

## **Pre-Employment Screening (Background Check)**

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### **Policy Statement:**

Pre-employment screening (i.e., background check) is performed on applicants being considered for employment, as part of the hiring process of Bergen Community College (the College). A background check searches public records, databases, and other sources of information on a candidate's history, which provides the College with insight into a candidate's experience and qualifications, criminal history if any, and other information as required by law, industry regulations, or as warranted by the position.

### **Reason for Policy:**

To establish the framework and guidelines for how background checks are conducted during the College's hiring process to ensure their effectiveness, consistent and standardized application, and compliance with federal and state law requirements.

### **Who Should Read This Policy:**

- Faculty and staff members with managerial or supervisory responsibilities for staff or operations.
- Human Resources Department Employees

### **Definitions:**

**Background Check** - An examination or investigation of an individual's history and past, which utilizes third-party resources to examine public records, law enforcement information, credit bureau reports, academic records, and previous work history. It can uncover information about an individual such as education and employment history, criminal records, credit history and more. The purpose of background checks is to confirm that individuals are who they say they are and uncover any potential issues or conflicts. Background checks are a type of consumer report covered under the Fair Credit Reporting Act ("FCRA"). Thus, consumer reporting agencies who collect and provide background check information, and employers who use such information in their hiring decisions must adhere to strict FCRA requirements.

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**Consumer Reporting Agency** - entity which collects information and provides reporting to third parties about individuals/consumers that is used in various decision-making situations. This includes pre-employment screening (i.e., background check) services provided to employers used in the hiring process, which includes information and verification of a candidate's education, certifications attained, prior employment, and criminal history (i.e., misdemeanor and felony convictions).

**Expungement of Criminal Record (expunged record)** - criminal record that has been destroyed or sealed from state or federal records by a court order, which instructs the court to treat the conviction as if it never happened, removing the record from the individual's record and ideally the public record.

**Fair Credit Reporting Act ("FCRA")** - enforced by the Federal Trade Commission is among the most important federal laws governing background checks and hiring processes. The FCRA protects consumer privacy and ensures fairness and accuracy of information collected and disclosed by consumer reporting agencies. It also controls how employers can use the information they receive on pre-employment background check reports. Before an employer can conduct a background check, it must first notify and secure the candidate's written consent to conduct a background check. If an employer decides not to hire a candidate based on information contained in the background check, it must adhere to FCRA's adverse action process before making a final decision (discussed in further detail later in this policy). While this law was initially meant to protect financial information, its scope was expanded to include background check information.

**Title VII of the 1964 Civil Rights Act** - the federal anti-discrimination law in the U.S., which prohibits employment discrimination based on the following protected classes: race, color, national origin, sex, religion, disability, genetic information, or age (40 or older). The law applies to background checks for employment when they reveal that an applicant has a criminal record. Although criminal history is not a protected class, Title VII prohibits use of criminal background checks in a way that discriminates against a protected class. The Equal Employment Opportunity Commission ("EEOC") which enforces Title VII requires employers to individually assess criminal records on pre-employment background checks, and any convictions must be assessed as they relate to the specific position the employer is hiring under EEOC guidance.

**American Disabilities Act ("ADA") of 1990** - civil rights law enforced by the EEOC that prohibits discrimination based on disability, which includes both mental and physical medical conditions. From an employment standpoint, employers with 15 or more employees must provide individuals with disabilities an equal opportunity to benefit from employment-related opportunities available to others. The ADA limits when and how employers can consider medical information in the hiring process to prevent discrimination against people with disabilities. The law prohibits using qualification standards, employment tests, discriminatory background checks, or other selection criteria that screen out an individual with a disability unless the qualification standard, test, or other criteria, is shown to be job-related for the position.

**Genetic Information Nondiscrimination Act** - enacted in 2008 to prohibit some types of genetic discrimination by barring the use of genetic information in health insurance and employment decisions. From an employment standpoint it bars employers from using individuals' genetic information when making hiring, firing, job placement, or promotion decisions.

**New Jersey Opportunity to Compete Law** - sometimes referred to as the Ban the Box Law, which applies to New Jersey public and private employers with 15 or more employees. Employers are prohibited from advertising that individuals with criminal records will not be considered and cannot ask about criminal history information during the initial application process. Employers may not inquire into a candidate's criminal history until after conducting a first interview and may not consider expunged or pardoned convictions when making hiring decisions.

Exceptions are made for positions that legally require criminal background checks, for employers that have a stated intention to hire candidates with criminal histories, and when applicants voluntarily disclose their criminal record.

**New Jersey Clean Slate Act** - allows for the expungement of criminal records after ten years following the date of conviction, payment of fines, completion of parole, or release from incarceration, whichever is latest, and as soon as three to five years for certain indictable convictions. The act allows individuals with convictions to petition the court for an expungement of their criminal records. While the law applies to most offenses, certain more serious convictions such as murder, manslaughter, treason, kidnapping, arson, robbery, and rape are not eligible for expungement and are reportable. Conspiracies, attempts, or aiding and assisting others to commit these offenses also cannot be expunged. Expunged records are not reported to consumer reporting agencies, and employers are not allowed to rely on such information, if known, when making hiring decisions.

## The Policy:

The College utilizes background checks during the hiring process, which serve as a critical screening tool to verify information on an applicant's resume and job application. This helps to limit or reduce the risk of potential hiring liabilities or issues, protect workplace safety, identify candidates who have disqualifying criminal convictions, uphold the College's reputation and ethical standards, maintain a culture of trust and transparency, and assist the College in making the right hiring decisions. The use of background checks helps the College bring clarity and validation to hiring decisions.

Background checks are conducted for all external candidates chosen for part-time and full-time vacant/open positions when conditional offers of employment are extended. An offer of employment is conditioned upon successfully passing a pre-employment background check, which must be completed prior to the start of employment.

Candidates for full-time positions must also be approved by the Board of Trustees (“BOT”) prior to joining the College. The nature and extent of the background check conducted may vary depending on the requirements and responsibilities of the open position. Thus, more comprehensive background checks may be conducted for candidates, including internal applicants, who are hired for positions that require a higher level of responsibility and authority. Entry level positions and positions with less responsibility and authority are still subject to comprehensive general background checks. The College’s Human Resources Department which oversees the background check process utilizes a reputable third-party consumer reporting agency (“CRA”) that is FCRA-compliant to conduct all background checks. The College does not conduct or use investigative reports on candidates based on such things as personal interviews concerning individuals’ character, general reputation, personal characteristics, and lifestyle.

#### Background Check Information Obtained

Depending on the requirements and responsibilities of the position, background checks will provide some or all the following information about the candidate:

- **Education verification** – schools attended, degrees or courses of study, and attendance and graduation dates.
- **Certifications, licensing, and credentials** – nature and type earned, issuance and expiration dates if applicable, status (i.e., current, valid, and in good standing), and any public discipline/sanctions levied.
- **Employment verification** – employers worked for, titles/positions held, dates of employment, and employment status.
- **Credit checks** – financial management-related information such as bankruptcies, accounts in collection, and payment histories
- **Criminal background checks** – criminal history records such as misdemeanor and felony convictions, arrests that may lead to convictions, and pending criminal cases.
- **Child Abuse Record Information (“CARI”) checks** – verification of any substantiated report of physical or sexual child abuse and/or neglect. CARI checks in addition to criminal background checks are utilized in the hiring of Child Development Center (“CDC”) staff. Such checks are performed upon each staff’s license renewal, and only CDC staff that have cleared both checks may provide unsupervised care of children.
- **Civil court checks** – non-criminal court history, including judgements, lawsuits, or claims.
- **Motor vehicle records** – driving history and verification of license status for positions that require driving on the job.
- **Drug screening** – detects signs or actual use of one or more illegal or prescription drugs. Conducted on all candidates for Public Safety Office positions and candidates who will operate College vehicles.
- **Other personal information** - information such as date of birth, current and prior home addresses, and social security number verification.

Health Professions faculty participating in clinical education programs must be cleared of the required background checks prior to joining these programs and as part of their clinical affiliate agreement.

### Compliance with Federal and New Jersey State Laws

Background checks and related hiring practices are conducted in compliance with all applicable federal and New Jersey state laws. From a federal law standpoint this includes compliance with the FCRA, Title VII of the 1964 Civil Rights Act, the American Disabilities Act, and the Genetic Information Nondisclosure Act. For New Jersey state law purposes, this includes compliance with the New Jersey Opportunity to Complete Law (aka Ban the Box Law) and the New Jersey Clean Slate Act; various state statutes that are consistent with or in addition to FCRA requirements which address background check notifications, adverse action rights, and prohibited inquiry of social media information; and New Jersey Bill A1094 passed into law which prohibits employers from making any pre-employment salary inquiries of applicants until after a conditional offer of employment has been made. Failure to comply with such laws and statutes could subject the College to penalties, fines, and litigation.

To ensure a standard, consistent, and compliant background check process, the College undertakes the following steps:

#### Prior to Obtaining a Background Check

The College takes the following steps prior to obtaining a background check to be in compliance with EEOC and FCRA requirements.

- Background checks are conducted for all external candidates selected for part-time and full-time open positions who are extended conditional offers of employment. A reputable third party CRA is used to conduct all background checks. The College provides the CRA with the candidates' names and email addresses. The CRA then contacts and works directly with the candidates to obtain all required information and comply with FCRA requirements.
- Prior written notice is provided to all candidates that they will be subject to a background check. This includes informing the candidate that information obtained from the background check may be used in the employment decision and job offer. This notice is in a stand-alone format and not included in the employment application.
- Candidates' written permission to conduct background checks are obtained by the CRA before they are performed. This can be part of the written notice informing candidates that they will be subject to a background check or can be in a separate document. Candidates that refuse to give authorization for a background check are informed that they will no longer be considered for employment.
- Candidates are provided with a copy of the "Summary of Your Rights Under the Fair Credit Reporting Act". The name, address, and telephone number of the CRA are also provided.
- Candidates can request or be given the option to receive a copy of their background check upon being conducted and available.
- A candidate's genetic information which includes family medical history is not obtained, and no medical questions are asked before a conditional job offer has been made. If such information is known or disclosed by the candidate, it is not used in the employment decision-making process.
- The College certifies with the CRA that the candidate was notified of the background check and received the candidate's permission, that all FCRA requirements were

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complied with, that the candidate is not discriminated against, and that the information gathered is not misused, in violation of federal and state laws and regulations.

### Use of the Background Check Information

Strict guidelines are adhered to by the College in the use of information obtained from a background check, to ensure that such information is not used in a discriminatory manner, which is in violation of federal laws.

- The same standards are applied in the review process of all background check information obtained, regardless of the candidates' protected class, which includes race, national origin, color, sex, religion, disability, genetic information (including family medical history), or age (40 or older).
- The results of background checks are communicated to candidates after they have been reviewed and assessed. Candidates with clean background checks are informed of this. Candidates with background checks that identify issues/problems, and which may lead to an adverse action taken (i.e., candidate not hired) are informed through the process addressed later in this policy.
- Special care and consideration are taken when basing employment decisions on background issues/problems that may be more common among individuals of a protected class.
- Consideration is taken, and possible exceptions made, for matters revealed during background checks that were caused by a disability. This includes allowing candidates to demonstrate their ability to perform the required job responsibilities despite the matter(s) identified in the background information, unless doing so would cause significant financial and/or operational difficulty to the College.
- For positions paying less than \$75,000, the FCRA has a seven-year lookback rule provision for background checks. This provision limits the reporting of certain information to the previous seven years which includes civil judgements, civil lawsuits, liens, bankruptcies, and arrests not leading to convictions. This provision does not apply to criminal convictions. Thus, an individual's entire criminal history is available, unless a conviction has been expunged. The FCRA's lookback period also does not apply to employment history, education, or credentials, which can be reported regardless of the age of the information. The seven-year lookback rule provision does not apply to positions earning \$75,000 or more. However, the College performs background checks on all external candidates chosen for part-time and full-time vacant/open positions when conditional offers of employment are extended, regardless of the amount they will be compensated.
- All background check information obtained by the College shall be treated as confidential. Such information will be securely stored in accordance with applicable laws and College policies to prevent unauthorized access, use, or disclosure. Access to background check records will be limited solely to individuals who have a legitimate reasons in order to perform their duties.

### Criminal Records/Convictions Identified in the Background Check

When a candidate's background check identifies a criminal conviction(s), several factors are assessed and considered in the hiring decision.

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- When reviewing criminal records, the College considers the type of offense that was committed, as well as the time that has passed since the incident. EEOC guidelines are adhered to by the College when deciding not to hire an individual based on arrests or convictions identified during the background check. Since an arrest does not mean that the individual was found guilty of committing the crime, there are no grounds to deny employment for that reason alone, unless further investigation shows clear wrongdoing. Even if an individual has a conviction that appears on the background check, EEOC guidelines are followed which recommend that extra consideration is taken to ensure the conviction information is accurate before denying employment based on that finding. Criminal conviction information is individually assessed as it directly pertains to the position for which the candidate applied.
- When a criminal conviction is identified in a background check, an individualized assessment is performed and the following is considered by the College in making the final hiring decision,
  - The type and nature of the conviction and whether it relates to the position.
  - The time elapsed since the conviction.
  - How many convictions the candidate has.
  - The candidate's prior history and evidence of rehabilitation.
  - Clarifying information provided by the candidate.
  - Whether hiring the candidate would create an unreasonable risk to the College community.
- Since background checks are only conducted on candidates who receive conditional offers of employment, they are guaranteed employment upon passing a background check (i.e., background check does not identify any issues/problems) and for the full-time positions being approved by the Board of Trustees.

#### Adverse Action Taken Based on Background Information Obtained

When a candidate's background check may or does result in an adverse employment action taken (i.e., candidate not hired) the FCRA has additional requirements which are designed to protect the candidate, to promote fairness and transparency in the hiring process, and to alert the candidate that negative information was the basis for the adverse action taken.

- Before an adverse action is taken, candidates are provided with:
  - A notice (i.e., pre-adverse action letter) that highlights the problematic information and includes a copy of the background check report that is used by the College to make its decision. This provides candidates with the opportunity to review the report and inform the College if it is correct or not, and the reason(s) why.
  - A copy of "A Summary of Your Rights Under the Fair Credit Reporting Act" obtained from the CRA that conducted the background check.
  - A reasonable amount of time to respond (typically five business days) which is referenced in the notice. Candidates can dispute any information they believe is inaccurate and can provide evidence that the information is wrong, that they have been rehabilitated, etc. The CRA will then investigate and resolve any disputed information.
  - A final notice of the adverse action taken, describing the reasons for same.

- When an adverse employment action is taken, candidates are informed either orally, in writing, or electronically:
  - That they were not hired because of the information in the background check.
  - The name, address, and phone number of the CRA that conducted the background check.
  - That the CRA did not make the hiring decision and cannot provide specific reasons for the decision reached.
  - Their rights under New Jersey state law and FCRA. That they have the right to dispute the accuracy or completeness of the background check and can obtain a free background check report from the CRA within 60 days from the point they were informed of the hiring decision.

### Disposal of Background Information

Employment and hiring related information including background check reports have record retention requirements. Once all requirements have been met, such information may be disposed of, which must be done in a secure manner.

- Any personnel or employment records (e.g., application forms, background check reports, and other hiring records) must be preserved for two years after the records were made, or after a personnel action was taken, whichever comes later, regardless of whether the candidate was hired or not. If a candidate files a charge of discrimination, the records are maintained until the case is concluded.
- When all applicable recordkeeping requirements are satisfied, all background check information can be disposed, which must be done in a secure manner. This can be done by burning, pulverizing, or shredding paper documents and disposing of electronic information so that it cannot be read or reconstructed.

### Roles and Responsibilities

The Human Resources Department and hiring managers of the College are impacted by and play a critical role in the background check process. Although not privy to this policy, candidates also have a role and responsibilities in this aspect of the hiring process which makes it more timely, accurate and efficient.

- Human Resources
  - Oversee and manage the College’s background check process.
  - Ensure compliance with this policy and all applicable federal and state laws and statutes, regarding the way background checks are conducted and how the information is used. This includes identifying, addressing, and implementing all new laws or changes to existing laws.
  - Determine the nature and extent of the background check required for each position.
  - Assess the ongoing support and services provided by the CRA used by the College and its compliance with federal and state laws.
  - Work with and apprise hiring managers of the status of their candidates’ background checks, including any issues/problems identified.
  - Assess all adverse issues identified during the background check process, and the impact on the final hiring decision, which includes working with hiring managers

- and/or the College's legal counsel and complying with all adverse action requirements.
- Ensure the proper handling and disposal of background check and other hiring-related information.
- Hiring Managers
  - Understand and comply with all requirements of the background check process.
  - Provide HR with all requested information about the position and its responsibilities, and work with HR where needed to address all issues/concerns identified during the background check process.
  - Support all adverse hiring decisions reached by HR and/or the College's legal counsel.
- Candidates
  - Provide accurate and complete information in the College's employment application and in their resumes.
  - Provide all requested information in a timely manner.
  - Provide any adverse information that is pertinent to the hiring process prior to the background check process, which may be considered and factored into the final hiring decision.
  - Provide written permission/approval to conduct a background check when a conditional offer of employment has been received.

## Procedure:

The Human Resources Department will provide the candidate with detailed instructions on how to submit the background check request.

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## Related Documents/Policies:

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## Policy History: (adopted/amended)

Adopted: October 8, 2025

Amended: