



Conducting Comprehensive Background Checks for the Child Care Industry in Georgia

Policy Manual Policy ID # CBC-001

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1. Introduction

The Purpose of this policy manual is to provide guidance to owners, directors, and staff of Georgia's child care facilities to help them comply with Georgia law and the federal Child Care and Development Block Grant Act of 2014 (CCDBG Act). Information contained in this document deals specifically with the Georgia Department of Early Care and Learning's (DECAL) policies relating to **comprehensive background checks**.

The CCDBG Act mandated that states change the way they administer the Child Care and Development Fund (CCDF) to accomplish the following goals:

- strengthen efforts to protect the health and safety of children in care;
- help parents make informed choices about child care and access information that supports child development;
- provide equal access to stable, high quality child care for low-income families; and
- enhance the quality of child care and the early childhood workforce.

The CCDBG Act ensures that the child care industry in Georgia receives funding to meet these goals and recognizes CCDF as an integral resource to promote the healthy development of children and to support parents' pathways to economic stability.

The final rule issued by the U.S. Department of Health and Human Services in September 2016 provides details on the health and safety standards established by the CCDBG Act, which affect health and safety training, **comprehensive background checks**, and monitoring. (Office of Child Care (OCC), 2017).

The CCDBG Act requires that all employees (including prospective employees) of all licensed, regulated, or registered child care providers and all child care providers eligible to deliver services funded by the Child Care and Development Fund (CCDF) must have a **comprehensive background check**.

2. Legal Authority

42 U.S.C.S. § 9858(f)

45 C.F.R. § 98.43 (Criminal background checks)

O.C.G.A. § 20-1A-30 *et seq.*

DECAL has established this policy on comprehensive background checks for the child care industry in Georgia in accordance with requirements mandated by Georgia law, federal law, the FBI Criminal Justice Information System (CJIS) Security Policy and the Georgia Crime Information center (GCIC) Council Rules.

3. Applicability

This policy applies to (1) all Directors, (2) all Employees and (3) residents aged 17 or older of the following:

- Licensed Family Child Care Learning Homes
 - Licensed Child Care Learning Centers
 - License-exempt programs receiving CCDF Block Grant subsidy (CAPS) funds
 - Informal Caregivers receiving CCDF Block Grant subsidy (CAPS) funds
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4. Definitions

In this policy the symbols, words, and phrases shall mean the following unless the context requires otherwise:

- a. **Child Care Learning Center** or **Center** means any place operated by an individual or any business entity recognized under Georgia law wherein are received for pay for group care, for fewer than 24 hours per day without transfer of legal custody, seven or more children under 18 years of age and which is required to be licensed. Child Care Learning Center also includes any day care center previously licensed by the Department of Human Resources and transferred pursuant to Code Section 20-1A-1 *et seq.*
- b. **Child Care Provider** means any Child Care Learning Center, any Family Child Care Learning Home or any other provider of child care services for compensation and on a regular basis that is licensed or regulated under Georgia law or is eligible to receive assistance through the Georgia Childcare and Parent Services (CAPS) program.
- c. **Comprehensive Background Check** means a satisfactory or unsatisfactory determination by the department based upon the following:
 1. A Federal Bureau of Investigation fingerprint check using Next Generation Identification;
 2. A Georgia Bureau of Investigation fingerprint check using Next Generation Identification;
 3. A search of the National Crime Information Center's National Sex Offender Registry;
 4. A search of the Georgia Department of Human Services' IONS child abuse database;
 5. A search of the Georgia Sex Offender Registry; and
 6. A search of the following registries, repositories, or databases in each U.S. territory, tribal land or state where the individual resided during the preceding five years:
 - i. Criminal registry (fingerprint-based or name-based);
 - ii. Sex offender registry; and
 - iii. Child abuse database.
- d. **Conviction** means a finding or verdict of guilty or a plea of guilty or nolo contendere regardless of whether an appeal of the conviction has been sought.

- e. **Crime** means
1. Any felony;
 2. A violation of O.C.G.A. § 16-5-23, relating to simple battery, where the victim is a minor;
 3. A violation of O.C.G.A. § 16-5-23.1, relating to battery, where the victim is a minor;
 4. A violation of O.C.G.A. § 16-21-1, relating to contributing to the delinquency, unruliness or deprivation of a minor;
 5. A violation of O.C.G.A. § 16-6-1 *et seq.*, relating to sexual offenses;
 6. A violation of O.C.G.A. § 16-5-29, relating to battery of an unborn child;
 7. A violation of O.C.G.A. § 16-5-70, relating to cruelty to children;
 8. A violation of O.C.G.A. § 16-12-1.1, relating to a child care operator permitting one with an unsatisfactory background check determination to work or reside in an early care and education program;
 9. A violation of O.C.G.A. § 16-12-100, relating to obscenity involving minors;
 10. A violation of O.C.G.A. § 16-12-100.1, relating to electronically furnishing obscene materials to minors;
 11. A violation of O.C.G.A. § 16-12-100.2, relating to computer or electronic pornography and child exploitation prevention;
 12. A violation of O.C.G.A. § 16-12-100.3, relating to obscene telephone contact with minors;
 13. A violation of O.C.G.A. § 40-6-391, relating to DUI, when a child is endangered;
 14. A violation of O.C.G.A. § 19-7-5, relating to failure to report child abuse when mandated by law to report;
 15. A violation of O.C.G.A. § 16-4-1, relating to criminal attempt when the crime attempted is any of the crimes specified by this above;
 16. Child pornography;
 17. Abuse of, endangerment of or sexual assault against a child by an adult;
 18. Any other violent misdemeanor against a child by an adult; or
 19. Any other offense committed in another jurisdiction which, if committed in this state, would be one of the enumerated crimes listed in this paragraph;
 20. Any violation listed in 45 C.F.R. 98.43(c).
- f. **Criminal Record** means:
1. Conviction of a crime; or
 2. Arrest, charge, and sentencing for a crime where:
 - i. A plea of nolo contendere was entered to the charge; or
 - ii. First offender treatment without adjudication of guilt pursuant to the charge was granted; provided, however, that this division shall not apply to a violation of O.C.G.A. § 16-13-1 *et seq.*, relating to controlled substances, or any other offense committed in another jurisdiction which, if it were committed in this state, would be a violation of O.C.G.A. § 16-13-1 *et seq.* if such violation or offense constituted only simple possession; or;

3. Arrest and being charged for a crime if the charge is pending, unless the time for prosecuting such crime has expired pursuant of O.C.G.A. § 17-3-1 *et seq.*
- g. **Department** or **DECAL** means Georgia Department of Early Care and Learning.
- h. **Director** means the on-site manager of a facility, designated by the legal owner, who is responsible for the supervision, operation, and maintenance of an early care and education program and meets the minimum qualifications as determined by the Department.
- i. **Employee** means any person, other than a director or provisional employee, who
 1. is compensated by a child care program to care for children; or
 2. cares for, supervises, or has unsupervised access to children, other than his/her own, in a facility; or
 3. is 17 years of age or older and resides at the facility; or
 4. performs duties for the child care program, with or without compensation, that involve personal contact between that person and any child being cared for by the program, including but not limited to volunteers who perform consistent services for the program; or
 5. is employed by a child care program and who also has a child in care at the program; or
 6. is an independent contractor hired by the child care program to offer supplemental educational or physical activities for children in care; or
 7. is a Student-in-Training.
- j. **Family Child Care Learning Homes (FCCLH)** means a private residence operated by any person who receives therein for pay for supervision and care fewer than 24 hours per day, without transfer of legal custody at least three but not more than six children under 13 years of age who are not related to such person and whose parents or guardians are not residents in the same private residence; provided, however, that the total number of unrelated children cared for in such home, for pay and not for pay, may not exceed six children under 13 years of age at one time.
- k. **Fingerprint** means an inked fingerprint card or an electronic image of a person's fingerprint.
- l. **Informal Caregiver** means family, friend or neighbor who provides care for no more than two unrelated (or no more than six related) children for pay. Informal care givers are not required to be licensed but must register with the CAPS program. Informal care can be provided only when no other licensed care is available within a reasonable geographic area, during non-traditional hours when licensed care is not available, or if the child in care meets the definition of a child with special needs.
- m. **National Fingerprint Records Check Determination** means a determination (satisfactory or unsatisfactory) made by DECAL that is based only on FBI and GBI criminal history record information obtained by using a person's fingerprints. This determination is only valid for forty-five days.
- n. **Parent** means a person related within the second degree of consanguinity by blood or marriage, or a person with lawful custody, or a state-regulated foster parent, or a legal guardian of a child in care. For purposes of these rules, a parent shall not be considered an

employee unless such parent is deemed an employee by the child care program or resides in a facility or is compensated in any way by the program other than through appropriate state or federal funds.

- o. **Provisional Employee** means a person other than a Director who has received a satisfactory National Fingerprint Records Check Determination, whose duties involve personal contact between that person and any child being cared for at the facility, and who is required to work under constant supervision by staff with a comprehensive background check determination. An individual is eligible for provisional employment at a childcare facility only once within any five year period. This determination is only valid forty-five days.
- p. **Records Check Application** means a document created by DECAL to be completed and submitted to the Department by every actual and potential director and employee (including residents, volunteers, Students-in Training, independent contractors) of a child care program that provides information the Department deems appropriate and that authorizes the Department to receive any information from a sex offender registry, child abuse and neglect database, criminal history records and to render a National Fingerprint Records Check Determination and a Comprehensive Records Check Determination regarding the applicant.
- q. **Records Check Clearance Date** means the date upon which an individual's fingerprint report was generated, and which is noted on a Satisfactory Records Check Determination letter issued by DECAL.
- r. **Satisfactory Records Check Determination** means a written declaration that a person who received a national fingerprint or a comprehensive records check was found to have no Criminal Record.
- s. **Student-in-Training** means a student currently enrolled in either a high school recognized by the Georgia Department of Education or an early education curriculum through an accredited school of higher education that requires or permits the student to observe and participate in the care of children at a center during a limited period of time, i.e., one quarter, one trimester or one semester, provided that they are under the direct supervision of program personnel at all times.
- t. **Unsatisfactory Records Check Determination** means a written declaration that a person who received either a National Fingerprint determination or a Comprehensive Records Check determination was found to have a criminal record.
- u. **Valid Evidence** means proof of a Satisfactory Records Check Determination as follows:
 - 1. **Director, Employee and Residents** – a current satisfactory Comprehensive Background Check determination letter issued by DECAL or a current and valid court order indicating that an unsatisfactory determination made by the Department has been reversed;
 - 2. **Provisional Employees** – a current satisfactory National Fingerprint Records Check Determination letter issued by DECAL within the immediately preceding one year of the Provisional Employee's date of hire, or a current and valid court order indicating that an unsatisfactory determination made by the Department has been reversed;

5. Policy and Procedures

a. For each records check applicant the child care provider must:

1. Submit a current Records Check Application to DECAL electronically through DECAL KOALA (preferred) or by mail;
2. Register with Gemalto/COGENT for the national and Georgia fingerprint-based criminal history screening;
3. Pay the fee associated with the national and Georgia fingerprint-based criminal history screening to Gemalto/COGENT; currently this fee is paid by DECAL.
4. Fingerprint through a Gemalto/COGENT fingerprint site for the national and Georgia fingerprint-based criminal history screening;
5. Request a criminal history report from any U.S. territory, tribal land or state, other than Georgia, where the individual resided during the preceding five years and maintain evidence of the request;
6. Request a child abuse/neglect database report from any U.S. territory, tribal land or state, other than Georgia where the individual resided during the preceding five years and maintain evidence of the request;
7. Submit a signed verification form to DECAL confirming that information for out-of-state criminal history and child abuse/neglect information has been requested;
8. Ensure that the other state, territory or tribal land submits the out-of-state criminal history report directly to DECAL, Attention: Records Unit, **including the individual's name and application number**, via
 - i. Email to OutOfSate@decals.ga.gov; or
 - ii. Fax to 404-232-1999; or
 - iii. Mail to 2 Martin Luther King Jr. Drive, Suite 754, East Tower, Atlanta, GA 30334, and
9. Ensure that the other state territory or tribal land submits the child abuse/registry report directly to DECAL, Attention: Records Unit, **including the individual's name and application number**, via
 - i. Email to OutOfSate@decals.ga.gov; or
 - ii. Fax to 404-232-1999; or
 - iii. Mail to 2 Martin Luther King Jr. Drive, Suite 754, East Tower, Atlanta, GA 30334

b. For each authorizing applicant, DECAL will:

1. Search the Department of Human Services' IONS child abuse database;
2. Search the Georgia Sex Offender Registry;
3. Search the National Sex Offender Registry;
4. Search the Sex Offender Registry of any state, territory or tribal land in which the applicant resided in the past five years;
5. Review the FBI fingerprint-based criminal history using Next Generation Identification;
6. Review the GBI fingerprint-based criminal history using Next Generation Identification;

7. Review the criminal history, sex offender registry information, and child abuse history reports from other states for any applicant who has resided in a jurisdiction other than Georgia during the last five years; and
 8. Issue a National Fingerprint Records Check Determination Letter, a Comprehensive Background Check Determination letter (within 45 days of receipt of the application*) or both.
- c. **DECAL will issue an Unsatisfactory Records Check Determination Letter upon a finding of any of the following:**
1. A Criminal Record;
 2. A Criminal Record about which more information is needed;
 3. Presence on any Sex Offender Registry;
 4. Presence on the Department of Human Services' IONS child abuse database;
 5. Presence on the child abuse or neglect database of any U.S. territory, tribal land or state where the individual resided during the preceding five years; or
 6. A criminal Record from any U.S. territory, tribal land or state where the individual resided during the preceding five years.
 7. Failure or refusal to consent to the background check requirements
- d. **Appeal/Dispute Rights for Anyone Receiving an Unsatisfactory Determination Letter. Appeal/Dispute rights differ according to the finding;**
1. Presence on any Sex Offender Registry – This finding may be disputed through the reporting state* (not DECAL). No Mitigation is available through the appeal process.
 2. Presence on the Georgia Department of Human Services' IONS child abuse database – Appeals may be heard for placement on the database, however if deemed valid mitigation is not available.
 3. Presence on a child abuse or neglect database of a U.S. territory, tribal land or state other than Georgia – This finding may be disputed through the reporting state* (not DECAL). No mitigation is available through the appeal process.
 4. Presence of a criminal record on a name-based state report can be disputed with the state in which the offense allegedly occurred. To dispute the accuracy or completeness of a criminal history report the applicant must contact the criminal justice agency of that U.S. territory, tribal land or state* (not DECAL). Potential Mitigation is available through the appeal process. O.C.G.A. 10-1A-43. Mitigation is not available for any crimes enumerated in 45 CFR 98-43(c).

***If an individual is unable to resolve a dispute, an appeal through the Georgia Office of State Administrative Hearings (OSAH) may be requested; however, only the accuracy and completeness of the determination may be reviewed. Mitigation cannot be found in these matters.**

5. **Mitigation.** An unsatisfactory determination based on a conviction for a crime may be appealed in a hearing before OSAH. An unsatisfactory determination may not be reversed by the OSAH hearing office if the crime is listed in the “Unallowable Offenses” section below. An unsatisfactory determination may not be reversed by the

OSAH hearing officer if the crime is listed in the “Unallowable Offenses” section below.

- i. **Allowable Offenses:** An applicant convicted of any crime listed in this section may appeal to OSAH and *may be eligible* for mitigation, which would allow for a Satisfactory Determination Letter to be issued by DECAL. Notwithstanding the preceding sentence, an applicant is *not eligible* for mitigation while on probation for a covered crime, **or if the hearing officer finds that physical harm was done to a victim, or that the applicant shows a propensity for cruel behavior or behavior involving moral turpitude.**
 1. Any felony offense not listed in the “Unallowable Offenses” list below;
 2. A violation of O.C.G.A. § 16-5-23 (simple battery) when the victim is a minor;
 3. A violation of O.C.G.A. § 16-12-1 (contributing to the delinquency, unruliness or deprivation of a minor);
 4. A violation of O.C.G.A. Chapter 6 of Title 16 (sexual offenses);
 5. A violation of O.C.G.A. § 16-4-1 (criminal attempt of any of the above);
 6. A violation of O.C.G.A. § 16-5-70, relating to cruelty to children;
 7. A violation of O.C.G.A. § 16-12-1.1, relating to a child care operator permitting one with an unsatisfactory background check determination to work or reside in an early care and education program;
 8. A violation of O.C.G.A. § 16-12-100, relating to obscenity relating to minors;
 9. A violation of O.C.G.A. § 16-12-100.1, relating to electronically furnishing obscene materials to minors;
 10. A violation of O.C.G.A. § 16-12-10.2, relating to computer or electronic pornography and child exploitation prevention;
 11. A violation of O.C.G.A. § 16-12-100.3, relating to obscene telephone contact with minors;
 12. A violation of O.C.G.A. § 40-6-391, relating to DUI, when a child is endangered;
 13. A violation of O.C.G.A. § 19-7-5, relating to failure to report child abuse when mandated by law to report;
 14. Any other offenses committed in another jurisdiction which, if committed in this jurisdiction, would be one of the enumerated crimes listed above.
- ii. **Unallowable Offenses:** An applicant convicted of any crime listed in this section may appeal to OSAH but *is not eligible* for mitigation (DECAL cannot issue a Satisfactory Determination Letter.):
 1. Any crime for which an applicant is currently on probation;
 2. Any crime that results in physical harm to a victim;
 3. Any crime that shows a propensity for cruel behavior or behavior involving moral turpitude;
 4. Any felony consisting of
 - i. murder;
 - ii. child abuse or neglect;

- iii. a crime against children, including child pornography;
 - iv. spousal abuse;
 - v. a crime involving rape or sexual assault;
 - vi. kidnapping;
 - vii. arson;
 - viii. physical assault or battery;
5. Any violent misdemeanor committed by an adult against a child including the following:
 - i. child abuse or neglect;
 - ii. child endangerment;
 - iii. sexual assault;
 - iv. child pornography;
 - v. a violation of O.C.G.A. § 16-5-29, relating to battery of an unborn child;
 6. Any other offense committed in another jurisdiction which, if committed in this jurisdiction, would be one of the crimes listed in this section.
- e. **Frequency and Portability of Background Check Determination Letters**
1. An individual must undergo an additional Comprehensive Background Check at least every five years or when that individual has not worked in a child care industry for six months or longer
 2. An individual (other than a qualifying Student-in-Training*) who has a National Fingerprint Satisfactory Determination letter or a Comprehensive Satisfactory Determination letter one year old or less, based on the fingerprint date, may port that letter to another facility.
 3. An individual (other than a qualifying Student-in-Training*) who has a satisfactory National Fingerprint Records Check Determination letter or a satisfactory Comprehensive Records Check Determination letter based on a fingerprint scan more than one year old, based upon the fingerprint date, may **NOT** port that letter to another facility. Instead, that individual must submit to another background check and obtain a Satisfactory Determination letter before transferring to the new facility.
 4. *A qualifying Student-in-Training is one who properly submitted evidence of enrollment in an early care and education curriculum at the time of application and was granted two years of portability under Georgia law. Any satisfactory National Fingerprint Records Check or satisfactory Comprehensive Fingerprint Records Check Determination letter issued to a qualifying Student-in-Training based on a fingerprint scan more than two years old **MAY NOT** be ported to another facility. Instead, the Student-in-Training must submit to another Comprehensive Background Check and must obtain a Satisfactory National or Comprehensive Records Check determination before transferring to a new facility
- f. **A National Fingerprint Records Check determination letter expires at the earliest of each of the following circumstances:**
1. Upon the issuance of a subsequent Unsatisfactory Determination Letter; or

2. Upon the issuance of a Satisfactory Comprehensive Background Check Determination Letter; or
 3. When an applicant, other than a qualified Student-in-Training, moves to another facility more than one year from the Records Check Clearance Date; or
 4. When a qualified Student-in-Training moves to another facility more than two years from the fingerprint date;
 5. Upon a six-month break in service. Providers are required by statute to obtain and make available for inspection each employee's ten-year employment history. Providers must ensure all potential employees obtain a current satisfactory records check determination letter before employment if the applicant has had a six-month break in service. DECAL consultants review this documentation during license inspections to ensure compliance; or
 6. Five years from the fingerprint date.
- g. **A Comprehensive Records Check determination letter expires at the earliest of each of the following circumstances:**
1. Upon the issuance of a subsequent Unsatisfactory Determination Letter; or
 2. Upon a six-month break in service. Providers are required by statute to obtain and make available for inspection each employee's ten-year employment history. Providers must ensure all potential employees obtain a current satisfactory records check determination letter prior to employment if the applicant has had a six-month break in service. DECAL consultants review this documentation during license inspections to ensure compliance; or
 3. When an applicant, or other than a qualified Student-in-Training, moves to another facility more than one year from the Records Check Clearance Date; or
 4. When a qualified Student-in-Training moves to another facility more than two years from the Records Check Clearance Date; or
 5. Five years from the Records Check Clearance Date.
- h. **Clearance Requirements** – The following must be on file with the child care provider before an individual can be present at a child care program:
1. **Family Child Care Learning Homes, Child Care Learning Centers and Informal Caregivers**
 - i. Every **Director, Employee, Informal Caregiver and resident age 17 and older of an Informal Caregiver** must have:
 1. A satisfactory National Fingerprint Records Check Determination letter (based on national fingerprint-based criminal history report); or
 2. A satisfactory Comprehensive Background Check Determination letter.
 - ii. Every **Provisional Employee** must:
 1. be supervised at all times by someone with a satisfactory Comprehensive Records Check Determination; and
 2. submit all information needed for a Comprehensive Background Check.
 2. **License-Exempt Providers and Informal Caregivers** receiving CAPS Subsidy

- i. Any director, provider, helper, volunteer (other than a parent who is not also an employee), Student-in-Training, independent contractor or resident aged 17 or older of the program must have:
 1. A satisfactory Comprehensive Background Check Determination letter or a satisfactory National Fingerprint Records Check Determination letter.
- i. **Penalties for Non-Compliance** – Any program subject to this policy that fails to comply with this policy is subject to adverse action and loss of CAPS subsidy funding.