

GUIDANCE SUITABILITY FOR EMPLOYMENT PROCESS

BACKGROUND:

Education Article §9.5-414 authorizes the Maryland State Department of Education to prohibit the operator of a child care center, that is required to be licensed, from employing individuals who have committed certain criminal offenses or who have been identified as responsible for child abuse or neglect.

Child Care employees are fingerprinted for criminal history record checks using the child care facility and the MSDE Office of Child Care Regional Office authorization numbers. CJIS sends criminal history results to the child care facility and to the appropriate Regional Office daily, via a certified e-mail account. **Alerts** – criminal activity noted subsequent to initial record checks are also sent to the regional offices.

Each Regional Office saves the electronic criminal histories and maintains an electronic file of all criminal background checks received from CJIS. (See **Instructions for Saving EARL RESPONSES.**) Two electronic files (Jes2Mail_ALL REGIONS_ALL REPORTS_Oct 05 to Present, and Jes2Mail Workbook - All Regions – FY(Year) to date are maintained and updated weekly on our Google Site (<https://sites.google.com/a/maryland.gov/division-of-early-childhood-development/website-builder/child-care-licensing>) which gives a quick overview of CBC results noting “yes” or “no” in response to the existence of criminal activity. Full rap sheets are housed in the electronic email file. A legislative audit revealed the need to establish a reporting mechanism for “Alert” follow-up. Follow-up reports for each region are housed on the Google Site and are named “**Reg#_Alerts_Follow-Up.**”

COMAR 13A.16 Child Care Centers, 13A.17 Letters of Compliance and 13A.18 Large Family Child Care Homes each at .06.03 “Suitability for Employment” outlines mandatory and discretionary employment exclusions, and notification requirements.

PURPOSE:

This document provides further guidance on the process for the notification of an employment prohibition and for maintaining “Alerts” follow-up information in SharePoint.

INSTRUCTION:

I. Mandatory Employment Exclusion

A. Upon receipt of the results of a (1) criminal background check (CBC) for an applicant for employment or upon receipt of a (2) CJIS “Alert” on an employee whose respective criminal histories include any of the incidents, crimes or offenses enumerated at above referenced regulations and prior to notifying the employer:

1. Verify that the individual is an applicant for employment or an employee of the child care center (see Section III for verification process); and
2. Obtain court documents that correlate with the charge(s) and/or dispositions.

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B. If the individual is an employee of the child care center or large family child care home, immediately inform the owner/operator/director that the employee shall not be left alone with children in care until a determination is made regarding the individual's employability status.

1. **Immediately**, enter action in CCATS and forward to Chief of the OCC Licensing Branch for approval.
2. Licensing Branch Chief will forward to OAG who will determine legal sufficiency.
3. Using template supplied by OAH, draft letter notifying the applicant or employee and the employer of the decision, the reason for the decision, and information concerning the person's right to appeal the decision.
4. Forward letter to the OAG for review and approval for legal sufficiency.
5. Notify the employer to arrange for delivery of the letter and to discuss the exclusion with both the employer and employee.
6. On the arranged meeting date, hand-deliver a copy of the letter to the employee. If, for some reason, the employee does not attend the meeting, mail a copy of the letter to the employee by certified mail, return receipt requested, immediately upon return to the Office.
7. After delivery of the letter to the employer, direct the employer to promptly terminate the individual from employment or from consideration for employment.
8. If employee appeals the decision, work with OAG representative to prepare for OAH hearing.

II. Discretionary Employment Exclusion

A. Upon receipt of the results of a (1) criminal background check (CBC) for an applicant for employment or upon receipt of a (2) CJIS "Alert" on an employee whose respective criminal histories include incidents, crimes or offenses other than those enumerated at above referenced regulations; and upon receipt of the results of a (3) CPS check for an applicant or employee who has been identified as responsible for abuse or neglect of a child:

1. Contact the employer and explain that the individual in question shall not be left alone with children in care until a determination is made regarding the individual's employability status.
2. For CBC results, obtain court documents that correlate with the charge(s) and/or disposition(s).
3. For CPS results, obtain the 181 from the LDSS.

B. Assess, on the basis of the following factors, the individual's suitability for employment:

1. The job position at the center for which the individual is applying or in which the individual is currently employed;
2. The nature and seriousness of the incident, crime, or offense;
3. How long ago the incident, crime, or offense occurred;
4. The age of the individual at the time the incident, crime or offense occurred;
5. The individual's probation or parole status, if applicable; and

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6. Any other information you consider pertinent.

C. Submit your recommendation to the Chief, Licensing Branch for approval:

1. **Immediately**, enter recommendation in CCATS for approval by the Chief, Licensing Branch.
2. If approved for employment denial, draft letter notifying the applicant or employee and the employer of the decision, the reason for the decision and information concerning the person's right to appeal the decision.
3. Forward letter to the OAG for review and approval for legal sufficiency.
4. Notify the employer to arrange for delivery of the letter and to discuss the exclusion with both employer and employee.
5. On arranged meeting date, hand-deliver a copy of the letter to the employee. If for some reason, the employee does not attend the meeting, mail a copy of the letter to the employee by certified mail, return receipt requested.
6. Direct the employer to promptly terminate the individual from employment or from consideration for employment.
7. If employee appeals the decision, work with OAG representative to prepare for OAH hearing.

III. "Alert" Follow-up and Results Documentation on Google Site

- A. Upon receipt of an "Alert", verify the employment status of the individual in CCATS.
 - a. Individual end-dated – means no longer employed. No action necessary.
 - b. Individual not found in CCATS
 - i. Contact provider to obtain employment status.
 - ii. If the individual was never employed, ask the provider to submit copies of the payroll register which are dated immediately before and after the date of the Alert to verify non-employment.
 - iii. If the individual was employed and was never reported to OCC prior to leaving employment, ask the provider to submit to the Regional Office a copy of the payroll register that indicates when the employee was last paid, and the payroll register for the following pay period to verify non employment.
- B. Upon receipt of an "Alert" for an individual who is no longer employed at the respective child care facility, and was not end-dated in CCATS, the child care provider must submit to the Regional Office a copy of the payroll register that indicates when the employee was last paid, and the payroll register for the following pay period to verify non employment.
- C. Upon receipt of an "Alert" for an individual who is currently employed at the respective child care facility, initiate suitability for employment process.
- D. Attach all documentation received from the provider to the actual "Alert" and file.
- E. Document results of alert follow-up in the regional office **Reg#_Alerts_Follow-Up** file. Location: (<https://sites.google.com/a/maryland.gov/division-of-early->

[childhood-development/website-builder/child-care-licensing](#)) in the Alert Files folder. You have five (5) business days to initiate the investigation and thirty (30) days to complete it, or document all efforts made to address the alert to date in the follow-up file located on the Google Site.

- F. **These files are updated every Monday morning.** Enter the date follow-up was initiated in column H, your findings in column J, and date investigation closed in column I. “Date Initiated” means date verification activity began, i.e., CCATS party search, or phone call to the facility. (Not the date alert was given to the Licensing Specialist.)
- G. Keep your remarks brief. Simply state the results of your follow-up, i.e., *“Individual end-dated in CCATS”, “Contacted Director, employee no longer employed at facility - received appropriate copies of the payroll register to verify non employmentment”; OR “Individual employed at facility - initiated suitability for employment process (see provider file)”*. Please note that all the regional worksheets are protected except for Columns H, I and J – therefore, the only entries that can be made are those in relation to follow-up actions: Date Initiated, Findings, and Date Investigation closed.
- H. Also note all activity on the comment sheet in the provider record.
- I. Send an email no later than Tuesday of each week to the Licensing Branch Chief stating that the Alert file was checked and whether alerts were found.
- J. **DOCUMENT! DOCUMENT! DOCUMENT EVERYTHING THAT WAS DONE FOR THE THOROUGH INVESTIGATION OF ALL ALERTS!**
 - a. **ENSURE ALL DOCUMENTATION IS ATTACHED TO THE ALERT AND FILED IN THE LOCKED FILE CABINET.**
 - b. **ENSURE THAT ALL INVESTIGATION ACTIVITY IS NOTED IN THE FILE ON OUR GOOGLE SITE AND ON THE COMMENT SHEET IN THE PROVIDER FILE.**