

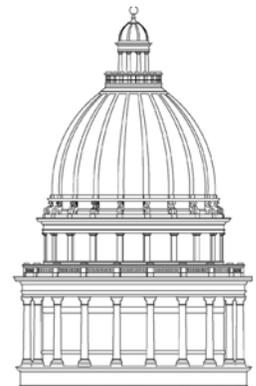
Office of the
LEGISLATIVE AUDITOR GENERAL
State of Utah

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A Performance Audit of Public Education Employees' Criminal Background Check Procedures

Our review of the criminal background checks of public education employees was concerning because we found numerous criminal convictions. For purposes of clarification throughout this report, public education employees are divided into two distinct groups, licensed educators (teachers, guidance counselors, psychologists, etc.) and classified/nonlicensed employees (custodians, teachers' aides, lunch workers, etc.). In our opinion, the current system for detecting and identifying the criminal histories of individuals employed in public schools is flawed and ineffective. Specifically, we found the following:

- A sample of approximately 1,200 individuals identified 17 current employees with concerning criminal convictions. Eleven employees had concerning criminal convictions prior to being hired, and eight individuals had concerning criminal convictions after being hired. However, two individuals had concerning criminal convictions both before and after hiring.
- We also reviewed the criminal histories of all educators who had their educator licenses suspended for inappropriate activities since 2004. At least four individuals with prior



A review of criminal background checks of public education employees found numerous concerns. In our opinion, the current system for detecting and identifying the criminal histories of individuals employed in public schools is flawed and ineffective.

criminal convictions may have retained their licenses longer than likely could have in other states. Because of criminal convictions that may occur after an individual is hired, periodic criminal background checks are needed for public education employees.

- The statutorily defined process enacted in 1999, requiring the Department of Public Safety (DPS) to maintain a database file on public education employees and notify the Utah State Office of Education (USOE) of any arrests, has never been developed and, consequently, is not working. Statutes require this database file to be funded by fees collected by the USOE, but the USOE has never requested nor paid for this database file to be developed.
- Most employees hired before 1994 who work in public schools have not had a criminal background check because these employees were only given background checks when reasonable cause existed, as per statutory language.
- Statutes and rules governing disqualifying criminal convictions are vague.

In spite of our small sample, we found 17 current education employees with concerning criminal convictions who have access to children.

Our primary concern, as is the major concern of public education officials, is the safety of the children in public schools. The fact that, in spite of our small sample of 32 schools in 4 school districts, we found 17 current education employees (both licensed educators and classified/nonlicensed employees) with concerning criminal convictions who have access to children, magnifies the issues presented in this report.

Based on our findings regarding the criminal backgrounds of some bus drivers in our *2008 Performance Audit of School Busing* (2008 busing audit), the Legislative Audit Subcommittee approved and prioritized this audit in January 2009. In the busing audit, we reviewed the criminal histories of approximately 2,700 bus drivers and found 13 bus drivers with concerning criminal histories. So in comparison, the 2008 busing audit found that 0.5 percent of drivers reviewed had concerning criminal convictions, but this audit found that 1.4 percent, or 17 out of 1,200 public school employees, have concerning criminal convictions. This percentage of 1.4 percent for

public school employees with concerning criminal convictions is almost three times greater than what was found for bus drivers.

Criminal Background Checks of Public Education Employees Present Significant Concerns

Our review of the criminal background checks of public education employees found individuals with criminal convictions involving sexual assault, indecent exposure, drugs, theft, and violence, as shown in Figures 1 and 2 of this report. Because standards are vague regarding criminal convictions which would prevent employment or raise concerns, we looked at standards used in Utah and other states to help develop policy recommendations, as will be discussed later in this report. For purposes of clarification, we considered the following convictions to be “concerning” in our findings:

- Convictions involving children
- Convictions involving sexually related crimes
- Crimes that resulted in felony convictions
- Convictions involving alcohol or drugs
- Convictions involving violence
- Multiple arrests and/or convictions, suggesting a pattern of criminal behavior.

We sampled employees from Jordan, Davis, Granite, and Salt Lake City school districts. From those four school districts, we sampled two high schools, two middle schools, and four elementary schools in each school district. From each school sampled, we requested pertinent information in order to run criminal background checks for the following sampled education employees (both licensed educators and classified/nonlicensed employees) who have access to children:

Licensed Educators

- Teachers
- Guidance counselors
- Social workers
- Psychologists

Classified/Nonlicensed Employees

- Custodians
- Paid teachers’ aides
- Secretaries
- Lunch workers

Because standards are vague concerning criminal convictions for public education employees, we looked at Utah’s statutes and statutes used in other states to develop a list of “concerning” criminal convictions.

Note that the State Board of Education has authority over licensure for licensed educators. However, the hiring and termination of classified/nonlicensed employees is determined locally.

For purposes of this audit, DPS agreed to run background checks on about 1,200 names. We eliminated the most recently hired individuals based on the assumption that these employees had a more recent background check than other employees and thus presented less of a risk. More information pertaining to our sample can be found in the appendix of this report.

Of the 1,209 current employees sampled, 49 employees or 4.1 percent, were found to have criminal histories. Of the 49 employees found to have criminal histories, 17 of these employees' criminal histories were found to be concerning, according to our earlier definition. Figure 1 identifies 11 of these individuals that had concerning criminal convictions prior to being hired while Figure 2 identifies six individuals who had concerning criminal convictions after they were hired. As previously mentioned, Figure 2 also includes two individuals who had criminal convictions both before and after hiring, so these individuals are listed in both Figures 1 and 2.

From this sample, we found that school districts have hired employees with criminal convictions that are concerning. We also found that periodic criminal background checks are needed and that statutes enacted in 1999 requiring the development of a database file for purposes of monitoring public education employees have never been developed.

School Districts Have Hired Employees With Concerning Criminal Convictions

Figure 1 illustrates current public school employees from our sample who had concerning criminal convictions prior to being hired. Figure 1 only lists the pre-employment criminal convictions that we found concerning; Figure 2 illustrates the criminal convictions that occurred after the individuals were hired. There are two individuals listed in both Figures 1 and 2 because they had criminal convictions both before and after hiring.

Figure 1. School Employees with Concerning Criminal Histories Prior to School District Hiring. Our limited review found 11 of the sampled employees had concerning criminal convictions prior to being hired.

Teachers – Licensed Employees		Year of Convictions and Conviction Description
1	Teacher	1988 – Felony Sex Assault
2	Teacher*	1980 – Indecent Exposure
3	Teacher	1979 – Aggravated Assault with Baseball Bat
Non-Teachers – Classified Employees		Year of Convictions and Conviction Description
4	Classified Employee**	1985 – Credit Card Fraud, 1986 – Felony Forgery, 1989 – Theft, 1991 – Theft, 1993 – Retail Theft
5	Assistant Custodian	1974 – Felony Burglary and Theft, 1975 – Burglary and Grand Larceny
6	Lunch Manager	1998 – Misdemeanor Drugs, 1999 – Misdemeanor Drug Paraphernalia Poss.
7	Associate Custodian	1986 – Loaded Weapon in Vehicle, 2005 – Disorderly Conduct
8	Head Custodian*	1988 – Theft
9	Head Custodian	1981 – Cultivating a Controlled Substance
10	Custodian	1996 – Vehicle Burglary
11	Secretary	1992 – Financial Transaction Card Offense

*Also convicted of a crime after being hired.

**Individual has an outstanding warrant for failure to appear in court.

As shown in the above figure, criminal convictions included felony sex assault, indecent exposure, aggravated assault, theft, and drugs. We also found that the classified employee with multiple convictions for fraud, forgery, and theft also has an outstanding warrant for failure to appear in court. A secretary’s 1992 conviction for financial transaction fraud, is unique when compared to the other concerning convictions shown in the figure. This conviction was listed because the employee was also arrested in 2000 but not convicted, and this employee may or may not have access to financial records in the course of the job. Due to this criminal history, having access to financial records would be a cause for concern.

All three teachers and some of the classified/nonlicensed employees shown in Figure 1 were hired prior to 1994 when background checks began to be required, as will be discussed later in this report. We visited two sampled school districts that employ 13 of the 17

From our sample of 1,200 current education employees, we found that school districts have hired 11 individuals with concerning criminal convictions.

We visited two sampled school districts that employ 13 of the 17 employees identified in Figures 1 and 2 and found that only 3 out of these 13 identified individuals ever had a criminal background check run on them.

employees identified in Figures 1 and 2 and found that only 3 out of these 13 identified individuals ever had a criminal background check. The three individuals who had a background check are all listed in Figure 1: the lunch manager, the associate custodian, and the custodian convicted of vehicle burglary.

Periodic Criminal Background Checks Are Needed

As we found in the 2008 busing audit, criminal background checks are needed after a period of employment has passed. From our small sample, we found licensed educators and classified/nonlicensed employees who had been convicted of concerning offenses after being hired. As will be discussed later in this report, the only type of background check that is currently required is the pre-hiring check. Figure 2 illustrates the concerning convictions identified in our sample that occurred *after* the employees were hired.

Figure 2. School Districts Have Retained Employees with Criminal Convictions After Being Hired. With the exception of the two individuals who were convicted of crimes both before and after hiring (marked with an *), our limited review found that six individuals had relatively clean criminal histories before being hired, but had concerning criminal convictions after being hired.

From our sample of 1,200 current education employees, we found that school districts have retained eight individuals with concerning criminal convictions. Two individuals had criminal convictions before and after being hired.

Teachers – Licensed Employees		Year of Convictions and Conviction Description
*	Teacher	1989 – Misdemeanor Sex Solicitation
1	Teacher	2008 – Simple Assault
Non-Teachers – Classified Employees		Year of Convictions and Conviction Description
2	Head Custodian	1993 – Criminal Trespass, 2002 – Assault, 2005 – Interfering with Legal Arrest
3	Head Custodian	1994 – Possession of a Controlled Substance, 1994 – Possession of Drug Paraphernalia
4	Custodian	1995 – Resisting an Officer and Disorderly Conduct, 1997 – Misdemeanor Class A & B Drug Possession
5	Custodian	1996 – Misdemeanor Drugs
*	Head Custodian	2008 – Felony Wanton Destruction of Wildlife
6	Head Custodian	1994 – Criminal Trespass, 1994 – Burglary of a Vehicle

*Also convicted of a crime before being hired.

The two individuals who had both pre-hiring and post-hiring convictions included a teacher who was convicted of misdemeanor sex solicitation after being hired and also convicted of indecent exposure before being hired. The head custodian convicted of felony wanton destruction of wildlife after being hired was also convicted of theft before being hired. Background checks at predetermined time intervals after the initial hire date will help ensure that school districts are not employing individuals with criminal convictions that should preclude them from working in public schools.

Audit Review of Individuals with Suspended Licenses Also Supports Need for Periodic Background Checks and Self-Reporting Requirements. In addition to the approximately 1,200 current employees sampled, we also ran criminal background checks on all educators who have had their licenses suspended or revoked since 2004. Most of the criminal convictions found from this review were related to the reasons the individuals had their license suspended or revoked, with some exceptions. From those suspended/revoked licenses we found the following concerning examples:

- In 2005, one educator's license was suspended for reporting to work under the influence of legal and illegal controlled substances, but the educator had also been convicted of assault in 1994.
- In 2007, one educator's license was suspended for a second felony DUI, but prior to the 2007 conviction, this educator was convicted of DUIs in 1997 and 1998. Additionally, in 2004, the educator was convicted of interfering with arrest and simple assault and then convicted of a felony DUI in 2006.
- In 2008, one educator's license was suspended for a felony DUI. Prior to the 2008 conviction, the educator was also convicted of two prior DUIs in 2004 and 2005, and failure to stop at the command of police in 2005. The 2005 convictions of DUI and failure to stop at the command of police occurred while the educator was a chaperon at an after-hours school event. The educator left during the course of the event and had no children in the vehicle. The educator was driving under the influence of alcohol and, when pulled over by the police, the educator got out of the vehicle and attempted to flee.

In addition to the individuals identified in Figures 1 and 2 of this report, at least 4 individuals retained their educator license longer than they likely should have because of criminal convictions.

We believe that the occurrences listed in this report reveal a need for school districts to perform periodic background checks on all public education employees who work in public schools.

- In 2008, one educator's license was revoked for abusing prescription drugs and creating an unsafe learning environment because of the drug abuse, but this educator was also convicted on federal charges of bank fraud in 1997 and 1998.

We believe the above situations reveal a need for school districts to perform periodic background checks on all public education employees who work in public schools. This recommendation is consistent with the recommendation made in the 2008 busing audit regarding school bus drivers. Currently, the USOE is working on a rule that would require a licensed educator to notify his or her employer following an arrest. We agree with this concept of self-reporting, but think that it should be required for all public education employees who work in schools and not just licensed educators. While self-reporting is a step in the right direction, it will not ensure effectiveness unless it is followed up with periodic background checks.

The practice of self-reporting followed by periodic background checks is important. In the 2008 busing audit, we found that it is a common practice for school districts to rely on their drivers to self-report when they receive a moving violation. But we also found that a system reliant only on drivers informing school districts when incidents occur is a system bound to fail if the school districts do not check drivers' motor vehicle records.

Our recommendation is also consistent with what two western states are currently doing and one western state is currently working on. Arizona requires criminal background checks to be run on all public education employees every six years. Colorado currently requires information regarding all public education employees to be submitted to their bureau of investigation each year. The bureau of investigation then updates the list of all public education employees and notifies school districts of the arrest details if an employee is arrested. Oregon is currently working on a system that would allow school districts to know immediately if an employee commits an offense.

We recognize that there is a financial cost to the school districts or school employees for periodic criminal background checks, but the costs can be minimized by only requiring name checks on periodic reviews while still doing fingerprint checks on initial hires. Costs associated with periodic background checks are sufficiently offset by

ensuring the safest possible learning environment for children and by possibly avoiding the potential lawsuits that could be associated with a school district employing individuals with concerning criminal histories. Periodic background checks help ensure that school districts are aware of the criminal histories of those that they employ to work with and around children. In the past, education and the Department of Public Safety (DPS) have not taken the necessary steps to ensure that individuals working in public schools are considered safe. This is evident by the fact that a 1999 statutory requirement to create a database file for the monitoring of education employees has not been developed.

Statutorily Required Notification Process In Utah Has Never Been Developed

Utah Code 53A-3-410(4)(ii) stipulates that the DPS is to maintain a file of fingerprints submitted by public education (USOE and school districts) and notify the USOE of any new entries made against a person regarding:

- (A) any matters involving an alleged sexual offense;
- (B) any matters involving an alleged felony or class A misdemeanor drug offense; or
- (C) any matters involving an alleged offense against the person under Title 76, Chapter 5, Offenses Against the Person.

While we did not review the DPS in this audit, an official for DPS stated that this statutorily required database file for education employees has never been created. According to officials from both the USOE and DPS the database file was never developed because of miscommunication between both departments. We were informed that a USOE attorney who was a key figure in helping develop the language for this legislation passed away and both DPS and the USOE somehow lost sight of the database requirements stipulated in the *Utah Code*.

We could find no clear audit trail to document the reason for both departments losing sight of this important database file. It is clear to us that the USOE never contacted DPS inquiring about the results of the database file during the past ten years. Likewise, DPS has never

Costs associated with periodic background checks are sufficiently offset by ensuring the safest possible learning environment and by possibly avoiding potential lawsuits.

The statutorily required database file for the monitoring of all education employees has never been created by DPS or funded by the USOE even though the statute was enacted in 1999.

contacted the USOE inquiring about funding to pay for the database file that the DPS is statutorily required to maintain. Consequently, the miscommunication between both departments continued since the statute was enacted in 1999. Officials now tell us that both the USOE and DPS are working closely to activate the system and to include all public education employees regardless of assignment or length of time employed.

There is a one-time charge of \$5 per individual to be stored on this database file and, statutorily, this fee is to be paid by the USOE. *Utah Code* 53A-3-410(4)(a)(iii) states:

The cost of maintaining the separate file shall be paid by the State Office of Education from fees charged to those submitting fingerprints.

Clearly, the USOE and DPS need to work together to ensure that this notification process is developed and is working as required by *Utah Code*. We therefore recommend that the USOE work with DPS and verify that the database file is created and is accomplishing its intended purposes. While we recognize that there will be up-front costs to develop this database file, the USOE has been collecting fees from licensed educators. Regardless of costs, this database file is important as it may further protect children. Therefore, the USOE and DPS should be ensuring that this statutorily defined process is working as intended.

Rules Governing Background Checks of Public Education Employees Need to Be Strengthened

The Legislature should consider strengthening the *Utah Code* by requiring individuals hired before 1994 to have a criminal background check. While we recognize that there will be a financial cost to these background checks, the Legislature could consider requiring them to be spread out over several years in order to reduce the financial impact on education in any one year. Additionally, those offenses that prevent teacher licensure and the employment of other individuals in public schools should be revisited. Strengthening the language found in the *Utah Administrative Rules* pertaining to criminal offenses that prevent employment in public education will aid the Utah Professional

The statutorily required database file appears to have been enacted to protect children, thus the USOE and DPS should ensure that it is created and working.

Practices Advisory Commission (UPPAC) and school districts in ensuring that those individuals employed in public education are considered safe.

Legislature Should Consider Requiring Education Employees Hired Before 1994 to Have a Criminal Background Check

Regardless of hire date, all public education employees working in public schools should be required to submit fingerprints for a criminal background check. *Utah Code* governs who receives background checks in Utah upon hire. Currently, *Utah Code* requires an initial background check for all licensed teachers and potential employees hired after 1994. The Legislature may want to consider requiring school districts to run criminal background checks on existing employees who were hired before the passage of statutes that require this check. If an employee was hired before 1994, typically a background check has not been performed. These employees were already employed when the statute took effect, and the statute allows local discretion pertaining to reasonable cause on whether or not a background check should be performed on these individuals. *Utah Code 53A-3-410* reads:

(1) A school district superintendent or the superintendent's designee:

(a) shall require a potential employee or a volunteer who will be given significant unsupervised access to a student in connection with the volunteer's assignment to submit to a criminal background check as a condition for employment or appointment; and

(b) where reasonable cause exists, may require an existing employee or volunteer to submit to a criminal background check.

Public education employees hired before 1994 were only given background checks when reasonable cause existed. The USOE informed us that to have done otherwise may have given rise to legal challenges where reasonable cause did not exist or was in question. Thus, in order to correct this concern, the statute should be revised, giving authority to the USOE and the school districts to affirmatively require criminal background checks on all existing employees, regardless of hiring date. While we recognize that there will be a

Every individual working in public schools should be subject to a criminal background check regardless of when they were hired.

Based on our sample, some individuals hired before 1994 have continued to work in public schools despite having concerning criminal convictions.

financial cost to these background checks, the Legislature could consider requiring them to be spread out over several years in order to reduce the financial impact on education in any one year.

As previously mentioned, during our review of the personnel records of 2 sampled school districts, we found only 3 out of 13 employees identified as having concerning convictions (shown in Figures 1 and 2) had criminal background checks run on them. The other individuals were hired prior to the passage of the law and have continued employment without having a background check completed. We found that at least two western states have ensured or are in the process of ensuring that all public education employees have had a criminal background check. This includes individuals who were hired prior to the passage of laws that require criminal background checks for public education employees.

Statute and Rules Governing Disqualifying Convictions Should Be Strengthened

In addition to strengthening the *Utah Code* by requiring criminal background checks for employees hired before 1994, the Legislature and the State Board of Education should consider strengthening the *Utah Code* and *Utah Administrative Rules* that determine which convictions disqualify employment in public education. Currently, rules governing drug and alcohol offenses and some sexually related offenses for teachers are clearly defined; however, statutes and rules governing other violent or dangerous convictions remain unclear. We also found that statutes and rules governing convictions that should prevent employment for both licensed educators and classified/nonlicensed employees are vague.

Because statutes and rules differ for licensed educators and classified/nonlicensed employees, the two are discussed separately below. Some states have clear guidelines that prevent the hiring or retention of individuals who have been convicted of certain crimes. In our 2008 busing audit, we cited the standards that list the criminal convictions precluding an individual from being a bus driver. We found that the qualifications for school bus drivers in Utah appear clearer and stricter than they are for individuals who work in public schools.

Some Standards Are Provided for Licensed Educators Regarding Criminal Convictions, but More Clarity Is Needed.

The Utah Professional Practices Advisory Commission (UPPAC) sets standards of professional performance, competence, and ethical conduct for educators holding licenses issued by the State Board of Education. This is the commission that conducts investigations on licensed teachers or those seeking licensure. If criminal background checks reveal concerning convictions or if an educator commits a criminal offense while employed in the public education system, UPPAC provides a hearing for the employee. UPPAC then makes recommendations to the State Board of Education on whether a license should be suspended or revoked, or no action should be taken.

Utah Administrative Rule R686-101 and 102 clearly defines how UPPAC is to handle drug and alcohol convictions. It provides minimum conditions and actions if an individual is convicted of a drug and/or alcohol offense. While these rules provide some clear guidance, the standard by which other types of criminal offenses are to be handled is unclear.

Listed in Figure 3 is the current statutory language that provides criteria for UPPAC and the State Board of Education to follow in regards to teacher licensure. While this statute provides some guidance, it is vague in that it only states which criminal convictions are to be considered in making licensure decisions.

While administrative rules addressing drug and alcohol convictions are clear, less guidance is provided for other criminal convictions.

Figure 3. Utah Code 53A-6-401(4) Licensing and Background Checks. *Utah Code* 53A-6-401(4) provides some guidance to UPPAC when an employee is considering licensure, but the statute is vague in that listed criminal convictions and/or offenses are to be considered.

In preparing recommendations concerning licensing for submission to the board, the office **shall consider** only the following matters obtained through fingerprint checks to the extent that they are relevant to the license sought by the applicant:

- a) convictions;
- b) any matters involving an alleged sexual offense;
- c) any matters involving an alleged felony or class A misdemeanor drug offense;
- d) any matters involving an alleged offense against a person as defined in "Title 76 Chapter 5 [*Offenses Against the Person*];"
- e) any matters involving a felony;
- f) any matters involving a class A misdemeanor property offense alleged to have occurred within the previous three years; and
- g) any matters involving any other type of offense, if more than one occurrence of the same type of offense is alleged to have taken place within the previous eight years.

The only further specific guidance is given in *Utah Code* 53A-6-501, which states that a license shall be permanently revoked of someone who is:

- convicted of a sexual offense against a child under Title 76, Chapter 5, Part 4, Sexual Offenses, against a minor child, or
- engages in sexually explicit conduct, as defined in Section 76-5a-2, with a student who is a minor, or engages in sexually explicit conduct with a student who is not a minor and enrolled in the school where the person is employed.

The *Utah Code* and *Utah Administrative Rules* are vague when tying specific actions to specific criminal convictions.

The *Utah Code* and *Utah Administrative Rules* are vague when tying specific actions to specific criminal convictions. Statutes governing teacher licensure, found in *Utah Code* 53A-6-501, prevent an individual who engages in or is convicted of sexual misconduct with a minor or student from obtaining or retaining a license. An individual may also be refused a license for other behavior that the board finds irremediable, but what behavior is considered irremediable is unclear. The *Utah Code* clearly states that convictions and certain offenses only have to be considered, but action is not required. For example, statute states that felony convictions be considered, but there are very few conditions, as mentioned above, that would categorically prevent

licensure. There is also no rule or statute that provides specific details on how other violent, dangerous, or felony convictions are to be handled or which additional convictions prevent a teacher from obtaining or retaining a license.

Utah Administrative Rule 277-515, entitled “Utah Educator Standards,” provides a framework for what is unacceptable for educators. However, the rule states that listed offenses “shall result in discipline,” but licensing discipline is defined as:

sanctions ranging from an admonition, a letter of warning, a written reprimand, suspension of license, and revocation of license, or other appropriate disciplinary measures, for violation of professional educator standards.

We believe that this rule should include specific penalties, including license revocation or suspension if certain convictions occur. A similar rule should be extended to all public education employees, preventing those with certain convictions from working in public education, thus providing a framework for UPPAC and school districts in licensing and employing individuals with criminal histories.

Audit Review of Recent UPPAC Actions Highlights the Need For More Clarity. The lack of clear rules pertaining to who can and cannot receive a license is concerning because of the potential for these individuals to have very close, unsupervised access to children. While UPPAC may approve a license for a potential educator, school districts make hiring decisions after conducting their own criminal background check on a potential employee. The lack of clarity in statute and rules can create situations where UPPAC will recommend and the State Board of Education will approve a license for an individual that some school districts may not employ. In our review, we found that UPPAC recently approved two individuals for licensure that raise potential concerns:

- One person was recently approved for licensure who was convicted in 2007 of a third-degree felony, child abuse/neglect. Even though this conviction was later expunged in 2008, there are still concerns because this person was convicted of a crime that involved violence and a child. There is no clear rule

UPPAC recently approved two individuals for licensure that highlight the need for more clarity in the Utah Code and Utah Administrative Rules.

A flaw in the current system is that UPPAC may recommend to the board that an individual be licensed that a school district may not employ.

regarding how felony child abuse should be handled by UPPAC.

- Another person, recently approved for licensure, was convicted of writing prescriptions illegally, and is seeking licensure six years after this felony charge and one year after a theft conviction. Again, no clear rule regarding licensure exists that can be applied to these convictions.

A concern that was raised through our interviews with school districts is that UPPAC is recommending that educators be licensed under the assumption that they would be fully vetted by the hiring school district. However, one school district human resource director told us that if UPPAC approves individuals for licensure, then the potential employees believe that they are acceptable for employment, which potentially sends an unclear message to these individuals. The current chair for UPPAC informed us:

There are no rules that articulate what decisions should be made about certain cases. The rules are clear for alcohol-related convictions, but what about other crimes like lewdness or child abuse?

A clear rule defining the criteria for public education employees would aid both UPPAC and the school districts in providing clear criteria to deny or offer employment and licensure.

The State Board of Education is responsible for licensing teachers and revoking licenses, when necessary for certain offenses, on the recommendation of UPPAC. In a January 2004 newsletter, UPPAC stated:

Teachers have a duty to be a role model to their students and a teacher who is arrested for a violation of a criminal law is unfit to stand before a classroom of adolescents as a model of acceptable behavior.

UPPAC has stated that abiding by state law is simply part of the educator's job.

UPPAC states later in the newsletter that "abiding by state law is simply part of the educator's job." However, there are no clearly defined rules which enforce this idea that teachers should be held to a high standard as role models. In addition to strengthening the rules regarding criminal convictions that prevent licensed educators from

working in public schools, the State Board of Education should also consider strengthening rules for classified/nonlicensed individuals.

Disqualifying Criminal Convictions for Classified/Nonlicensed Individuals Are Determined Locally. Statutes governing criminal convictions that preclude a classified/nonlicensed individual from working in public schools are also vague. *Utah Code* 53A-3-410 states:

The superintendent, local school board, or their counterparts at a private school shall consider only those convictions which are job-related for the employee, applicant, or volunteer.

Unlike licensed educators whose ability to retain a license is reviewed by UPPAC, school districts are responsible for the investigation and subsequent actions taken against a classified/nonlicensed individual. The only guidance that statutes and rules provide to school districts regarding criminal convictions is that job-related convictions may preclude employment in a classified/nonlicensed position.

For classified/nonlicensed employees, administrative rules addressing limits on employment for criminal activity also need to be developed. If an offense involves drugs or alcohol, school districts should be required to apply *Utah Administrative Rule* 686-101 and 102, which provides minimum conditions and actions when an individual is convicted of a drug and/or alcohol offense. However, offenses involving violence, child abuse, or other crimes are not specifically addressed. As mentioned previously, *Utah Code* 53A-4-410(5) mentions that convictions which are job related should be considered by the superintendent or hiring entity. However, further guidance concerning what convictions prevent the hiring or retention of classified/nonlicensed employees by school districts is needed.

Some States Have Clear Guidelines That Prevent the Hiring or Retention of Employees with Certain Criminal Convictions. We believe that Utah should develop stronger standards dictating who is allowed to work in public schools, as some other states have done. For example, Arizona has two categories of offenses that must be considered when an employee is hired in public education. Offenses in the first category automatically prevent an individual from employment. If an individual has committed an offense from the

For classified/nonlicensed employees, administrative rules addressing limits on employment for criminal activity also need to be developed.

We believe that Utah should develop stronger standards dictating who is allowed to work in public schools, as some other states have done.

Statutes in Arizona clearly identify criminal convictions that prevent employment in public schools.

second category, however, he or she can still be considered for a position but must provide a petition to the hiring entity explaining the conviction. Based upon the petition, the hiring entity will decide whether or not the person should be employed by the school district. Convictions that prevent employment in Arizona schools include the following:

- Sexual assault
- Child abuse
- Molestation
- Furnishing harmful items to minors
- Production, publication, sale, possession and presentation of obscene items
- First- or second-degree murder
- Pandering

Examples of offenses that require a petition for clearance for employment in Arizona schools include the following:

- Manslaughter
- Endangerment
- Assault
- Theft
- Arson
- Robbery
- Forgery
- Indecent exposure
- Concealed weapon violation

While Arizona's statutes address all public education employees, Colorado's statutes only address licensed educators. Colorado statutes state that licenses, endorsements, and authorizations will be revoked, suspended, or denied in the following circumstances, as commission of said offense renders the holder unfit to perform the services authorized by his or her license, endorsement, certificate or authorization.

- Felony child abuse conviction
- Crime of violence
- Felony offense involving unlawful sexual behavior
- Felony offense involving domestic violence

Oregon statutes list similar offenses to those listed in Colorado law that prevent employment of teachers in public education. Idaho statutes prevent individuals convicted of crimes that involve children from obtaining or retaining a license. Wyoming and Nevada statutes state that the board *may* revoke a license upon the conviction of a felony or other crimes. In these instances, restraints are similar to those found in the *Utah Code* in determining the outcome of a teacher who has committed a felony.

Rules Governing School Bus Drivers Appear Stricter and Clearer than Rules Governing Employment in Public Schools. It also appears that the qualifications are stricter and clearer for Utah's bus drivers than they are for licensed teachers and classified/nonlicensed employees who work in public schools. Figure 4 cites Utah's bus driving standards.

Figure 4. State Standards List Criminal Convictions That Prevent a Person from Being a Bus Driver. The following list is to be used by school districts to screen people who are seeking employment as bus drivers.

A check will be conducted to determine if an applicant has a record of criminal convictions. No person shall be employed or retained as a school bus operator in Utah who has been **convicted** of any of the following offenses:

- (a) A crime involving violence or threat of violence (assault/battery, etc.).
- (b) Driving any vehicle while under the influence of intoxicating liquor within the last 10 years.
- (c) Driving while under the influence of habit-forming or illegal drugs during their lifetime.
- (d) Leaving the scene of an injury/accident or manslaughter with a motor vehicle.
- (e) A crime involving the use of a motor vehicle in conjunction with a fatality and/or felony.
- (f) A sex offense crime involving force or minors.

Current rules that prevent an individual from being a bus driver in Utah are more comprehensive and stricter than the rules for individuals who work in public schools.

The 2008 busing audit found that these rules cited in Figure 4, when compared to other states, need to be strengthened. However, while current rules addressing convictions that prevent a person from being a bus driver in the state of Utah are less comprehensive than that of other states, the current rules for bus drivers are still more comprehensive and stricter than the rules for individuals who work in public schools.

To summarize, there are rules in place governing how employees are to be handled if the situation involves alcohol and drugs; however, the rules for crimes such as child abuse, violent crimes, or dangerous behavior are unclear for both licensed educators and classified/nonlicensed employees. There is a clear need for strong standards for public education employees in regards to all types of criminal convictions. Therefore, we recommend that the Legislature and the State Board of Education strengthen existing statutes and rules pertaining to criminal background checks and criminal convictions that prevent an individual from working in public schools.

Furthermore, as shown in Figures 1 and 2 of this report, our small sample found 17 current employees in public schools whose criminal histories raise concerns about their employment around children. Strengthening statutes and rules that pertain to criminal convictions that should preclude employment in public schools is essential to ensuring a safe learning environment for children. It is also important that all employees who work in public schools have a criminal background check, regardless of when they were hired. We also found that the USOE and DPS need to work together to ensure that the statutorily defined database file of public education employees is created and working. Finally, periodic background checks at predetermined time intervals should be considered to ensure that school districts are aware of the criminal histories of those they employ.

Recommendations

1. We recommend that the State Board of Education consider a rule that requires periodic background checks of all public education employees at predetermined time intervals.
2. We recommend that the State Board of Education consider a rule that requires self-disclosure of all public education employees to their employers following an arrest.
3. We recommend that the USOE work with the Department of Public Safety to ensure that the statutorily required database file of fingerprints is created and that the notification process is addressed so that it is accomplishing its intended purposes.

4. We recommend that the Legislature consider requiring all current employees hired before 1994 who are working in public schools to have a criminal background check. The Legislature could consider requiring these background checks to be spread out over several years in order to reduce the financial impact on education in any one year.

5. We recommend that the State Board of Education consider strengthening the guidelines found in *Utah Administrative Rules* that preclude an individual from being employed in public schools. This rule should extend to both licensed educators and classified/nonlicensed individuals.

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Appendix

Size of sample in relation to criminal convictions found suggests problems with undiscovered criminal convictions. As mentioned throughout this report, the number of criminal convictions found when compared to the relatively small size of our sample suggests there may be a problem with undiscovered criminal convictions in public education. Listed below in Appendix Figure 1 is the information pertaining to sample sizes in the four school districts that were sampled.

Appendix Figure 1. Only About 3.5 Percent of Employees Who Work Primarily in Public Schools Were Sampled in Four School Districts.

The fact that our relatively small sample produced the number of convictions identified in Figures 1 and 2 of the report suggests there may be an issue with the current system of detecting and identifying the criminal histories of individuals working in public schools.

District	School Employees	Sample Size	Percent Sampled
Salt Lake	3,400	267	7.9 %
Jordan	15,876	328	2.1
Granite	6,617	341	5.2
Davis	8,729	273	3.1
TOTALS	34,622	1,209	3.5 %

Our sample size included only individuals who work primarily in the schools from these four school districts. Individuals who work primarily in the district offices were not included.

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Agency Response

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UTAH STATE OFFICE OF EDUCATION

Leadership...Service...Accountability

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March 30, 2009

Mr. John M. Schaff
Auditor General
W315 Utah State Capitol Complex
PO Box 145315
Salt Lake City, UT 84114-5315

Dear Mr. Schaff:

Thank you for allowing me to review the Exposure Draft of *A Performance Audit of Public Education Employees' Criminal Background Check Procedures* (Report No. 2009-08). The audit raises important concerns. I will work with the Utah Legislature and the Utah State Board of Education to take immediate action to bring definition and clarity to rules governing background checks for all public education employees.

Specifically, and in tandem with Legislative statutory changes, we will:

1. Consider a rule that requires periodic background checks of all public education employees, regardless of hiring date, at predetermined time intervals. This will be for both certified employees (for which the Board has licensure power) and for classified employees (who are hired and screened in local districts and charter schools).
2. Consider a rule that requires self-disclosure of all public education employees to their employers following an arrest for certain offenses.
3. Immediately establish a DPS file of fingerprints for all public education employees, regardless of hiring date.
4. Improve and create language that strengthens guidelines that will preclude an individual from being employed or remaining employed as a public education employee should the individual commit certain criminal offenses.

Student safety is goal number one in operating public schools in Utah. We will continue in our efforts to ensure child safety with increased diligence and clarity as we attend to the recommendations of this audit.

Sincerely,



Dr. Patti Harrington
State Superintendent of Public Instruction