

# Sounding Board

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*Promoting Quality Charter School Governance*

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## Background Checks

### Introduction

Schools are entrusted with the most important of the public's treasures: their children. The duty to protect and care for students supersedes all others, and schools must ensure that the adults they trust to interact with students are fully vetted. While a screening and interview process can reveal much about a potential employee (and their ability to do the job for which they are being considered), it cannot fully glean nor verify the history an employee has and if that history might indicate a concern with having them interact with students. To obtain that, schools must rely on background checks.



While there are many types of background checks a school can obtain, the two most common are:

- **Employment Background Check:** Employers run employment background checks to avoid hiring someone who may pose a threat to the workplace or become a liability to the employer. Typically, an employment background check includes information and records from the past seven years, although some states allow up to 10 years. An employment background check can include, but is not limited to, a person's work history, education, credit history, motor vehicle reports (MVRs), criminal record, medical history, use of social media, and drug screening. Schools may choose to use an employment background check on their school leaders, wishing to verify employment history, academic credentials, credit report, professional licenses, etc. in addition to criminal history.
- **Criminal Background Check:** A narrower background check than the employment background check, a criminal background check is often required in situations where a person or organization needs to know about major criminal activity, including violent or sex crimes, fraud, embezzlement, or felony convictions before making a decision regarding employment. Schools may choose to add a more extensive driving record check to the criminal background check when employing drivers of school vehicles.

The topic of this *Sounding Board* is related specifically to criminal background checks and the requirements in Minnesota Statutes as well as the Osprey Wilds contract related to criminal background checks. While the information applies to employees, potential employees, and volunteers, OW is specifically concerned with the notice requirement in relation to Board members.

## What Do Minnesota Statutes and Osprey Wilds' Contract Say About Background Checks?

Charter schools are required by MN §123B.03 to request a criminal history background check on all individuals who are offered employment in a school and on all individuals, except enrolled student volunteers, who are offered the opportunity to provide athletic coaching services or other extracurricular academic coaching services to a school, regardless of whether any compensation is paid.

Additionally, Section 6.20 of the school's contract with Osprey Wilds states, "The School agrees to obtain background checks, at the School's or the individual's expense, whichever is allowed by Applicable Law, on all potential board members before such members are added to the School Board; the School shall certify to OW within (10) business days of receipt of such background check that the background check has been completed and whether or not the background check contained adverse information."

Osprey Wilds also evaluates the school's operational performance (Board Capacity as well as Employment Practices) in relation to the school's compliance with conducting appropriate background checks on staff and volunteers.

Therefore, schools authorized by Osprey Wilds are required to obtain background checks on all school employees, volunteers, and specifically anyone serving on the School Board prior to their beginning paid or volunteer work for the school.

## What Is Contained in a Criminal Background Check?

A criminal background check may include the following record searches:

- National criminal databases
- Sex offender registries
- Statewide criminal records
- County criminal courts
- Domestic and global watch lists
- Federal and state criminal records

It is important to know that there are different levels of criminal background checks, and the school will want to ensure that their background checks have the appropriate level of detail and cover an appropriate amount of time. A standard criminal background check should include:

- Social security trace
- County criminal records for at least 7 years (all names)
- Federal criminal records for the last 7 years (all names)
- National Sex Offender and Federal Watch Lists



Often, many of these searches are included in a basic background check. However, some background check services may charge an additional fee to check for aliases or to search federal, state, and county criminal records in addition to national databases. Schools should be sure they know what is included in their background check searches and ensure that the background checks they conduct include the states in which a person worked previously and in which they obtained their degree, if different than Minnesota.

## What Does a School Do with an Adverse Background Check?

The majority of the checks the school will run will not report any adverse findings, but many will. Just because a background check comes back with adverse information does not mean it should be used to deny the candidate/employee. Schools should consider the relevance of what is found in the background check on with the job the candidate/employee is applying for. For example, an underage consumption finding that was fifteen years ago may not be relevant to the position that person is seeking. Likewise, driving citations may not be relevant unless driving company vehicles is a part of the position being sought.

Your school should create clear criteria for considering a rejection. These criteria should revolve around three key questions:

1. How relevant is the offense to the job the school is hiring for?
2. What was the nature and severity of the offense? (i.e. does it relate to a school setting?)
3. How much time has passed since the offense occurred?

While a school is encouraged to develop a rubric for using these criteria, every case will be unique. Developing as clear criteria as possible can help in ensuring that decisions are applied equitably.

However, if you do believe the adverse information is relevant to your ability to offer employment or volunteer positions to this person, be sure that this action is not going to violate state or federal laws. Specifically, the school should:

- Apply the same standards to everyone, regardless of their race, national origin, color, sex, religion, disability, genetic information (including family medical history), or age. If you are going to reject an applicant based on what is in their background check, you must do so for anyone with a similar finding in order to ensure that persons are treated equally.
- Be cautious when employment decisions based on background problems might be more common among people of a certain race, color, national origin, sex, or religion; among people who have a disability; or among people age 40 or older. For example, schools should not use a policy or practice that excludes people with certain criminal records if the policy or practice significantly disadvantages individuals of a particular race, national origin, or another protected characteristic, and does not accurately predict who will be a responsible, reliable, or safe employee.

Should the school conclude that it must reject a candidate (or a current employee) due to an adverse background check there are some steps that the school must take:

- 1. Pre-Adverse Action Letter:** Provide disclosure and send a notice to the candidate or employee before taking action. A “pre-adverse action letter” serves as a notice to the candidate/employee that their completed background check has resulted in findings that are grounds for denying a job or dismissing a current employee. This notice should provide the candidate/employee with the information obtained in their background check and is intended to provide the candidate with the opportunity to respond to any information the report contains. It should also provide both a copy of the background check as well as a summary of the candidate/employee’s rights.
- 2. Waiting Period:** Provide a reasonable waiting period. The school must provide the candidate/employee a chance to provide clarifying information to either explain the findings in the report or potentially correct the record. No specific waiting period is defined by law, but generally 5-7 days is considered a reasonable time period.
- 3. Notice of Adverse Action:** Review the report results again. Consider any response or corrections the school is provided. If the school still must reject the candidate, provide a notice of adverse action. This notice must clearly inform the candidate/employee of their power to dispute the school’s decision as

well offer them another copy of their report at any point within 60 days of the notice. The notice also needs to state that the hiring decision was made by the school and not any company that conducted the background check.

### **What Does Your Authorizer Need to Know?**

Specifically related to Board Member candidates, the school must certify to Osprey Wilds within (10) business days of receipt the Board or potential Board member background check that the background check has been completed **and** whether or not the background check contained adverse information. You do not have to disclose what the adverse information is or whose background check returned adverse information. However, you may need to certify that it does not preclude the individual from completing their job or volunteer duties.

### **Policy Regarding Background Checks**

Your school is required to have a policy regarding background checks, and you are also required to notify parents and guardians annually regarding the policy. Specifically, MN §123B.03 Subd. 1(e) states:

At the beginning of each school year or when a student enrolls, a school hiring authority must notify parents and guardians about the school hiring authority’s policy requiring a criminal history background check on employees and other individuals who provide services to the school, and identify those positions subject to a background check and the extent of the hiring authority’s discretion in requiring a background check.

The policy should spell out that all employees, board members, and volunteers at the school are subject to a background check as well as the procedures for obtaining background check information, how the school will use the data, and how the school will dispose of data collected. The school may use the student handbook or similar communication as the vehicle for the annual notification.

Keep in mind that any personnel or employment records made or kept by a charter school (including all application forms, regardless of whether the applicant was hired, and other records related to hiring) must be preserved for two years after the records were made, or after a personnel action was taken, whichever comes later . If the applicant or employee files a charge of discrimination, you must maintain the records until the case is concluded.

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<sup>i</sup> §1602.40 of the Code of Federal Regulations

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More resources can be found on our [website](#)