

Chapter 4 Human Resources Management

4.6 Background Check Policy

Policy Statement

This policy outlines measures to ensure the safety and security of all children and youth on the APSEA caseload, while interacting with or under the care of teachers and other designated employees of the Atlantic Provinces Special Education Authority (APSEA).

Definitions

Break in Service – A period of more than three (3) consecutive calendar months during which a person, who was an employee of APSEA, is not employed by APSEA. An approved leave of absence is not considered a break.

Candidate – An applicant who is in the final stages of the recruitment and selection process and is being considered for a position within APSEA.

Child Abuse Register Search – A search of the Nova Scotia Child Abuse Register conducted in accordance with the Children and Family Services Act (Nova Scotia 1990). (Residents of Nova Scotia only.)

Criminal Offence – An offence under the Criminal Code (Canada 1985), the Controlled Drugs and Substances Act (Canada 1996), or an offence under the criminal law of a competent jurisdiction outside of Canada in which the offence occurred.

Designated Employee – Any individual in, or being considered for, a position designated as a position of trust or authority and, in accordance with the provincial regulations, requires prescribed record checks as a condition of employment, or ongoing employment, by APSEA.

Direct Contact – Physical or verbal interaction, or personal and sustained written or electronic interaction.

Offence Declaration – A declaration by an employee, in the prescribed form, in respect of whether the employee has a conviction for a criminal offence.

Position of Authority – A position in which the individual's role or responsibilities give them power or influence over a child or youth on the APSEA caseload.

Position of Trust – A position held by an individual with fiduciary responsibility for a child or youth on the APSEA caseload, or in which an individual’s role or responsibility may reasonably cause a child or youth on the APSEA caseload to believe that they are under the individual’s protection, care, or control.

Signature – A written or electronic signature or other manner of identification in a form approved by APSEA.

Policy Objectives

This policy has been established to ensure that safety and security of children and youth on the APSEA caseload are the first and foremost considerations in determining suitability for employment. This policy outlines the requirements for record checks, annual declarations, immediate disclosures, and related processes.

- Regular checks help ensure designated employees meet required safety and security standards and provide safe and secure learning environments.
- APSEA respects the privacy of all employees and ensures that private and/or personal information is appropriately maintained.

Application

This policy applies to all employees and prospective employees of APSEA.

The directives outlined in this policy replace directives in existing policies covering the same issue.

Policy Directives

Pre-employment

1. All candidates who hold a position of trust or authority must provide the necessary record checks, in accordance with the Background Check Administrative Procedures.
2. All candidates who will not hold a position of trust or authority but have a reasonable expectation of direct contact with children and youth on the APSEA caseload, must provide the necessary record checks in accordance with the Background Check Administrative Procedures.
3. Pre-employment record checks and any additional information requested will become the property of APSEA and will not be forwarded to any other institution or individual except to the extent required or permitted by law.

Offers of Employment

4. All offers of employment must be conditional upon there being no outstanding criminal charges or prior convictions that reasonably indicate that the candidate could pose a threat to:
 - a. children and youth on the APSEA caseload;
 - b. other employees;
 - c. property and equipment; or
 - d. government's legitimate interest in public trust in the education system.
5. The final determination concerning the suitability of prospective employment shall be made by the Director of Human Resources (HR) in consultation with legal counsel, when necessary.

Annual Offence Declaration

6. In all cases, except when on an approved leave of absence or in other unique circumstances, employees are required to complete, annually, an Offence Declaration form attesting to the fact that they have not, in the past year or since the completion of a previous declaration, received a criminal conviction for which a pardon has not been granted.
7. Employees who fail to submit, or submit falsified, Offence Declaration forms may be subject to disciplinary action, up to and including termination.

Immediate Disclosure

8. All employees must immediately disclose to their employer any charge or conviction for a criminal offence. If the criminal offence occurs outside of Canada, it should be reported if the charge or conviction would also be considered criminal activity in Canada.
9. Immediate disclosure is to occur within seven (7) days of the employee becoming aware of the conviction(s) or immediately following a/an:
 - a. break in service;
 - b. approved leave of absence; or
 - c. break in the school year (e.g., summer holidays).
10. Employees who fail to immediately disclose to their employer any charge or conviction for a criminal offence may be subject to disciplinary action up to and including termination.

Criminal Record Check Renewal

11. All designated employees will be required to update their Criminal Record Check (CRC) every five years, pursuant to a schedule created and maintained by APSEA.
12. Designated employees who fail to comply with the CRC renewal process may be subject to disciplinary action, up to and including termination.

Disclosure Follow-Up

13. In all cases where there is a charge or conviction immediately disclosed, or indicated on a CRC or Offence Declaration, the Superintendent or designate shall review the suitability of the employee for ongoing employment, given the charge or conviction.
14. When appropriate, the Superintendent or designate, in consultation with the Director of Human Resources will arrange an in-person follow up meeting with the employee.
 - a. The follow-up meeting is to take place within a reasonable timeframe based on the severity of the charge or conviction.
15. Where areas of concern are identified, the final decision regarding suitability of continued employment shall be made by the Superintendent or designate, in consultation with the Director of Human Resources and when necessary, legal counsel.
 - a. Any disciplinary action determined will be in accordance with processes established in collective agreements or terms and conditions of employment.
 - b. Follow-up considerations, discussions, and records of decision will be documented and retained in accordance with Records Management directives, as outlined below in Item 16 and in Section 7 of the Background Checks Administrative Procedures.

Records Management

16. All records collected by APSEA as a condition of pre-employment and ongoing employment, will be retained according to a prescribed disposition schedule and stored in a confidential and secured location, in accordance with APSEA's Protection of Privacy Policy.

Accountability

The Superintendent is responsible for:

- determining appropriate follow-up and conducting disclosure follow-up, as required.
- determining disciplinary action for employees who fail to submit or falsify prescribed checks, declarations, or disclosures.

Directors/Supervisors/Managers are responsible for:

- notifying candidates of the requirement for and fulfillment of pre-employment conditions, including the completion of any required checks.

The Director of Human Resources is responsible for:

- making the final determination regarding suitability of prospective employment.
- determining candidate and employee suitability for employment.
- monitoring the schedule of employee record checks.
- notifying employees of the need to renew and resubmit record checks for ongoing employment.
- determining, in consultation with the Superintendent as needed, disciplinary action for employees who falsify record checks or fail to submit record checks.
- determining appropriate follow-up and conducting disclosure follow-up as required.
- ensuring appropriate management of employee personal information.

All APSEA Employees are responsible for:

- understanding and following this operational policy, and the related procedures.
- providing prescribed record checks as a condition of employment.
- renewing and submitting prescribed record checks as a condition of ongoing employment.
- immediately disclosing any charge or conviction for a criminal offence to their employer.
- completing an annual Declaration of Offence form pursuant to direction from their employer.

Monitoring

- The Superintendent of APSEA or their designate will review this policy annually.

References

- [Canada. 1985. Criminal Code. RSC, c. C-46](#)
- [Canada. 1996. Controlled Drugs and Substances Act. SC, c. 19.](#)
- [Nova Scotia. 1990. Children and Family Service Act. SNS, c. 5.](#)
- [New Brunswick: Family Services Act, N.N.B. 1980, c. F-2.2 \(Section 30\(3\)\)](#)
- [Newfoundland and Labrador: Child, Youth and Family Services Act, S.N.L 1998, c. C-12.1 \(Section 15.1\)](#)
- [Prince Edward Island: Child's Protection Act, RSPEI 1988, c. C5.1 Section 10](#)
- [APSEA Protection of Privacy Policy](#)
- [APSEA Privacy Breach Protocol](#)

Approval Dates

Approved: February 2022

Revised: