Sec. 1. DEFINITIONS

"Criminal history clearinghouse" ("Clearinghouse") means the electronic clearinghouse and subscription service established by the Department of Public Safety ("DPS") to provide criminal history record information to persons entitled to receive that information and to provide updates to such information. A person who is the subject of the criminal history record information requested must consent to the release of the information. *Gov't Code 411.0845(a), (h)*.

"Criminal history record information" (the "CHRI") means information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions. The term does not include:

(A) Identification information, including fingerprint records, to the extent that the identification information does not indicate involvement of the person in the criminal justice system; or

(B) Driving record information maintained by the department under Subchapter C, Chapter 521, Transportation Code.

Gov't Code 411.082(2).

"National criminal history record information" ("NCHRI") means criminal history record information obtained from DPS under Government Code Chapter 411, Subchapter F, and the Federal Bureau of Investigation (the "FBI") under Government Code 411.087. *Education Code 22.081(2)*.

Sec. 2. CERTIFIED PERSONS

The State Board for Educator Certification (the "SBEC") shall review the NCHRI of a person who has not previously submitted fingerprints to the department or been subject to a national criminal history record information review who is an applicant for or holder of a certificate and who is employed by or is an applicant for employment by Midland Academy Charter. *Education Code 22.0831(b), (c)*.

Sec. 3. NONCERTIFIED EMPLOYEES

This section applies to a person who is not an applicant for or holder of a certificate from the SBEC and who, on or after January 1, 2008, is offered employment by:

1. Midland Academy Charter; or
2. A shared services arrangement, if the employee's or applicant's duties are or will be performed on school property or at another location where students are regularly present.

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For noncertified employees of Midland Academy Charter or a shared services arrangement hired before January 1, 2008, see Section 7 (All Other Employees) below.

a) ***Information to DPS and the Texas Education Agency (the "TEA")***

Before or immediately after employing or securing the services of a person subject to this section, Midland Academy Charter shall send or ensure that the person sends to the DPS information that the DPS requires for obtaining NCHRI, which may include fingerprints and photographs.

Midland Academy Charter shall provide the TEA with the name of a person to whom this section applies. The TEA shall examine the CHRI of the person and notify Midland Academy Charter if the person may not be hired or must be discharged under Education Code 22.085.

b) ***Employment Pending Review***

After the required information is submitted, the person may begin employment, but that employment is conditional upon the review and acceptability of that person's CHRI by Midland Academy Charter and by the TEA. If Midland Academy Charter or the TEA makes a determination that the employee or applicant is ineligible for employment, the employee must be terminated.

c) ***Criminal History***

Midland Academy Charter shall obtain all CHRI that relates to a person subject to this section through the Clearinghouse and shall subscribe to the CHRI of that person. Midland Academy Charter may require the person to pay any fees related to obtaining the CHRI.

Education Code 22.0833; 19 TAC 153.1109(d).

Sec. 4. SUBSTITUTE TEACHERS

This section applies to a person who is a substitute teacher for Midland Academy Charter or a shared services arrangement. For purposes of this policy, a "substitute teacher" is a teacher who is on call or on a list of approved substitutes to replace a regular teacher and has no regular or guaranteed hours. A substitute teacher may be certified or noncertified.

a) ***Information to DPS and TEA***

Midland Academy Charter shall send or ensure that a person to whom this section applies sends to the DPS information required for obtaining NCHRI, which may include fingerprints and photographs.

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Midland Academy Charter shall provide the TEA with the name of a person to whom this section applies. The TEA shall examine the CHRI and certification records of the person and notify Midland Academy Charter if the person:

1. May not be hired or must be discharged as provided by Education Code 22.085; or
2. May not be employed as a substitute teacher because the person's educator certification has been revoked or is suspended.

b) *Employment Pending Review*

After the required information is submitted, the person may begin employment, but that employment is conditional upon the review of that person's CHRI by Midland Academy Charter and by the TEA. If Midland Academy Charter or the TEA makes a determination that the employee or applicant is ineligible for employment, the employee must be terminated.

c) *Criminal History*

Midland Academy Charter shall obtain all CHRI that relates to a person to whom this section applies through the Clearinghouse. Midland Academy Charter may require the person to pay any fees related to obtaining the CHRI.

Education Code 22.0836; 19 TAC 153.1101(5), 153.1111(d).

Sec. 5. STUDENT TEACHERS AND VOLUNTEERS

This section applies to:

1. A person participating in an internship consisting of student teaching to receive a teaching certificate; and
2. A volunteer or person who has indicated, in writing, an intention to serve as a volunteer with Midland Academy Charter.

a) *Criminal History*

A person may not perform any student teaching or volunteer duties until:

1. The student teacher or volunteer has provided to Midland Academy Charter a driver's license or another form of identification containing the person's photograph issued by an entity of the United States government; and
2. Midland Academy Charter has obtained from the DPS all CHRI that relates to the student teacher or volunteer. Midland Academy Charter may also obtain CHRI relating to a student teacher or volunteer from any other law enforcement agency, criminal justice agency, or private consumer reporting agency.

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Midland Academy Charter may require a student teacher or volunteer to pay any costs related to obtaining the CHRI.

b) ***Exception***

The criminal history requirements above do not apply to a person who volunteers or is applying to volunteer with Midland Academy Charter if the person:

1. Is the parent, guardian, or grandparent of a child who is enrolled in Midland Academy Charter;
2. Will be accompanied by a Midland Academy Charter employee while on a Midland Academy Charter campus; or
3. Is volunteering for a single event on Midland Academy Charter campus.

Education Code 22.0835.

Sec. 6. COORDINATION OF EFFORTS

Midland Academy Charter may coordinate with the TEA, the SBEC, and a shared services arrangement as necessary to ensure that criminal history reviews are not unnecessarily duplicated. *Education Code 22.0833(h)*.

Sec. 7. ALL OTHER EMPLOYEES

Midland Academy Charter shall obtain CHRI that relates to a person who is not subject to a NCHRI review and who is an employee of:

1. Midland Academy Charter; or
2. A shared services arrangement, if the employee's duties are performed on school property or at another location where students are regularly present.

Midland Academy Charter may obtain the CHRI from:

1. The DPS;
2. A law enforcement or criminal justice agency; or
3. A private consumer reporting agency.

Education Code 22.083(a), (a-1), (c); Gov't Code 411.097.

Sec. 8. CONFIDENTIALITY OF CRIMINAL HISTORY RECORDS

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CHRI that Midland Academy Charter obtains from the DPS, including any identification information that could reveal the identity of a person about whom the CHRI is requested and information that directly or indirectly indicates or implies involvement of a person in the criminal justice system:

1. Is for the exclusive use of Midland Academy Charter; and
2. May be disclosed or used by Midland Academy Charter only if, and only to the extent, disclosure is authorized or directed by a statute, rule, or order of a court of competent jurisdiction.

For purposes of these confidentiality provisions, "criminal history record" information does not refer to any specific document provided by the DPS, but to the information contained, wholly or partly, in a document's original form or any subsequent form or use.

Midland Academy Charter or an individual may not confirm the existence or non-existence of CHRI to any person who is not eligible to receive the information. *Gov't Code 411.084.*

CHRI obtained by Midland Academy Charter, in the original form or any subsequent form, may not be released to any person except the individual who is the subject of the information, the TEA, the SBEC, or by court order. The CHRI is not subject to disclosure under Government Code Chapter 552 (Public Information Act).

A Midland Academy Charter employee may request from the Human Resources Department a copy of any CHRI related to that employee that Midland Academy Charter has obtained from the DPS. Midland Academy Charter may charge a fee to provide the information, not to exceed the actual cost of copying the CHRI. *Gov't Code 411.097(d), (f).*

Midland Academy Charter generally will not print out CHRI, unless necessary for conducting a review of records or if seeking legal advice concerning eligibility for employment following receipt of a CHRI report.

Any Midland Academy Charter employee who violates confidentiality protocols concerning access to, review of, or confidentiality of CHRI is subject to discipline, up to and including termination.

a) *Destroying CHRI*

Midland Academy Charter shall destroy CHRI obtained from the DPS on the earlier of:

1. The date the information is used for the authorized purpose; or
2. The first anniversary of the date the information was originally obtained.

Gov't Code 411.097(d)(3).

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This process also applies if it is necessary to print out CHRI.

Sec. 9. CONFIDENTIALITY OF CHRI INFORMATION

Midland Academy Charter may not release information collected about a person in order to obtain CHRI, including the person's name, address, phone number, social security number, driver's license number, other identification number, and fingerprint records, except:

1. To comply with Government Code Chapter 22, Subchapter C (criminal records);
2. By court order; or
3. With the consent of the person who is the subject of the information.

In addition, the information is not subject to disclosure under Government Code Chapter 522 (Public Information Act). Midland Academy Charter shall destroy the information not later than the first anniversary of the date the information is received. *Education Code 22.08391*.

Sec. 10. SBEC NOTIFICATION

The Superintendent or designee shall promptly notify the SBEC in writing by filing a report with the TEA staff within seven calendar days of the date the Superintendent obtains or has knowledge of information indicating that an applicant for or holder of a certificate issued by the SBEC has a reported criminal history and Midland Academy Charter obtained information about the educator's criminal record by a means other than by the DPS.

"Reported criminal history" means information concerning any formal criminal justice system charges and dispositions. The term includes arrests, detentions, indictments, criminal information, convictions, deferred adjudications, and probations in any state or federal jurisdiction. *Education Code 22.087; 19 TAC 249.14(d), .3(43)*.

Sec. 11. DISCHARGE OF CONVICTED EMPLOYEES

a) *Discharge Under Education Code 22.085*

In accordance with Education Code 22.085, Midland Academy Charter shall discharge or refuse to hire an employee or applicant for employment if Midland Academy Charter obtains information through a CHRI review that the employee or applicant has been:

1. Convicted of or placed on deferred adjudication community supervision for an offense for which a defendant is required to register as a sex offender under Code of Criminal Procedure Chapter 62; or
2. Convicted of:

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a. A felony offense under Title 5, Penal Code, if the victim of the offense was under 18 years of age at the time the offense was committed; or
b. An offense under the laws of another state or federal law that is equivalent to an offense under item 1 or item 2(a).

However, Midland Academy Charter is not required to discharge or refuse to hire an employee or applicant if the person committed an offense under Title 5 Penal Code and:

1. The date of the offense is more than 30 years before:
   a. June 15, 2007 in the case of a person employed by Midland Academy Charter as of that date; or
   b. The date the person's employment will begin, in the case of a person applying for employment with Midland Academy Charter after June 15, 2007; and
2. The employee or applicant for employment satisfied all terms of the court order entered on conviction.

b) ***Discharge Under Education Code 12.120 and 19 TAC 100.151***

Additionally, in accordance with Education Code 12.120 and 19 TAC 100.1151, an individual may not be employed by Midland Academy Charter if he or she:

1. Has been convicted of any felony or a misdemeanor involving moral turpitude;
2. Has been convicted of any offense listed in Education Code section 37.007(a); or
3. Has been convicted of an offense listed in the Code of Criminal Procedure section 62.001(5).

c) ***Exception***

Notwithstanding the foregoing, a person may be employed in any position by Midland Academy Charter if a school district could employ the person in that position and the TEA approves of the employment pursuant to Education Code section 12.1059. *Education Code 12.120; 19 TAC 100.1151(b)*.

d) ***Certification to TEA***

Each school year, the Superintendent or designee shall certify to the Commissioner of Education that Midland Academy Charter has complied with the above provisions.

e) ***Optional Termination***

Midland Academy Charter may discharge an employee if it obtains information of the employee's conviction of a felony or misdemeanor involving moral turpitude that the employee did not disclose to the SBEC or Midland Academy Charter.

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Sec. 12. NOTIFICATION OF ARRESTS, INDICTMENTS, CONVICTIONS, AND OTHER ADJUDICATIONS

A Midland Academy Charter employee shall notify his or her Principal or immediate supervisor within three calendar days of any arrest, indictment, conviction, guilty or no contest plea, or other adjudication of the employee for any felony offense or misdemeanor offense involving moral turpitude and/or:

1. Crimes involving Midland Academy Charter property or funds;
2. Crimes involving attempt by fraudulent or unauthorized means to obtain or alter any certificate or permit that would entitle any person to hold or obtain a position as an educator;
3. Crimes that occur wholly or in part on Midland Academy Charter property or at a school-sponsored or school-related activity; or
4. Crimes involving moral turpitude, which include:
   a. Dishonesty, fraud, deceit, theft, misrepresentation;
   b. Deliberate violence;
   c. Base, vile or depraved acts that are intended to arouse or gratify the sexual desire of the actor;
   d. Acts constituting public intoxication, operating a motor vehicle while under the influence of alcohol, or disorderly conduct; or
   e. Acts constituting abuse under the Texas Family Code.

Sec. 13. DISCRIMINATION BASED ON CRIMINAL HISTORY

Except as required by state or federal law, Midland Academy Charter does not prohibit employment or refuse to consider an application for employment solely on the grounds that an applicant/employee has a prior criminal record. Midland Academy Charter does not prohibit employment or refuse to consider an application for employment based solely on the grounds that the applicant/employee has been arrested. It is the policy of Midland Academy Charter, prior to any exclusion of an applicant for employment or continued employment of an employee that has a criminal record, to conduct an individualized assessment of the criminal conduct at issue. In conducting such an assessment, Midland Academy Charter shall carefully consider the following in order to determine that any exclusion based on criminal conduct is job related to the position in question and consistent with the business necessity of Midland Academy Charter:

- The nature and gravity of the offense or offenses;
- The time that has passed since the conviction and/or completion of the sentence;
- The nature of the job held or sought.

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Midland Academy Charter shall consider the additional information provided by the applicant/employee that demonstrates that the criminal conduct is not job related and is consistent with business necessity of Midland Academy Charter prior to making any final determination. Such additional information may include:

- The facts or circumstances surrounding the offense or conduct;
- The number of offenses for which the individual was convicted;
- Age at the time of conviction, or release from prison;
- Evidence that the individual performed the same type of work, post-conviction, with the same or a different employer, with no known incidents of criminal conduct;
- The length and consistency of employment history before and after the offense;
- Rehabilitation efforts, e.g., education/training;
- Employment or character references regarding fitness for the particular position;
- Whether the individual is bonded under a federal, state or local bonding program.

Sec. 14. CONSUMER CREDIT REPORTS

a) ***Definitions***

"Adverse action" includes a denial of employment or any other decision for employment purposes that adversely affects any current or prospective employee.

"Consumer report" includes any information from a consumer reporting agency that is used or expected to be used as a factor in establishing the person's eligibility for employment.

"Consumer reporting agency" is an agency that, for monetary fees, dues, or on a cooperative nonprofit basis, regularly assembles or evaluates consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties.

"Employment purposes" when used in connection with a consumer report means a report used for the purpose of evaluating a person for employment, promotion, reassignment, or retention as an employee.

15 U.S.C. 1681a.

b) ***Obtaining Consumer Credit Reports***

Midland Academy Charter may not procure a consumer report for employment purposes unless:

1. Midland Academy Charter has provided the applicant or employee a written disclosure that a consumer report may be obtained for employment purposes; and

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2. The applicant or employee has authorized in writing the procurement of the consumer report.

c) ***Adverse Action***

Before taking any adverse action based on the consumer report, Midland Academy Charter shall provide the applicant or employee a copy of the consumer report and a written description of the person's rights under the Fair Credit Reporting Act, as prescribed by the Federal Trade Commission.

15 U.S.C. 1681b(b)(2).

d) ***Discrepancies in Address***

The Superintendent or designee shall develop and implement reasonable policies and procedures designed to enable Midland Academy Charter, when it receives a notice of address discrepancy, to form a reasonable belief that a consumer report relates to the consumer about whom it has requested the report. The Superintendent or designee shall also develop and implement reasonable policies and procedures for furnishing an address for the consumer, which Midland Academy Charter has reasonably confirmed is accurate, to the consumer reporting agency. *16 CFR 641.1*.

e) ***Disposing of Consumer Credit Report Records***

Midland Academy Charter must properly dispose of a consumer report by taking reasonable measures to protect against unauthorized access to or use of the information. "Dispose" includes discarding or abandoning the consumer report, or selling, donating, or transferring any medium, including computer equipment, upon which the consumer report is stored.

Examples of reasonable measures include:

1. Burning, pulverizing, or shredding papers containing a consumer report so the information cannot practicably be read or reconstructed;
2. Destroying or erasing electronic media containing a consumer report so that the information cannot practicably be read or reconstructed; or
3. After due diligence, entering into and monitoring compliance with a contract with another party engaged in the business of record destruction to dispose of the consumer report.

16 CFR 682.3.

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