

Department of Early Learning

10.5.2

Qualification

1. An applicant must submit 10.9.2.1, Portable Background Check (PBC) Form or apply using the online MERIT/PBC application;
 - a. Within seven days of:
 - i. The date of hire or volunteering in a licensed facility;
 - ii. Residing in a licensed family home age 13 up to 16 years of age.
 - b. By the date of:
 - i. Individuals, residing in the licensed family home that turn 16 years of age;
 - ii. Individuals, 16 years of age or older whom move into a licensed family home.

Noncriminal Process For Family Home Facilities

2. The licensor will review all information, including juvenile records for character and suitability. The licensor will not disqualify an individual for a conviction under WAC 170-06-0070 (1) and (2), unless the conviction was the result of prosecution of the juvenile as an adult.

Qualification Process

Paper Application Processing Steps

3. When an applicant submits a PBC paper form to the DEL state office:
 - a. Fiscal staff will process the payment and route PBC applications to MERIT staff;
 - b. MERIT staff will:
 - i. Process the PBC form for STARs ID purposes and record the STARs ID on the PBC form; and
 - ii. Forward the PBC form to fiscal.
 - c. Fiscal staff will:
 - i. Route the PBC application to the local DEL licensing office;
 - ii. Identify unpaid applications for notification of insufficient funds (NSF) PBC applications;
 - iii. Send email/paper notification to the applicant and provider after 10 days of nonpayment from the date of the current/original PBC submission or the date of NSF notification;
 - iv. Send email/paper notification to the licensor, applicant and provider after 30 days of nonpayment from the date of PBC submission or the date of NSF notification; and
 - v. Send email/paper “incomplete application” to the applicant, provider and licensor after 45 days of nonpayment from the date of PBC submission or the date of NSF notification.
4. The local DEL licensing office will, within five business days of receipt, electronically input the PBC data into MERIT.

Department of Early Learning

5. The licensing staff will review the data entered for completion and accuracy. When the PBC form is incomplete, licensing staff will send the incomplete (rejected) applications back to the applicant as follows:
 - a. Send the reject letter from the Background Check Portal to the applicant;
 - b. Check the Background Check Portal every other day, at a minimum, for the rejected applications awaiting return;
 - c. If rejected background checks have not been returned within 10 days from the date of entry, contact the provider to check the status of the background check;
 - d. If the applicant is no longer working/living or volunteering for the provider, document this in the background check; and
 - e. After two unsuccessful documented attempts to contact the applicant to resolve the issue, the licensor will be notified;
 - i. The licensor will follow up and if applicable will complete a compliance agreement with the licensee.
 - f. For online applications, when incorrect or incomplete information is discovered, select the 'MERIT Redo' function;
 - i. Input a note into the inquiry identifying the incorrect or incomplete information;
 - ii. Send a notice to the applicant advising them of the need to correct and resubmit their application from their MERIT account.

Fingerprint Process

6. The following individuals, 16 year of age and older, will require fingerprints beginning 7/1/2012:
 - a. Individuals with no previous background check clearance by DEL in the last three years;
 - b. Individuals who live outside of Washington State;
 - c. Individuals who have lived outside of Washington State since the last background check clearance;
 - d. Individuals who have lived in Washington for less than three years from July 1, 2013 and had a previous fingerprint check; and
 - e. Individuals that have had a current background check clearance with a Clearance Date prior to 07/01/12 who has resided in WA for less than three consecutive years do not require fingerprints.
7. Fingerprint results from DSHS/ Background Check Central Unit (BCCU) may be accepted and DSHS/BCCU will send the fingerprint results to DEL.
8. DEL and DSHS based fingerprint results are valid for 45 days.
9. If a college student or other individuals apply for a background check and:
 - a. Has lived out-of-state for more than six months, a fingerprint check is required; or
 - b. Has lived out-of-state for less than six months, and has had a previous background check clearance, then a fingerprint check is not required. In the DEL Background Check Portal 'Residency Established' is selected, which will not require the applicant to obtain fingerprints.
10. When a fingerprint check is required;

Department of Early Learning

- a. The system will automatically email a Fingerprint Check Appointment Form to the applicant when there is an available email address; or
 - b. Licensing staff will send the Fingerprint Check Appointment Form by US Postal Service when an email address is not available.
 - c. The applicant is required to schedule the fingerprint appointment within 10 business days of receiving the appointment form;
 - i. If the applicant fails to schedule the appointment within the required 10 business days, licensing staff may archive the application;
 - ii. If the applicant informs licensing staff that they will not complete the required fingerprint process, the licensing staff will archive the application.
11. The FBI rap sheets are mailed to the local office by DSHS/BCCU staff. DEL staff will ensure the FBI conviction information is not shared with the licensed provider. The disqualifying letter to the licensee only states the individual “qualifies” or “disqualifies.” The FBI conviction information is shared only with the applicant by:
- a. Verbally relaying the information to the applicant; or
 - b. Writing the information in the letter to the applicant.
12. Within five business days of receiving all the results from the DSHS/BCCU to include the FBI rap sheet, the licensor will begin the process of determining if the applicant is qualified.
- a. Licensing staff will conduct a person search in FamLink.
 - b. If more information is needed from an applicant in order to make a determination, DEL staff will:
 - i. Verbally notify the applicant that additional information is needed and mail a 10.9.1.11 Request for Additional Information letter to the applicant; or
 - ii. Mail the 10.9.1.11 Request for Additional Information letter to the applicant when verbal contact is unsuccessful;
 - iii. If the requested information is not received within 10 business days of the request, licensing staff may archive the application;
 - iv. If the request for information requires the applicant to obtain additional information such as a WIN report, requiring more than 10 business days the licensor will staff the extension with the supervisor to extend beyond the 10 business days; and
 - v. When the DEL database indicates there is a “source doc” the licensor must carefully review all information. Sometimes this may mean there is additional criminal history from another state.

State Source Doc	If the information is from another state, the licensor will include the following information on the 10.9.1.11 Request for Additional Information Form as described in the table below:
Nevada and Wyoming	After the local office has received the Nevada or Wyoming fingerprint packet from DSHS/BCCU, write on the 10.9.1.11 Request for Additional Information Form the following: <ul style="list-style-type: none"> • The applicant must complete the attached fingerprint packet; and • Mail it to Nevada or Wyoming.
Oregon, Utah and Montana	The state Internet site address located in the “Source Doc” along with brief instructions that instruct the applicant to have the information sent to DSHS/BCCU.
Alaska and Idaho	No action needed-DSHS/BCCU will obtain the information electronically and add the information to the “Source Doc” when applicable.

Department of Early Learning

- vi. Review information that is received. Within five business days, the licensor will make a recommendation to the supervisor to qualify or disqualify.
 - vii. When criminal history information is received from another state and not DSHS/BCCU, send a copy to DSHS/BCCU via fax to 360.902.0292.
 - viii. WIN information is received and processed by BCCU.
 - ix. The local office must check the inquiry periodically for updated information.
 - c. Document the results in the Background Check Portal.
13. Once an applicant has been qualified, to include payment received, DEL staff will:
- a. Print the “Clearance Certificate” from the Background Check Portal, only when the applicant applied by paper;
 - b. Send the “Clearance Certificate” from the Background Check Portal, only when the applicant or licensee does not have online access. Send the information within three business days of the decision;
 - c. When multiple sites are listed the “Clearance Certificate” must be sent to the applicant and each child care facility where the individual is employed; and
 - d. Licensors will ‘verify’ the applicant’s employment status in MERIT on behalf of the licensee when the licensee does not have access to MERIT.
14. When a copy of the Washington State rap sheet is requested by:
- a. The applicant, then it is provided by the licensor; or
 - b. The licensee, then it is provided when a public disclosure request is made.
15. Applicants are disqualified for the following:
- a. Permanent convictions from the Director’s List;
 - b. Non-permanent convictions from the Director’s list if less than five years from the conviction date; or
 - c. Convictions of equivalent crimes in another jurisdiction.
16. Applicants may be disqualified for the following negative actions, including findings of:
- a. Child abuse and neglect;
 - b. Abuse, neglect, financial exploitation of a vulnerable adult; or
 - c. Pending investigations for any of the above.
17. Applicants may be disqualified if:
- a. There is a negative action that relates to character, suitability and competence to care for children. (Categories of negative actions are defined in WAC 170-06-0020);
 - b. The applicant is a subject of pending CPS investigation; or
 - c. The applicant has other (non-conviction) background issues. Examples may include:
 - i. Obtaining a license dishonestly;
 - ii. Using or abusing prescription drugs, illegal drugs or alcohol, in a manner that presents a risk to children;
 - iii. Lacking physical or mental health to meet children’s needs;
 - iv. Participating in illegal act on facility premises;

Department of Early Learning

- v. Having a previous child care license or certification suspended, revoked or denied; or
- vi. Not submitting requested materials within 10 business days.

18. When applicants are disqualified, DEL staff will:

- a. Document the results in the Background Check Portal;
- b. Verbally inform the licensee; and
- c. Within three business days of the decision complete and send:
 - i. The 10.10.7 Notice of Disqualification letter to the applicant; and
 - ii. The Disqualification letter from the Background Check Portal to the licensee and the applicant.
- d. If the disqualification is reversed through the DEL reconsideration process or the administrative hearing process, the licensor will:
 - i. Update FamLink and the Background Check Portal within three business days; and
 - ii. Complete the 10.10.17 Reconsideration Decision Notice letter within five business days when the decision is reversed through the reconsideration process.

19. FamLink requires that the background check information be documented under the background check tab for the following individuals associated with a license:

- a. Family Home:
 - i. Licensee;
 - ii. Assistants; and
 - iii. All persons residing on the premises 13 years of age or older.
- b. Center Staff:
 - i. Owner;
 - ii. Director;
 - iii. Assistant Director, if applicable; and
 - iv. Program Supervisor.

20. When payment is not received within 45 days of the PBC submission date, the application is considered incomplete and will be archived.

Processing Steps After BCCU Results Are Received

21. After BCCU results are received, the local DEL office will cross-reference the applicant against information in FamLink.

- a. If there is a match, DEL staff will note the information in the Background Check inquiry for the licensor to review. This information will be used by the licensor to make an accurate and efficient character and suitability determination.
- b. If there is no match, the applicant's background check determination will be made solely on the basis of the results of the criminal history.

22. Initially, the inquiry status will be identified as not having been paid for and will not be able to be processed beyond the 'Awaiting Payment' queue. Once payment is received, the inquiry will be able to proceed beyond the 'Awaiting Payment' queue and be able to be completed.

Department of Early Learning

Reviewing a Qualified Applicant when New Information is Received

23. When the licensor receives a report that a qualified applicant may have a recent arrest, charge, CPS investigation or other actions that may disqualify the applicant, the licensor will:
 - a. Mail the applicant 10.9.1.11 Request for Additional Information letter and a new Background Check Form;
 - b. Complete the background check process for the individual using the same procedures as a new applicant as if they were applying with a paper application;
 - i. The applicant does not have to pay for the new background check.
 - ii. Fingerprints are not required regardless of circumstance.
 - c. Verbally inform the licensee that a review of the individual has been initiated;
 - d. Determine if the qualified individual should remain on-site pending the outcome of the new background check; and
 - e. If the individual does not respond to the 10.9.1.11 Request for Additional Information letter in the time frame requested, the licensor will complete the disqualification determination using all appropriate information.

24. When an applicant applies for a background check and has been previously disqualified, including permanent disqualifications, the background check application will be processed.

DEL Reconsideration Process

25. If the applicant requests reconsideration from DEL, the licensor will inform the applicant they must complete the 10.9.2.12 Reconsideration Request, within 28 calendar days from the receipt date of the disqualification letter.

26. Upon receipt of the applicant's 10.9.2.12 Reconsideration Request, the licensor and supervisor will:
 - a. Review the existing background check information and all supporting documentation;
 - b. Review all information submitted with the 10.9.2.12 Reconsideration Request;
 - c. Request more information when needed to make an informed decision;
 - d. Verify the additional information submitted by the applicant, when needed;
 - e. Review the information to determine if the applicant is qualified to care for or have unsupervised access to children;
 - f. Complete the 10.9.1.14 Reconsideration Review Form and make a recommendation to either qualify or disqualify the applicant and forward the packet to the supervisor for review;
 - g. If disqualified, the licensor will complete and send 10.10.5 Reconsideration Decision Notice letter to the applicant within three business days of the decision. Forward denied reconsiderations to the RA; and
 - h. Forward recommendations for qualification, from the supervisor to the CCSLA, or designee for review using the 10.9.1.14 Reconsideration Review Form and existing background check information.

27. Upon receipt of the materials, the CCSLA or designee will:
 - a. Review the existing background check information and all supporting documentation;
 - b. Review the information submitted with the 10.9.2.12 Reconsideration Request;

Department of Early Learning

- c. Review recommendations;
- d. Make a final determination on the Reconsideration Request;
- e. Notify the applicant in writing of the decision within five business days:
 - i. If denied, complete and send 10.10.5 Reconsideration Decision Notice; or
 - ii. If approved, complete and send 10.10.17 Reconsideration Decision Notice-Reverse letter ; and
 - iii. Send the 10.9.1.14 Reconsideration Review form and the 10.10.5 Reconsideration Decision Notice letter to the local office to be filed with the Disqualification letter.

Hearing Process for all Disqualified Applicants

28. When an applicant from a family child care facility is disqualified from providing child care or having access to children in care following a noncriminal background check as described in WAC 170-296A-1225, the applicant has the right to appeal the department's decision under WAC 170-06-0090.
29. If an applicant chooses to request a hearing and not the DEL reconsideration process, the applicant must make a request to the Office of Administrative Hearing (OAH) and DEL the within 28 calendar days of the receipt date of the disqualification letter. When requested, the licensor will provide the 10.9.2.15 Hearing Request Form.
30. A request for reconsideration does not change the time the applicant has to request a hearing from OAH.
31. An applicant cannot withdraw a hearing request and make a request for reconsideration unless the 28 calendar day period for requesting reconsideration is still in effect.
32. If the disqualified individual is requesting reconsideration and an administrative hearing, both requests must be made within the 28 calendar days from the receipt of the letter.
33. When the reconsideration or administrative hearing process supports the disqualification, the individual may not request the other appeal process unless it is made within the 28 calendar days from the receipt of the original disqualification letter.

Definitions

Applicant – An individual who is seeking a DEL background check authorization as part of an application for a child care agency license or DEL certification or who seeks DEL authorization to care for or have unsupervised access to children in child care.

Authorized or authorization – Approval by DEL to care for or have unsupervised access to children in child care or to work in or reside on the premises of a child care agency or certified facility.

Background check - Refers to an in-depth review of an applicant's (1) criminal history background and (2) a character and suitability check which includes reviewing any child abuse and neglect allegations and (3) a review of any prior licenses held by the applicant.

BCCU – Background Check Central Unit of DSHS.

Department of Early Learning

Character, Competence, and Suitability (CCS) – The assessment of the potential personal and professional capability of an employee or applicant to work with or serve vulnerable adults, juveniles or children based on a review of crimes and negative actions.

Clear and convincing evidence – The credibility of evidence, measured with the persuasive factual nature of the evidence, would lead a reasonable person to a conclusion is highly probable or reasonably certain.

Director's List – A list of crimes, the commission of which disqualifies an individual from being authorized by DEL to care for or have unsupervised access to children in child care, WAC [170-06-0120](#).

Disqualified – DEL has determined that a person's background information prevents that person from being licensed or certified by DEL or from being authorized by DEL to care for or have unsupervised access to children in child care or live in the residence of a family home child care facility.

DSHS – Department of Social and Health Services

FBI – Federal Bureau of Investigation

Pending Charge – A charge for an offense or crime that has not been discharged by a court. A pending charge in Washington will show on a RAP sheet for only 12 months after the charge was filed if the court has not made a decision.

Negative action – A court order, court judgment or an adverse action taken by an agency, in any state, federal, tribal or foreign jurisdiction, which results in a finding against the applicant reasonably related to the individual's character, suitability and competence to care for or have unsupervised access to children in child care. This may include but is not limited to a:

- Decision issued by an administrative law judge.
- Final determination, decision or finding made by an agency following an investigation.
- Adverse agency action, including termination, revocation or denial of a license or certification.
- Pending adverse agency action, the voluntary surrender of a license, certification or contract in lieu of the adverse action.
- Revocation, denial or restriction placed on any professional license.
- Final decision of a disciplinary board.

OCA – Originating Case Agency. This is the number assigned to an individual applicant to have a background check processed.

ORI – Originating Agency Identifier. The number issued by FBI authorizing DEL to submit fingerprints for a national criminal background check on applicants who have unsupervised access to children in care.

RAP Sheet – Record of Arrests and Prosecutions

RMS- Receipt Management System- The electronic system that DEL and field offices use to receive payments.

Thumbprint – A thumbprint is requested for the applicant when additional identification is needed to verify identity for the Washington State Patrol records.

Licensing Procedure: Qualification

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Department of Early Learning

Unsupervised access – Any individual who will or may have the opportunity to be alone with a child in child care at any time for any length of time and access that is not within constant visual or auditory range of the licensee, an employee authorized by DEL, nor a relative or guardian of the child in child care.

WSP – Washington State Patrol

WIN - Western Identification Network – WIN is a company that collects criminal history information from several states and reports this information to WSP. This information may or may not be included in the FBI rap sheet.