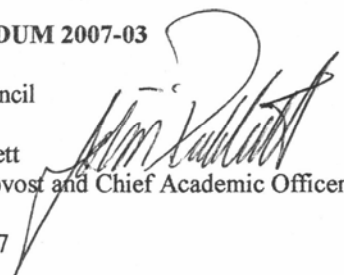




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PROVOST'S MEMORANDUM 2007-03

TO: Provost's Council
FRIN: John F. Pritchett
University Provost and Chief Academic Officer
DATE: August 3, 2007
SUBJECT: **Academic Appointment Background Checks**

A handwritten signature in black ink is written over the "FRIN:" line and extends into the "DATE:" line. The signature appears to be "John F. Pritchett".

PURPOSE:

To provide a formal process for background checks of finalists for academic appointments: permanent and visiting faculty administrators and regular faculty (ranked faculty in tenured and tenure-track positions; instructors; faculty on multi-year appointments; librarians; research appointments), as well as adjuncts and those on courtesy appointments.

PROCEDURE:

An applicant, as part of the application form, will be asked to self-disclose any felony or misdemeanor convictions or convictions of other crimes involving sex offenses, minors, violence, drugs, or misappropriation of funds. The application form is maintained by the Office of Human Resources and will be kept in strict confidence by the University, to the extent legally possible.

At the point of offering an academic appointment, the applicant will be informed that the offer is contingent on a criminal background check for review by the University that may be conducted by a vendor. The background check will be limited to convictions only; arrests will not be reported to the University. The University will focus on felony convictions and convictions of crimes involving sex offenses, minors, violence, drugs, or misappropriation of funds. Background check information will be conveyed to the University for review by the Associate Provost of Academic Personnel. This information will be kept in strict confidence by the University, to the extent permitted by law.

Applicants will be informed of any findings of concern and be given the opportunity to verify and respond to them. In determining whether an offer is to be rescinded as a result of any finding based on the self-disclosure or background check, the Associate Provost of Academic Personnel, in consultation with the dean, department chair/head, and/or school director, as appropriate, will consider context

factors including job relatedness, the seriousness of the crime, the time elapsed since the conviction, and evidence of rehabilitation.

Recommendations to rescind an offer of appointment based on the self-disclosure or background check will be reported to the Provost.

JFP/ev

Cc: Frank Brogan, President
Kenneth Jessell, Vice President of Financial Affairs
Larry Glick, Associate General Counsel
Dennis Crudele, Associate Vice President of Financial Affairs
El pagnier Hudson, Director of Human Resources

Background checks: Questions and Answers

Is FAU alone in considering background checks for academic appointments?

No. The Big Ten schools have signed an agreement with an outside vendor to provide them a group rate for background checks of their employees. Criminal background checks are conducted on new employees at an increasing number of universities, including James Madison University, the University of Arizona, the University of Iowa, the Pennsylvania State University and the University of Kentucky. At most of these schools the policy is primarily directed at new hires, although some are requiring checks when an employee changes a position or if a source subsequently reveals a potential job-related criminal history. State legislatures have begun to mandate background checks for faculty appointments. The policy at the University of Kentucky was triggered by a new state law designed to toughen standards for sex- and violent-crime offenders. The Board of Regents of the University System of Georgia is considering a system-wide policy that would apply to all newly hired faculty and staff in the thirty-five school system. In Florida, New College, the University of Florida and the University of West Florida are currently conducting background checks and other public universities are working on policies and procedures. Currently at FAU, faculty in the Christine E. Lynn College of Nursing undergo background checks and faculty in the College of Education must undergo background checks if they have responsibilities in a K-12 school setting (Jessica Lundsford Act).

Do other institutions require self-disclosure of criminal background?

Yes. In addition to those required by schools mandating background checks, some form of background disclosure is required by such schools as Michigan State, Purdue, and Temple. In Florida, most public universities have a criminal background self-disclosure question as part of the application for all employees.

Do background checks for faculty, even if they have begun at other universities, unfairly single out faculty in higher education?

That is a hard case to make. According to a January 20, 2004 article in *The Wall Street Journal*, "A recent survey by the Society for Human Resource Management in Alexandria, Virginia, found that about 80% of companies performed criminal background checks on potential employees in 2003, up from 51% in 1996." Pressures for accountability have increased markedly in all areas in recent years, and higher education is not immune to those pressures. Applicants for elementary and secondary education positions are required to agree to background checks, as are an increasing number of applicants in business, health care and the human services. It makes sense to try and protect students, faculty and staff if we can.

Might we be able to argue that the difference is, the faculty members we hire are so well vetted by the time they receive their advanced degrees and are so well-known by their professional colleagues, that we wouldn't expect that any serious past criminal activity that we didn't already know about would be discovered through background checks?

Experience tells us that this is not always the case. There are several high profile cases across the country that have received a great deal of national and local press. There was a case at Penn State involving a faculty member hired four years earlier who had been convicted of committing a triple-murder. Several years ago, a local community college instituted retroactive criminal background checks when it was discovered that an instructor had an involuntary manslaughter conviction for the shooting death of his girlfriend.

Are faculty positions the only academic appointments subject to self-disclosure statements and background checks?

No, they would apply to all academic appointments, including all faculty administrators (provost, associate provosts, deans, chairs, directors).

Are academic appointments the only ones subject to disclosure statements and background checks?

For at least the last 10 years, all applicants have been asked to disclose whether they have been convicted of any criminal activity, and background checks have been employed in a number of units in the University. FAU students also must self-disclose criminal background information prior to admission. Since January 2005 all new AMP, SP and OPS employees have undergone criminal background checks. FAU employees would be treated similarly in this respect.

Will current faculty members be subject to background checks?

No, the policy will apply only to faculty applicants at the point of making a conditional offer of employment. Adjunct faculty members who are currently teaching with us will similarly not be required to undergo these checks.

Will all applicants for academic positions undergo background checks?

No, only the applicant being made an offer will undergo the background check, with the offer being contingent on the background check.

What if the selected applicant refuses to give consent for a background check? Will this affect the consideration for hire?

Yes. While the applicant will be given the opportunity to explain this decision, the Dean, and the Associate Provost for Academic Personnel, in consultation with the Provost, may recommend rescinding the offer.

Won't the need for a disclosure form and background check slow the process of making an appointment, perhaps at the cost of a department being able to make the hire? How intrusive will this be?

We intend the process to be unintrusive as possible. Only at the point of an offer being made, when the applicant will have to submit some other paper work, will he or she be asked to go on line and fill out the consent form for a background check. Our vendor should convey the results of its check, which only involves a check of public records for limited information, within 24 hours. In special cases where a faculty placement needs to be made before the University receives the background information from the vendor, the department chair/school director, after receiving approval from the Associate Provost of Academic Personnel, can place the faculty member into the classroom immediately (as might be necessary with an adjunct appointment), with only the applicant's self-disclosure form on file. This placement may only be made after the applicant agrees in writing that continued employment remains contingent upon the results of the background check.

Just what will be looked for in the background check? Won't the very process of doing the checking be intrusive? What prevents the background check from revealing additional information that applicants would not want to be revealed about them?

The University and its vendor will do no more than check records for convictions of crimes, not arrests. Specifically, the University will look for felony convictions and convictions of other crimes involving sexual offenses, minors, violence, drugs, or misappropriation of funds. Even if a vendor were to find any criminal information beyond convictions, we have instructed the vendor not to report it to us. No doors will be knocked on, no neighbors asked for any additional information.

Aren't such background checks violations of privacy and civil liberties?

No. These checks will be restricted to a review of public records. Moreover, no background check will be made without the applicant's consent, and applicants will be informed of any findings. The University and its vendor will follow all applicable laws.

What about errors in the background check, or extenuating circumstances?

Applicants will be given the opportunity to explain past convictions or sanctions and their circumstances on the disclosure question. All the background check does is to insure that there are no convictions for the listed offenses that they had not disclosed. If there are such convictions, to insure that there is no mistake, no action will be taken without giving the applicant the opportunity to verify the finding and to offer any explanation. The University will abide by federal and state laws regarding background checks.

Why in addition to felonies will FAU do background checking for other convictions such as those involving sexual offenses?

FAU wants to do everything it can to insure that its faculty and students feel safe. There are a variety of offenses for sexual assault in Florida that do not rise to the level of felony, but we want to insure that if an applicant has a history of such offenses, we know about it before we decide to make an appointment.

Why is the conviction for misappropriation of funds a category of criminal activity that will be focused on by the University?

Since these checks will be made for all academic appointments, including those with budgetary responsibility (provost, associate provosts, deans, chairs, directors), it is important to know if an applicant for such positions, or faculty members who may later move into such positions, have a criminal record that involves misappropriation of funds, even if the crime did not rise to the level of a felony.

What if an applicant was only accused of one of these crimes, but was not convicted?

Applicants are not asked to disclose such information, and it would not be revealed to us in a background check since only a record of convictions will be sought.

Will there be background checks to investigate professional misconduct, harassment, or discrimination?

Background checks will not discover such actions, since they do not involve convictions that would be found in public criminal records. They may, however, be learned through the normal reference checking procedure. Departments and colleges should want to know if an applicant candidate they wish to hire has been guilty of professional misconduct, such as plagiarism or falsifying information on a grant proposal. Actions of harassment or discrimination may also be of concern to us before we make an appointment. If a faculty member at another institution was interested in making a move to FAU because his current institution had forced a separation as a result of sexual harassment, we should know about that.

Does this mean that simply because an applicant has been convicted of crimes, he or she is automatically barred from a position at FAU?

By no means does the disclosure by itself require that FAU not make the appointment. The decision for the appointment of a faculty member will be made by the dean, who is responsible for all faculty hiring decisions in consultation with the department chair/head, school director and Associate Provost of Academic Personnel.

What assurances are applicants given that any information that is found about them will be kept confidential?

The information collected by the University is from non-confidential public records. All records will be kept confidential by the University to the extent permitted by law.

What is the cost of all this, and who will pay for it? How can the University afford this initiative in difficult budgetary times?

At this time, the FAU Police Department will be conducting background checks for all prospective employees. The costs encumbered will be a central responsibility. In the long run, the cost represents inexpensive insurance against claims that could be made against us if there

are acts committed by academic employees who would not have been hired if the University had done its due diligence before making the appointment.