

WAC 67-16-040 Department of services for the blind—Background check requirements for employees, applicants, volunteers and student interns.

(1) The executive director of the department of services for the blind shall conduct background checks on all employees in covered positions and applicants under final consideration for a covered position. A covered position is one in which a person will or may have unsupervised access to vulnerable participants or potential participants with vision disability. These participants or potential participants may also have other disabilities, such as developmental disabilities or mental health disabilities. Employees and applicants shall authorize the executive director of the department of services for the blind to conduct a background check.

(2) The requirement for background checks shall include the following:

(a) Any employee seeking a covered position because of a reduction in force, reallocation, transfer, promotion or demotion.

(b) Any applicant prior to appointment into a covered position, except when appointment is made on a conditional basis under subsection (7)(b) of this section.

(3) A background check will be conducted on the final preferred candidate prior to appointment.

(4) The executive director of the department of services for the blind shall use the results of a background check solely to determine the character, competence and suitability of a person for a covered position. The background check information shall consist of:

(a) A fingerprint check using a complete Washington state criminal identification fingerprint card.

(b) Conviction records, pending charges, and disciplinary board final decisions (if applicable).

(c) Evidence that substantiates or mitigates convictions, pending charges, and disciplinary board final decisions including, but not limited to:

(i) The employee or applicant's background check authorization and disclosure form;

(ii) The employee or applicant's age at the time of conviction, charge, or disciplinary board final decision;

(iii) The nature and severity of the conviction, charge, or disciplinary board final decision;

(iv) The length of time since the conviction, charge, or disciplinary board final decisions;

(v) The nature and number of previous offenses; and

(vi) The relationship between the nature of the conviction, pending charge, or disciplinary board final decision and the duties of the employee or applicant.

(5) A permanent employee with a background check disqualification may voluntarily resign, or be subject to disciplinary action in accordance with WAC 357-40-010.

(6) Interim measures that may be used while the executive director explores availability of actions (not to exceed thirty calendar days except in cases where there are investigations of pending charges):

(a) Voluntary use of accrued vacation, exchange, and/or compensatory time.

(b) Authorized leave without pay, if there is no paid leave available, or if the employee chooses not to use paid leave.

When considering the above actions, the agency will consider the least restrictive means necessary to prevent unsupervised access.

(7) The executive director of the department of services for the blind shall:

(a) Notify employees and applicants that a background check is required for covered positions;

(b) Develop procedures specifying when employees and applicants may be hired on a conditional basis pending the results of a background check; and

(c) Develop policies and procedures pertaining to background checks;

(d) Provide the employee/applicant with the results of the background check in writing;

(e) Notify employees of their promotional register rights when they have been separated from their position, either voluntarily or involuntarily due to a background disqualification.

(8) Failure to authorize the executive director of the department of services for the blind to conduct a background check disqualifies an employee or applicant from consideration for any covered position including an employee's current covered position.

(9) An applicant for a covered position who is denied employment due to a disqualifying finding, shall be given the right to request a review of the decision by the executive director.

Requests for review must be in writing and received by the executive director within fifteen calendar days of the postmark date of the notification or date of hand-delivery.

(10) Permanent nonrepresented employees may appeal to the personnel resources board in accordance with RCW 41.06.170 and rules promulgated thereunder including WAC 357-52-010. Represented employees may appeal to the Washington state federation of state employees under the terms of the collective bargaining agreement.

(11) Nothing in this rule shall limit the department of services for the blind executive director's use of other authorities to conduct background checks.

(12) Information pertaining to background checks is confidential and shall be used solely for the purpose of determining the character, suitability and competence of the applicant and/or employee. Access to background check information shall be limited to only those individuals processing the information for the department. Misuse of background check information is a criminal offense and may result in prosecution and/or disciplinary action as provided under WAC 357-40-010.

(13) The department of services for the blind will pay the costs associated with the background checks for current employees, applicants, volunteers, and student interns.

[Statutory Authority: P.L. 113-128 and 34 C.F.R. Part 361. WSR 18-14-101, § 67-16-040, filed 7/3/18, effective 8/3/18. Statutory Authority: RCW 74.18.123. WSR 10-19-081, § 67-16-040, filed 9/16/10, effective 10/17/10. Statutory Authority: Chapter 74.18 RCW. WSR 04-12-029, § 67-16-040, filed 5/26/04, effective 7/1/04.]