

UNH FACULTY SENATE
MOTION # XII-M16

Recommendations on background checks

1. Motion presenter: Jeff Salloway
2. Date of Faculty Senate discussion: 5/5/08
3. Rationale:

See the attached reports from the senate's Academic Affairs Committee and Professional Standards Committee and the 5/5/08 senate discussion on the proposed background check policy.

4. Motion:

Jeff Salloway moved that the Faculty Senate commend the work of the Professional Standards Committee and the Academic Affairs Committee, regarding background check policy, and gratefully accept the reports.

5. Senate action: passed, unanimously

Senate chair's signature: _____

Forwarded to: President Mark Huddleston, on _____, 2008

Forwarded to: Provost Bruce Mallory, on _____, 2008

Forwarded to: Interim Vice Provost Lisa MacFarlane, on _____, 2008

Forwarded to: Graduate School Dean Harry Richards, on _____, 2008

Recommendations from the Academic Affairs Committee, regarding background checks:

May1, 2008,

To: Bill Stine, Senate President
From: Lawrence Prelli,
Chair, Academic Affairs Committee
Re: Proposed Background Check Policy

The Academic Affairs Committee of the Faculty Senate has completed its review of documents relevant to the proposed background check policy. The committee supports the overall purpose and intent of the policy, but also recognizes that the American Association of University

Professors may identify issues directly related to current contractual arrangements that we did not discover. Assuming that the administration will contact and collaborate with the AAUP, we also want to elucidate several concerns of our own.

First, we are concerned about possible legal ambiguities in the criteria for interpreting the results of a background check. C 4.2.3.1 states that “candidates are automatically disqualified if they have been convicted within the past five (5) years for any felony or violent misdemeanor (crimes against persons, simple assault, sex offenses, weapons violations, child abuse, domestic violence).” The committee wondered whether automatic disqualification is legally justifiable since, presumably, the individual in question has already paid his or her debt to society. Given that we lack legal expertise, we recommend a legal review of the relationship of this policy to the individual rights of the persons applying for employment at UNH.

Second, we are concerned that this policy runs at cross purposes with the increasing trend in securing personnel through independent contractors rather than hiring staff members to work specifically for the University of New Hampshire. How do we know that independent contractors will follow procedures as rigorous as those specified in the university’s proposed policy? If Human Resources is responsible for implementing the UNH policy, who is responsible for ensuring the suitability of personnel hired from independent contractors? This concern is all the more magnified given the rapid turnover of personnel in outsourced positions. If the purpose of the background checks policy is to make sure that employees in sensitive positions are properly vetted, separate or unclear standards for hiring personnel through independent contractors might frustrate that purpose.

Third, we are concerned that the background check policy could complicate hiring adjunct, per course, instructors who may be hired as late as one week before the new semester. We wonder whether consideration should be given to hiring decisions that require timely action.

Fourth, the documents reviewed did not include information about the process of consulting with a professional organization to conduct the background checks. Are there professional standards or “best practices” in that sort of profession? If so, how do our arrangements and practices compare with those standards?

Fifth, we are concerned about ensuring confidentiality when background checks are enacted. Such concern is understandable given the sensitive nature of the information solicited. Have procedures or processes been enacted in similar situations that could mitigate that concern? Any procedures and processes for guarding confidential information that are implemented should undergo periodic review to make sure that they are used effectively.

Sixth, there is considerable ambiguity about the conditions under which faculty and graduate students could be subjected to a background check. Administrative language in the documents distinguishes between the “status positions” of professional staff and the operating staff positions of per hour wage earners. Yet the word “faculty” does not appear once in the policy document. One might conclude from reading the policy document alone that faculty members are not included in the policy. Presumably, however, this policy also applies to faculty and graduate students occupying security sensitive positions. For that reason, we recommend formulation of criteria about what constitutes “security sensitive functions” that are specific to the research,

teaching, and service efforts of faculty and graduate students. Moreover, unless those criteria are specified and examined by the AAUP, our position is that the proposal should not move forward.

Finally, the committee does not understand why the University of New Hampshire's proposed "Disclosure and Authorization Form" specifies that the candidate must undergo a credit assessment to work at UNH while applicants who sign the Arizona State University's "Faculty Consent Form" do not. Given the typical applicant, why would there be need for information beyond that provided through reference checks and criminal background checks? The "frequently asked questions" document anticipates this concern by assuring readers that they will not need a credit rating and disclosure of personal finances. We did not feel assured. The committee is seriously concerned about this matter. We do not understand why the designation "credit history and reports" is included among the resources for executing a background check.

Recommendations from the Professional Standards Committee, regarding background checks:

The Professional Standards Committee of the Faculty Senate recognizes the practical need of requiring background checks for new hires and current employees moving to positions considered sensitive. However, the committee has a number of concerns regarding the ambiguity of some elements of the policy and documentation as presented.

- We find the "Disclosure and Authorization Form" as presently written inadequate and would not recommend adopting it.
- The policy seems too comprehensive and at times vague as to who determines the appropriate level of check; where the collected information will be kept and with whom it will be shared; for how long the information would be kept; for how long the authorization would be in effect.
- Criminal, credit and other areas are lumped together and there is not a clear sense of the precise limitations of the background check.
- It is not clear to the committee why a credit check is necessary.
- We do not have enough information about how the process will extend confidentiality protections.
- While certain "Security and Safety Sensitive Positions" may indeed require scrutiny, the background check policy seems too broad. Different sensitive functions may require different authorization levels.
- Certain areas may be clear (violent criminal convictions, for example) but the policy leaves some gray areas that could be subject to abuse.
- The committee recognizes that it is already legal and common practice to do criminal background checks of the public record, and these do not need endorsement from the Senate. The extension of these checks, however, would be problematic.
- We noted that in all the documentation, there are no references to the faculty or to academic freedom.
- Very few faculty hold positions involving large financial transactions (beyond the oversight of the BSCs, that is), and while many faculty work with hazardous substances, they do so under the auspices of both departmental and university safety policies. Criminal background checks would not likely reveal any information not already gleaned through the very thorough checks that most departments perform in hiring and promoting

colleagues, and credit checks should be the rare exception, especially since the BSCs have a strong oversight role in financial transactions initiated by faculty members.

- The policy refers to a decision making process between Human Resources in consultation with departments, but there is no clear sense of who holds what information and of what competence is necessary to interpret such information.
- The committee questions why departments should be billed for these checks. If USNH mandates these policy changes, they should perhaps fund them.

Item V of the 5/5/08 Faculty Senate minutes:

V. Background check policy – The Professional Standards Committee of the Faculty Senate recognizes a practical need of requiring background checks for new hires and current employees moving to positions considered sensitive. However, the committee has a number of concerns regarding the ambiguity of some elements of the policy. The committee finds the “Disclosure and Authorization Form”, as presently written, to be inadequate and would not recommend adopting it. The policy seems too comprehensive and also vague about who will determine the appropriate level of check, where the collected information will be kept, with whom it will be shared, for how long the information will be kept, and for how long the authorization will be in effect. Criminal, credit, and other areas of the background check are lumped together; and there is not a clear sense of the precise limitations of the background check. It is not clear to the committee why a credit check is necessary, and there is not enough information about how the process will extend confidentiality protections. The background check policy seems too broad. Different sensitive functions may require different authorization levels. The policy leaves some gray areas that could be subject to abuse. The committee chair said that, while it is already legal and common practice to do criminal background checks of the public record and these do not need endorsement from the senate, the extension of these checks would be problematic.

The Professional Standards Committee chair said that, in all the documentation, there are no references to the faculty or to academic freedom. Very few faculty hold positions involving large financial transactions; and those are under the oversight of the Business Service Centers; and while many faculty work with hazardous substances, faculty do so under the auspices of both departmental and university safety policies. Criminal background checks would likely not reveal any information not already gleaned through the very thorough checks that most departments perform in hiring and promoting colleagues; and credit checks should be the rare exception, especially since the BSCs have a strong oversight role in financial transactions initiated by faculty members. The policy refers to a decision-making process between Human Resources in consultation with departments, but there is no clear sense of who would hold what information and of what competence would be necessary to interpret such information. In addition, the committee questions why departments should be billed for these checks. If USNH mandates these policy changes, USNH should perhaps fund them.

The Academic Affairs Committee of the Faculty Senate supports the overall purpose and intent of the background check policy but also recognizes that the American Association of University Professors may identify issues directly related to current contractual arrangements. Assuming that the administration will contact and collaborate with the AAUP, the Academic Affairs Committee also wants to elucidate a number of concerns, including possible legal ambiguities in the criteria for interpreting the results of a background check. Item C 4.2.3.1 states that “candidates are

automatically disqualified if they have been convicted within the past five (5) years for any felony or violent misdemeanor (crimes against persons, simple assault, sex offenses, weapons violations, child abuse, domestic violence).” The committee wonders whether automatic disqualification is legally justifiable since, presumably, the individual in question has already paid his or her debt to society. The committee recommends a legal review of the relationship of this policy to the individual rights of the persons applying for employment at UNH.

Second, this policy runs at cross purposes with the increasing trend of securing personnel through independent contractors rather than hiring staff members to work specifically for UNH. How do we know that independent contractors will follow procedures as rigorous as those specified in the university’s proposed policy? If Human Resources is responsible for implementing the UNH policy, who is responsible for ensuring the suitability of personnel hired from independent contractors? This concern is all the more magnified given the rapid turnover of personnel in outsourced positions. If the purpose of the background check policy is to make sure that employees in sensitive positions are properly vetted, then separate or unclear standards for hiring personnel through independent contractors might frustrate that purpose.

Third, the background check policy could complicate the hiring of adjunct, per-course instructors who may be hired as late as one week before the new semester. Consideration should be given to hiring decisions that require timely action. Fourth, the documents reviewed did not include information about the process of consulting with a professional organization to conduct the background checks. Are there professional standards or “best practices” in that sort of profession? If so, how do our arrangements and practices compare with those standards? Fifth, the committee is concerned about ensuring confidentiality when background checks are done, given the sensitive nature of the information solicited. In similar situations, have procedures or processes been enacted that could mitigate that concern? Any procedures and processes, for guarding confidential information, that are implemented should undergo periodic review to make sure that they are used effectively.

Sixth, there is considerable ambiguity about the conditions under which faculty and graduate students could be subjected to a background check. Administrative language in the documents distinguishes between the “status positions” of professional staff and the operating staff positions of per-hour wage earners. Yet the word “faculty” does not appear once in the policy document. One might conclude, from reading the policy document alone, that faculty members are not included in the policy. Presumably however, this policy also applies to faculty and graduate students occupying security-sensitive positions. For that reason, the committee recommends the formulation of criteria for what constitutes “security sensitive functions” that are specific to the research, teaching, and service efforts of faculty and graduate students. Moreover, unless those criteria are specified and examined by the AAUP, the Academic Affairs Committee believes that the proposal should not move forward.

Finally, the committee does not understand why the University of New Hampshire’s proposed “Disclosure and Authorization Form” specifies that the candidate must undergo a credit assessment to work at UNH, while applicants who sign the Arizona State University’s “Faculty Consent Form” do not. Why would there be need for information beyond that provided through reference checks and criminal background checks? The “frequently asked questions” document anticipates this concern by assuring readers that they will not need a credit rating and disclosure of personal finances, but the committee does not feel assured and is seriously concerned about this

matter. Why is the designation of “credit history and reports” included among the resources for executing a background check? A professor said that the AAUP is very concerned about this proposed policy, especially in regard to academic freedom and conditions of employment. **Jeff Salloway moved that the Faculty Senate commend the work of the Professional Standards Committee and the Academic Affairs Committee, regarding background check policy, and gratefully accept the reports. The senate passed that motion unanimously.**