

COLLEGE of CHARLESTON

OFFICIAL POLICY

8.1.5 Admitting Applicants for Enrollment with Criminal Backgrounds Policy

7/20/2016

Policy

POLICY ON ADMITTING APPLICANTS FOR ENROLLMENT WITH A CRIMINAL OR DISCIPLINARY HISTORY

1.0 PURPOSE

The College of Charleston recognizes the right of individuals to apply for enrollment at institutions of higher education that are best suited to their talents, their potential, and their aspirations for meaningful and productive lives. While the College considers Applicants for admission on the basis of merit, it must also take prudent measures to assure, insofar as practicable, that offers of admission are not extended to those individuals who present an unreasonable risk of harm to the members of the College Community or their property. It is, therefore, the purpose of this Policy to

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- (a) further the interest of the College to provide a safe and secure environment for all members of the College Community and to foster and protect their respective rights to work and learn in such an environment;
- (b) mitigate against the possibility of extending an offer of enrollment to any person that presents an unreasonable risk to the safety of the College Community or their property;
- (c) require that Applicants for admission have fully and accurately disclosed problematic behaviors and conduct that may present an unreasonable risk to the College Community;
- (d) set out procedures that are calculated to make informed determinations about risks and threats while preserving the rights of all Applicants to challenge such determinations at meaningful times and in meaningful ways; and
- (e) Provide appropriate notice of those standards and procedures that will be used by the College to make an adverse admission's decision based on an Applicant's disciplinary or criminal record, or to rescind an offer of admission if made on the basis of false, misleading or incomplete information.

2.0 DEFINITIONS

As used in the Policy the terms listed below shall have the meaning ascribed next to each:

- (a) “Admissions Office” – shall mean one or more of the following: the Office of Admissions, the Office of Transfer/Adult Admissions, the Office of Graduate Admissions, and/or the Office of Summer Sessions.
- (b) “Applicant” -- shall mean any prospective enrollee at the College who has completed and submitted an application for admission and who has paid the applicable application fee to the appropriate office of the College.
- (c) “Background Check” -- shall mean the process of requesting and obtaining one or more of the following elements of information regarding an Applicant’s personal history:
 - (1) criminal court record;
 - (2) driving record;
 - (3) disciplinary record from other education institutions;
 - (4) reference verification (character and/or professional/job references);
 - (5) National Sex Offender Record;
 - (6) any fingerprint-based criminal or security record;
 - (7) national wants and warrants;
 - (8) any OIG/GSA/DOD excluded parties list (of individuals or entities debarment or suspension from federal contracting);
 - (9) global terrorist record; or
 - (10) Military Justice System Record.
- (d) “College Community” – shall mean trustees, students, faculty, staff and invitees of the College.
- (e) “Conviction” – shall mean a criminal conviction and includes a guilty plea or plea of *nolo contendere* in any state, federal or international court.
- (f) “Criminal Record” – shall mean any crime for which there is a record of conviction.
- (g) “Decisional Authority” -- shall mean the Executive Vice President for Student Affairs and the Provost/Executive Vice President for Academic Affairs.
- (h) “Disciplinary Action” – shall mean any secondary school or institution of higher education offense or infraction of rules that prompted a disciplinary response by the school or institution (such as a reprimand, expulsion, suspension or other sanction), and includes a sanction imposed after the acceptance of responsibility by the Applicant.
- (i) “Disqualifying Crime” or “Disqualifying Disciplinary Record” – shall mean a crime or disciplinary record as defined in Section 6.0.
- (j) “Violent Crime” or "Crime of Violence" – shall mean:

- (1) a criminal offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or
- (2) any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense; or
- (3) a crime designated as a “violent crime” under S.C. Code Ann. §16-60 (see Appendix A)

3.1 APPLICANT ASSESSMENTS

3.2 Minor Offenses and Minor Disciplinary Actions

(a) If an Applicant has disclosed, or if a Background Check has reported, that the Applicant has been: (1) convicted of no more than one misdemeanor (not involving violence) within the last 4 year period; and/or (2) the subject of a disciplinary action by another school or institution within the last 4 years involving a sanction no more severe than a written reprimand and/or a suspension of no greater than 5 school days, the appropriate Admission’s Office may process the Applicant’s application for admission without making a referral to the Committee established pursuant to Section 3.2.

(b) Notwithstanding the provisions of Section 3.1(a), the Admission’s Office shall not make a favorable recommendation for the offer of admission to such an Applicant unless it has first determined that the Applicant: (1) has completed, or is likely to complete within a reasonable period of time, all conditions of parole, including restitution and other conditions of release, in the case of a crime, and all condition or sanctions, in the case of a disciplinary proceeding; and (2) does not present an unreasonable risk of harm to the College Community if such Applicant were enrolled at the College.

3.3 Applicant Safety Assessment Board

(a) There is hereby established an Applicant Safety Assessment Committee (the “Committee”) that shall be responsible for assessing and evaluating whether an Applicant’s past behavior or conduct, as evidenced by the Applicant’s criminal record and/or disciplinary history, presents a credible and unreasonable risk of harm to the College Community. The Committee may not take any directive action with respect to any such Applicant, but is authorized to make recommendations to the appropriate Admission’s Office in accordance with the provisions of this Policy. All such assessment and recommendations shall be made in a timely manner, as provided for in subsection (d) of this Section 3.2, and with due regard for such confidentiality as may be appropriate under the circumstances.

(b) The Committee that shall be comprised of those individuals occupying the following College positions:

- (1) Director of Admissions, who shall serve as the Co-Chair;
- (2) Director of Transfer/Adult Admissions;
- (3) Director of Graduate Admissions, who shall serve as the Co-Chair;
- (4) Director of Summer Sessions;
- (5) Dean of Students;
- (6) Speaker of the Faculty; and
- (6) Chief of Public Safety.

(c) The Senior Vice President for Legal Affairs, or his/her designee, shall serve as legal counsel to the Committee.

3.4 Responsibilities and Time Limitations --

(a) Each Admission's Office shall refer to the Committee all Applicants who are likely to be extended an offer for admission and who has been convicted of a crime other than a minor offense and/or have been the subject of a disciplinary action other than a minor disciplinary action.

(b) The Committee shall commence its review of a referred matter within 25 business days of receipt. To the maximum extent practicable under the circumstances, the Committee shall conclude its consideration of a referred matter within 35 business days after receipt of the referral.

(c) The Committee may consider a matter only upon the referral of an Admission's Office and such consideration shall be conducted in accord with this Policy and such provisions of law, rule or regulation as may be applicable.

(d) Each Admissions Office shall ensure that its applications for admission and relevant web sites contain adequate notice that Applicants with criminal records or disciplinary histories may be asked to undergo a Background Check as a part of the admissions process pursuant to this Policy. Such applications and web sites shall have a reference to the College's web page where this Policy is located.

3.5 Freedom of Information Act -- Meetings of the Committee shall be conducted in conformity with the South Carolina *Freedom of Information Act* (S.C. Code Ann. §30-4-10 *et seq.*) (the "Act"), and its records shall be made publicly available to the extent required by such Act, provided that, nothing contained herein shall be deemed to prohibit executive sessions of the Committee that are held in a manner and for a purpose that are consistent with the Act; nor shall anything contained in this Policy be deemed to prohibit the withholding of records that may be exempt from disclosure under the Act and/or the *Family Educational Rights and Privacy Act* (20 U.S.C. §1232g).

4.1 COMMITTEE PROCEDURES

4.2 Meetings -- Meetings of the Applicant Safety Assessment Committee shall be called by the Chairs upon such notice as the Chairs believe reasonable under the circumstances. No recommendation may be taken by the Committee except by a majority vote of all members. Voting must be in person at a meeting and may not be by proxy. If there is a tie vote of the Committee, the relevant Admission's Office shall proceed to make an admission decision on the pending matter

without the benefit of a recommendation from the Committee.

4.3 Referrals -- Upon receipt of a referred matter from an Admission's Office, the Committee may request the Applicant (either directly or through the Admission's Office) to submit such information to the Committee as may be of assistance to its deliberations and, if deemed appropriate by the Committee, require that the Applicant appear before the Committee *via* video, phone, or in person. Upon request to a Co-Chair of the Committee, the Applicant may also request that s/he be allowed to appear before the Committee. If the Committee determines that such an appearance would materially advance its deliberations, it shall agree to the request and such appearance may be *via* video, phone, or in person.

4.4 Background Checks – During the course of its deliberations the Committee may have a vendor conduct a Background Check on an Applicant and/or may use information that has been provided by the Applicant and any other source including, but not limited to, an office of the College, a local, state, or federal agency, or a foreign government or instrumentality of a foreign government. When applicable, prior to conducting any Background Check through a vendor the College will obtain a written authorization from the Applicant, as may be required by law, and will advise such Applicant that such a report may be obtained for admission purposes (see Appendix B). The cost of the vendor's report or other Background Check external to the College shall be paid by the Applicant.

4.5 No Inference -- A negative inference may not be drawn by the Applicant's decision not to provide additional information or to provide a needed consent for a vendor report. In such an event the application submitted by the Applicant shall be considered incomplete and shall not be processed any further.

4.6 Recommendations – At the conclusion of its deliberations on a referred matter the Committee may adopt one of the following three recommendations:

- (a) the Applicant be denied admission on the basis that the Applicant presents a credible and unreasonable risk of harm to the College Community and that such Applicant be declared ineligible for admission for a specified period of time or until such risk has been sufficiently mitigated;
- (b) the Applicant not be denied admission on the basis that the Applicant presents a credible and unreasonable risk of harm to the College Community;
- (c) the Applicant not be admitted unless the Applicant first undertakes specified actions reasonably calculated by the Committee to mitigate the risk to the College Community; or
- (d) the Applicant be conditionally admitted based on adequate assurances from the Applicant that s/he will consent to periodic assessments and evaluations and not engage in any violation of law or the *Student Code of Conduct*.

4.7 External Reports -- If a negative admission's decision is probable based in whole or in part on a background report from a vendor, the appropriate Admission's Office shall notify the

Applicant that such action is probable and that the Applicant may challenge the veracity and completeness of the report in an appeal conducted pursuant to Section 7.0. The Admission's Office shall include the following documents with the notification: a copy of the background check report and a copy of any documents that may be required under law, such as a "*Summary of Your Rights Under the Fair Credit Reporting Act.*"

4.8 Other Reports -- If a negative admission's decision is probable based in whole or in part on a Background Check not provided by a vendor, the Applicant shall be informed of the Committee's recommendation and the basis for the Committee's recommendation by the appropriate Admission's Office and the Applicant shall be provided an opportunity to appeal that recommendation pursuant to Section 7.0.

4.9 Use of Juvenile Offense Records – An Applicant who is 18 years of age or older, or the parents/legal guardian of an Applicant below the age of 18, may consent to make juvenile offense records of the Applicant available for review by the Committee. If the Applicant declines, the evaluation of the risk of harm shall take place without the benefit of such records. A negative inference may not be drawn by the Applicant's decision not to provide juvenile offense records.

5.1 EVALUATION FACTORS

Except as provided for in Section 6.0 (dealing with Disqualifying Crimes and Disqualifying Disciplinary actions), when determining whether an Applicant's criminal record and/or disciplinary history, presents a credible and unreasonable risk of harm to the College Community the following factors shall be taken into account to the extent applicable to the individual history of the Applicant:

- (a) The nature of the crime or misconduct;
- (b) The circumstances surrounding the crime or misconduct;
- (c) Whether violence was involved with the crime or misconduct;
- (d) The existence, number and type of other incidents of crime or misconduct by the Applicant;
- (e) Any pattern of misconduct;
- (f) The time that has elapsed since the Conviction or disciplinary determination(s);
- (g) The actions or activities of the Applicant since the date(s) of the reported crime(s) or misconduct;
- (h) The nature of the State, federal or foreign laws involved;
- (i) The institutional policies involved;
- (j) The honesty of the Applicant in disclosing and/or explaining the crime or

misconduct;

- (k) Professional opinions about the possibility or likelihood of future criminal behavior or other misconduct; and
- (l) defenses and/or mitigating circumstances asserted by the Applicant.

6.1 DISQUALIFYING CRIMES AND DISQUALIFYING DISCIPLINE

6.2 Crimes -- No person shall be admitted to the College who, within the 5 year period prior to the date of the submitted application, has been convicted of ---

- (a) a Crime of Violence;
- (b) any sex offense involving a minor;
- (c) arson;
- (d) malicious injury to real or personal property; or
- (e) any other crime that the Committee, in the exercise of its reasonable discretion, may consider to be a disqualifying crime or conduct.

6.3 Discipline -- No person shall be admitted to the College who, within the last 2 year period, has been the subject of a disciplinary action taken by a secondary school or an institution of higher education if such action involved: (a) the Applicant's expulsion or a suspension of more than 5 school days; and (b) such expulsion or suspension was due to an act of violence, sexual misconduct, significant property damage, or any other conduct that, in the exercise of the Committee's reasonable discretion, is considered disqualifying conduct.

7.1 APPEALS

7.2 Notice of Adverse Recommendation -- Before making a final decision on the admission of an Applicant based on the recommendation of the Committee, the appropriate Admission's Office shall provide written notice to the Applicant (the "Notice") and shall give the Applicant five (5) business days (the "Response Period") to respond to or challenge the Committee's recommendation and/or the Background Check on which it is based (an "Appeal"). The appropriate Admission's Office shall immediately provide copies of the Appeal to the Committee and to the Decisional Authority. Thereafter, the Committee may, at its election, prepare a response to the Appeal that it shall submit to the Decisional Authority.

7.3 Content of Appeal -- The Appeal submitted by the Applicant shall state the factual or other basis for the appeal, the relief requested, and shall provide any additional relevant information on what, if any, risk the Applicant presents for the safety of the College Community. Appeals shall be in writing and must be received by the appropriate Admission's Office within 10 calendar days of receipt of the Notice by the Applicant.

7.4 Standards of Review on Appeal -- Upon an appeal, the findings of the Admission's Office will be overturned only if the Decisional Authority determines that there was no circumstance under which a reasonable person could reach the same conclusions or opinions based on the record of deliberations.

8.1 CONFIDENTIALITY

8.2 Non-Disclosure Agreements -- All members of the Committee, and all others providing professional services to the Committee, shall be required to sign an appropriate confidentiality agreement prepared by the Office of Legal Affairs.

8.3 Confidential Information – The Committee shall maintain such records as may be necessary and appropriate to perform its responsibilities under this Policy. The Committee shall conduct its operations and maintain its records in a manner that is fully compliant with the *Privacy Policy* of the College of Charleston (<http://www.cofc.edu/policies/privacypolicy/index.php>).

Information received as the result of a Background Check shall be maintained as “confidential” and access to such information shall be restricted to employees that have a need to know such information in order to perform their respective job responsibilities. After use by the Committee, all such records and information shall be transferred to the Office of the Dean of Students and shall be maintained confidentially and securely in that Office.

9.0 DISPARATE IMPACT

Each Admission's Office shall record all admission actions (both positive and negative) taken by that Office that are based primarily on the criminal record and/or disciplinary history of its Applicants. Among other things, such records shall record the race/ethnicity, gender, and age of the Applicants. Such records shall be forwarded, at least once annually, to Office of Legal Affairs for such further analysis as may be appropriate to determine if this Policy is being administered on an equitable basis.

10.0 CONTINUING REVIEW

Upon the receipt of credible information that a current student failed to disclose, or to accurately and completely disclose, a Conviction and/or Disciplinary Action in his/her admission's application form, the College may commence such action as may be appropriate under the circumstances to rescind its offer of admission and expel the student from the College.

11.0 RESPONSIBILITY

The Dean of Students shall be responsible for the periodic review and maintenance of this Policy. Such reviews shall take place no less frequently than once during each three year period.

12.0 AMENDMENTS

This Policy may be amended at any time in accordance with the Colleges *Campus Wide Policy Making Procedures*.

APPENDIX A

§ 16-1-60. Violent crimes defined.

For purposes of definition under South Carolina law, a violent crime includes the offenses of: murder (*Section 16-3-10*); attempted murder (*Section 16-3-29*); assault and battery by mob, first degree, resulting in death (*Section 16-3-210(B)*), criminal sexual conduct in the first and second degree (*Sections 16-3-652 and 16-3-653*); criminal sexual conduct with minors, first and second degree (*Section 16-3-655*); assault with intent to commit criminal sexual conduct, first and second degree (*Section 16-3-656*); assault and battery with intent to kill (*Section 16-3-620*); assault and battery of a high and aggravated nature (*Section 16-3-600(B)*); kidnapping (*Section 16-3-910*); trafficking in persons (*Section 16-3-930*); voluntary manslaughter (*Section 16-3-50*); armed robbery (*Section 16-11-330(A)*); attempted armed robbery (*Section 16-11-330(B)*); carjacking (*Section 16-3-1075*); drug trafficking as defined in *Section 44-53-370(e)* or trafficking cocaine base as defined in *Section 44-53-375(C)*; manufacturing or trafficking methamphetamine as defined in *Section 44-53-375*; arson in the first degree (*Section 16-11-110(A)*); arson in the second degree (*Section 16-11-110(B)*); burglary in the first degree (*Section 16-11-311*); burglary in the second degree (*Section 16-11-312(B)*); engaging a child for a sexual performance (*Section 16-3-810*); homicide by child abuse (*Section 16-3-85(A)(1)*); aiding and abetting homicide by child abuse (*Section 16-3-85(A)(2)*); inflicting great bodily injury upon a child (*Section 16-3-95(A)*); allowing great bodily injury to be inflicted upon a child (*Section 16-3-95(B)*); criminal domestic violence of a high and aggravated nature (*Section 16-25-65*); abuse or neglect of a vulnerable adult resulting in death (*Section 43-35-85(F)*); abuse or neglect of a vulnerable adult resulting in great bodily injury (*Section 43-35-85(E)*); taking of a hostage by an inmate (*Section 24-13-450*); detonating a destructive device upon the capitol grounds resulting in death with malice (*Section 10-11-325(B)(1)*); spousal sexual battery (*Section 16-3-615*); producing, directing, or promoting sexual performance by a child (*Section 16-3-820*); lewd act upon a child under sixteen (*Section 16-15-140*); sexual exploitation of a minor first degree (*Section 16-15-395*); sexual exploitation of a minor second degree (*Section 16-15-405*); promoting prostitution of a minor (*Section 16-15-415*); participating in prostitution of a minor (*Section 16-15-425*); aggravated voyeurism (*Section 16-17-470(C)*); detonating a destructive device resulting in death with malice (*Section 16-23-720(A)(1)*); detonating a destructive device resulting in death without malice (*Section 16-23-720(A)(2)*); boating under the influence resulting in death (*Section 50-21-113(A)(2)*); vessel operator's failure to render assistance resulting in death (*Section 50-21-130(A)(3)*); damaging an airport facility or removing equipment resulting in death (*Section 55-1-30(3)*); failure to stop when signaled by a law enforcement vehicle resulting in death (*Section 56-5-750(C)(2)*); interference with traffic-control devices, railroad signs, or signals resulting in death (*Section 56-5-1030(B)(3)*); hit and run resulting in death (*Section 56-5-1210(A)(3)*); felony driving under the influence or felony driving with an unlawful alcohol concentration resulting in death (*Section 56-5-2945(A)(2)*); putting destructive or injurious materials on a highway resulting in death (*Section 57-7-20(D)*); obstruction of a railroad

resulting in death (*Section 58-17-4090*); accessory before the fact to commit any of the above offenses (*Section 16-1-40*); and attempt to commit any of the above offenses (*Section 16-1-80*). Only those offenses specifically enumerated in this section are considered violent offenses.

Policy Manager and Responsible Department or Office

Dean of Students

Purpose/Reason for the Policy

To protect the safety of the College Community and to foster a safe learning, living and working environment.

Departments/Offices Affected by the Policy

The Division of Academic Affairs and the Division of Student Affairs

Procedures Related to the Policy

Related Policies, Documents or Forms

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Review Schedule

Issue Date: 7/20/2016 Date of Policy Revision: 7/20/2016	Next Review Date: 10/20/2016
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POLICY APPROVAL (For use by the Office of the Board of Trustees or the Office of the President)	
Policy Number: 8.1.5	
President or Chairman, Board of Trustees	 Date: <u>7-20-16</u>