in law, rules or procedures.

Board approved April 2019