



The State University  
of New York

**The State University of New York**

**Guide to Presidential Searches at  
State-Operated Institutions**

Adopted: January 25, 2012  
Revised: June 22, 2016



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Appendix A – Legal Issues Surround Employment

**Guidelines for the Selection of a President  
When a Vacancy Occurs at a State-operated Campus  
of the State University of New York**

**I. Legal Authority for Nomination and for Appointment**

The legal authority to appoint the president or chief administrative officer of a State-operated institution of the State University of New York (SUNY) is vested in the Board of Trustees of SUNY (SUNY Trustees) by Section 355(2)(g) of the Education Law. The College Council of each such institution is given responsibility for recommending a candidate or candidates to the SUNY Trustees by Section 356(3)(a). (Section 6004 (c) gives this same power to the Trustees of the College of Environmental Science and Forestry.) The SUNY Trustees may also appoint a president or chief administrative officer in the event that no council recommendation is made, or where a council recommendation fails to comply with the SUNY Trustees' standards and procedures.

**II. Introduction**

The SUNY Trustees considers the selection of campus presidents to be one of the most important of its duties. The procedures below are intended to assist the College Councils of State-operated institutions in the search for, and nomination of, individuals to fill the position of president. It should be noted that the term "College Council" in the following is intended to refer equally to the Board of Trustees of the State University College of Environmental Science and Forestry.

This document is intended to provide a set of guidelines that should be utilized to conduct presidential searches. Recognizing the great diversity of size, scope and mission of the campuses in the SUNY system, the specific search process at an individual campus may be modified as described in this document by the SUNY Chancellor in consultation with the campus Council Chair.

**III. Campus Presidential Search**

**A. Preliminary Steps in the Search Process**

- As soon as practical after it is known that a presidential vacancy will occur, the Chancellor (or the Chancellor's representative) shall reach out to the Council Chair to provide advice and instructions in planning the search and the criteria to be used in the selection of a new president.
- The Council Chair should consult with campus constituency groups, including the campus governance leader, regarding the search plans and the development of the search committee.
- The committee should, in accordance with generally accepted presidential search procedures, be diverse and have representatives from principal campus constituencies.
- Unless otherwise agreed upon by the Chancellor (or Chancellor's representative) and the Council Chair, the search committee shall consist of:

- Four members of the council (including the chair);
  - Six members of the full-time teaching faculty of the campus;
  - One student;
  - One alumni representative;
  - One campus-related foundation representative;
  - One academic dean;
  - One professional or support staff member;
  - One incumbent or retired SUNY president from another campus or a member of the Chancellor's senior staff designated by the Chancellor; and
  - The Chancellor's liaison representative (non-voting).
- In the case of campuses larger than 10,000 student FTE, the Council Chair may choose, after discussion with the campus governance leader and authorization by the Chancellor (or the Chancellor's representative), to increase the size of the search committee to include an additional member of the teaching faculty, a graduate student, and an additional representative from the campus foundation board.
  - The Council Chair shall appoint a chair of the search committee. Generally, the Council Chair also serves as the chair of the search committee. If the Council Chair is unwilling or unable to serve as chair of the search committee, the Council Chair shall appoint another member of the council to serve as chair of the search committee.
  - Taking care to assure that faculty representation on the search committee speaks for a broad spectrum of faculty opinion, the campus faculty governance leader will work with the Search Committee Chair and the Chancellor's representative to devise a nomination and election process to select the faculty representatives to the search committee by secret ballot. The voting process must be widely publicized with sufficient notice to allow any interested faculty to participate in the nomination and voting process. The Council Chair shall invite the appropriate campus and community groups, including the campus governance leader, to submit recommendations for all other positions on the search committee, and shall make the appointments to the remaining positions on the search committee from the recommendations submitted. The committee itself should represent a broad diversity of opinion among the primary campus constituencies.
  - The Chancellor shall designate a liaison representative to serve as a non-voting member of the search committee. That representative shall have full access to the files of the committee, and shall be responsible for reporting at regular intervals to the Chancellor and the Trustees regarding the progress of

the search and the work of the search committee. The representative shall provide general assistance to the search committee as needed for each step in the process.

- The Council Chair and the Chancellor (or the Chancellor's representative) shall agree on an expected timetable for the search and nomination process.
- The Chancellor (or the Chancellor's representative) shall provide a list of nationally recognized organizations (e.g., search firms) with established expertise in academic recruitment and screening, as well as a commitment to developing diverse candidate pools, from which the council shall select one to assist in their search. The campus may elect to use a search firm not on this list with approval from the Chancellor (or the Chancellor's representative). In compliance with SUNY Board of Trustees Resolution regarding the Diversity, Equity, and Inclusion Policy, adopted on September 10, 2015, campuses shall, during the search firm selection process, inquire with search firms about their success in assuring diverse candidate pools.<sup>1</sup> The campus must follow all appropriate procurement policies in the selection of the search firm.<sup>2</sup>
- A campus staff liaison shall be appointed to assist the search committee and to coordinate the clerical work of the committee. This person shall be held to the same confidentiality agreements as the search committee.
- A budget for the search should be determined in conjunction with the chief financial officer of the campus, and arrangements made for a search office and support staff. The campus is responsible for the full cost of the presidential search and the budget should be sufficient to cover the cost of hiring a professional search firm; advertising the position; travel of candidates to all interviews, including those with the Chancellor and the Board of Trustees; as well as the usual telephone, postage, duplicating, and other administrative expenses associated with a search.

## **B. The Search Process**

- At the first search committee meeting, the search chair, along with the Chancellor's representative, shall acquaint the committee members with the search procedures in general and with any specific instructions from the college council, the Chancellor, and the Trustees. The search committee shall be advised that the council is required to send a list of no fewer than three names of acceptable candidates to the Chancellor for consideration, and that the council may submit its opinion on the relative strengths and weaknesses of

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<sup>1</sup> The SUNY Office of Presidential Searches and Leadership shall track the efforts of search firms in developing of diverse candidate pools to fill presidential vacancies and share this information, as appropriate, with campuses. The Office will also provide each selected search firm with a copy of the Board Resolution policy on Diversity, Equity, and Inclusion as well as the system and campus diversity plans.

<sup>2</sup> The search committee should consult with the campus purchasing office to ensure that all state and SUNY rules and regulations are followed regarding the contracting of the search firm.

each candidate whose name is forwarded for consideration by the Chancellor. The timetable for the search shall be presented to all committee members and a commitment obtained from each member to attend all meetings and all interviews.

- Only approved members of the search committee and those staffing the committee are allowed to participate in the confidential work of the committee. Search committee member designees or representatives are not permitted to participate in search committee meetings or review confidential materials.
- The Chancellor (or the Chancellor's designee) will give the search committee its charge at the first meeting.
- At the first search committee meeting, the importance of confidentiality shall be discussed. All members of the committee must agree to preserve the confidentiality of the search and the names of all candidates.
- The chair may ask the Chancellor to dismiss any committee member if there is evidence that a member of the committee has breached the confidentiality of the search or a committee member is believed to be unduly biased, a non-participant or otherwise unable to fulfill his/her responsibilities in the search process. The decision of whether or not to dismiss the member as well as whether or not to replace the dismissed member will be in the sole discretion of the Chancellor in consultation with the chair of the search committee. If a representative of the faculty is dismissed, the Chancellor (or Chancellor's representative) shall also consult with the campus's faculty governance leader as to whether and how the individual shall be replaced.
- At one of the meetings of the search committee, prior to the review of candidates, the chair will invite the campus's Chief Diversity Officer and Human Resources Director (or designees) to address issues related to the recruitment of diverse candidates as well as discuss general legal protocols and campus and system policies related to hiring of staff.<sup>3</sup>
- In consultation with the Chancellor's representative and the search consultant, the committee should assess the needs of the institution and the type and style of leadership desired in a new president. Combining the results of this assessment and the required criteria set forth by the Chancellor, the search committee shall develop, and submit to the Chancellor (or the Chancellor's representative) for approval, the material to be used in the advertisement of the vacancy and the recruitment of candidates for the position.

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<sup>3</sup> Per the SUNY Board of Trustees Resolution policy on Diversity, Equity and Inclusion, adopted on September 10, 2015, each SUNY campus is required to appoint a Chief Diversity Officer (CDO) no later than August 15, 2017. In the event of a position vacancy or this position has not yet been filled, the SUNY CDO (or designee) shall be invited to meet with the search committee.

- The campus prospectus and job description for the position of president should be developed in consultation with the search firm and the Chancellor's representative, and reflect the future leadership needs of the college. The material should contain at least the following:
  - The general description of the college, including its current strengths, opportunities, and relevant challenges;
  - The required and preferred qualifications for the position;
  - Information about the SUNY system, provided by the Chancellor's representative;
  - Gender neutral language; and
  - The following passage: *"The Institution is an affirmative action, equal opportunity employer and does not discriminate on the basis of race, color, national origin, religion, creed, age, disability, sex, gender identity, sexual orientation, familial status, pregnancy, predisposing genetic characteristics, military status, domestic violence victim status, criminal conviction, or retaliation."*
  
- The vacancy shall be advertised nationally and in a way intended to generate a diverse pool of candidates. The campus and/or SUNY Chief Diversity Officer shall be consulted in the development of the advertising plan. In order to reach an array of potential candidates, the vacancy shall be broadly advertised in recruitment sources that target the higher education sector and/or are determined to be Equal Opportunity recruitment outlets such as:
  - The Chronicle of Higher Education
  - Inside Higher Education
  - Higheredjobs.com
  - Diverse Issues in Higher Education (formerly Black Issues in Higher Education)
  - Hispanic Outlook
  - The Insight into Diversity
  - Military Hire
  
- The following can be additional sources of information on creating effective recruitment strategies for diverse candidate pools:
  - National Association for Equal Opportunity in Higher Education
  - American Council on Education's Womens' Network
  - American Association of University Women
  - U.S Department of Veterans Affairs
  - Joining Forces

- Prior to commencing a review of the candidates, the committee should:
  - Establish evaluation criteria and interview questions based on the qualifications described in the advertisement;
  - Become familiar with requirements of the position and the required and preferred qualifications of the position;
  - Designate a diversity advocate(s) with the role of advocating for diversity as a core component of the search process;
  - Discuss the role of the search committee members in representing first the best interest of the institution, and second the constituencies that they represent; and
  - Consider the need to develop and abide by a fair and just selection process.
- In consultation with the search firm, the committee will develop an initial application screening method and identify those candidates who meet the minimum qualifications. Letters should be sent to those who do not meet the minimum qualifications for the position as soon as practical.
- From the pool of candidates who meet the minimum qualifications, the committee shall use the agreed upon evaluation criteria to select a group of approximately 20 names whom they judge to be the strongest applicants. Additional information may be collected on this group by the search consultant and committee members. Additional information may include reference checking (but only from references named by the candidate in order to preserve the candidate's confidentiality and only after permission from the candidate to contact those references has been obtained), and appropriate internet searches.
- When additional information is collected and reference checking, if done, has been completed, the committee shall meet to review the applications of all candidates and to discuss the additional information obtained. The committee will then select a group of approximately 8-12 candidates to be interviewed at a site convenient to the committee and to the candidates, subject to the approval by the Chancellor (or the Chancellor's representative). The site selected for the interviews must be designed to assure that the confidentiality of the names of the candidates to be interviewed will be maintained. Prior to the interviews, the search consultant will conduct a thorough review of each candidate's credentials and check references supplied by each candidate, and provide the search committee with the results of that review. (Please see Appendix A for additional guidance on the appropriate methods, including legal limitations, for collecting additional information.)
- All members of the search committee should attend the personal interviews. The Chancellor's representative (or designee) will also attend these



interviews. Each interview will typically last at least one hour, using a list of questions to be asked of all candidates. Time should also be allotted during this interview to allow each candidate to ask questions of the committee.

- Following these interviews, the committee should meet to discuss and review the qualifications of the candidates interviewed and to select a small group of five or more candidates as semi-finalists. At this point, most searches will proceed with publicly announced campus visits by semi-finalists, subject to the approval by the Chancellor (or the Chancellor's representative). Other searches, as described below, may proceed as a representational search. Where appropriate during campus visits, the candidate's spouse/partner, or other family members or associates, may also be invited to visit the campus. At this stage, candidates will be asked to allow the search committee to check references, other than those names provided by the candidates. Candidates other than the semi-finalists should be notified prior to the release to the public of the names of candidates to be invited to the campus.
- Up to this point in the search process, the names of the candidates have been kept confidential by the committee. When the semi-finalists are scheduled to visit campus, their names are released to the public, along with general information about their background and qualifications. It is recommended that the name of each semi-finalist be made public at least 48 hours prior to their scheduled campus visit. The names may be released at the same time or the release staggered throughout the process.
- Campus visits shall be designed to allow a large number of campus and community members to meet and hear from each candidate. In planning these visits, the committee should remember that at this stage of the process they are recruiting the candidates as well as evaluating them.
- All members of the council should actively participate in the interviews of the semi-finalist candidates who visit the campus.
- The SUNY Board of Trustees and the Chancellor may – in confidence – request access to search committee documents, including candidates' curriculum vitae, at any point in the process. However, all information regarding the reference checks, committee discussion and voting on the various applicants is confidential, and may not be divulged at any time.

### **C. Representational Searches**

- When deemed necessary by the Chancellor and the State University Board of Trustees, or when initiated by the Council Chair and agreed upon by the Chancellor and State University Board of Trustees, the search will be deemed a representational search where the search committee will be the representatives of the campus in lieu of campus visits and where the semi-finalists' names are not publicized to the community.

- The sole criterion upon which this decision rests is a determination as to whether a traditional search process with public campus meetings would inhibit the generation of a suitable pool of excellent candidates.
- During a representational search, members of the college council and other designated members of the college community will be invited to meet with the semi-finalist candidates under strict rules of confidentiality.
- The decision whether to hold campus visits will be discussed with the college council and search committee, but it is in the sole discretion of the Chancellor and Board of Trustees of the State University of New York.

#### **D. The Selection Process**

- The search committee shall meet and deliberate on the merits of each semi-finalist candidate. It is recommended that all council members be invited to join the search committee at this meeting to hear the search committee's discussions regarding the relative merits of each candidate.
- The search committee shall forward to the council the list of all acceptable candidates, along with a short (one page) synopsis of the relative strengths and weaknesses of each candidate. The committee shall determine the appropriate process by which a candidate may be determined to be acceptable. The search committee is strongly urged to forward as many acceptable names as possible to the council for consideration.
- The council then shall meet and deliberate on the relative merits of each of the candidates whose names have been forwarded to them by the search committee. While the recommendation of candidates to the Chancellor and the State University Board of Trustees is the prerogative of the council alone, consensus between the council and the search committee should be sought and encouraged. Serious disagreement about the final candidates recommended by the council, particularly any disagreement that clearly follows major constituency lines, suggests a potentially serious problem with the search process.
- The council shall recommend three acceptable finalist candidates to the Chancellor for consideration. The recommendations shall be unranked, though the council may submit its opinion in written form on the relative strengths and weaknesses of each finalist candidate whose name is forwarded for consideration by the Chancellor.
- In most searches, the Chancellor shall then invite the three candidates to meet with him/her and, as appropriate, members of his/her senior staff prior to the Chancellor making a final recommendation to the Board.

- In most searches, the three candidates will be required to provide a presentation to an invited audience including SUNY senior staff and members of the SUNY Board of Trustees about their vision for the campus, how they will advance that vision, and how they will work with system to achieve that vision. The materials (e.g., C.V. and cover letter) shall be provided to the invited audience in advance of the presentations. Those in attendance shall provide feedback to the Chancellor for his/her consideration in selecting a nominee to forward to the Trustees for their approval.

#### **E. Board of Trustees Approval**

- The Chancellor shall provide the name of her recommendation as well as related background materials to the Board of Trustees. Except when approved by the Board Chair, the Chancellor shall provide such information no less than one week prior to the Trustees' interview of the candidate.
- For each search, a sub-committee of at least three members of the Trustees shall be constituted to serve as the primary liaisons of the Board to the search. Responsibilities of the sub-committee shall include:
  - Reviewing the materials provided by the three candidates forwarded to the Chancellor and attending the required presentation to be given by the three finalists advanced to the Chancellor;
  - Interviewing, in person, the candidate recommended by the Chancellor, at a time and place arranged by the Secretary of the Board of Trustees;
  - Receive from the Chancellor a proposed annual compensation package with background compensation data as well as a summary of the search process.
  - Making a full report of the process and forwarding its recommendations on both the candidate and the compensation package to the full Board of Trustees.
- It is anticipated that a recommended candidate approved by the sub-committee of the Board of Trustees will be invited to attend the next scheduled meeting of the Board of Trustees for consideration of final appointment. The Board of Trustees may meet with the candidate in executive session before a final presentation and vote.
- Interviews done by the full Board will occur on the first day of a scheduled meeting in executive session. At the meeting (or prior to the meeting) with the candidate, the Chancellor will provide to the Board of Trustees a proposed annual compensation package with background compensation data as well as a summary of the search process. It is anticipated that a recommended

candidate interviewed during executive session will be invited to attend the next scheduled meeting of the Board of Trustees for consideration of final appointment.

#### **F. Post Search Evaluation**

Once a search has been completed, it is recommended that the SUNY Office of Presidential Searches and Leadership, in consultation with the College Council, administer an evaluation to the search committee, all candidates that were invited to the off-site interviews, and the selected candidate. The evaluation should be considered a tool for the System and College Council to understand how the process went, review of the search firm and consultant used, and what they should learn from the search that should be remembered for future searches.

#### **G. Reopened Searches**

Should the Chancellor or the Board of Trustees decide that the circumstances warrant the reopening of a search, it is within their discretion to require that the Council Chair appoint, in accordance with these guidelines, a new search committee.

#### **H. Internal Candidates**

Should anyone from within the campus community wish to apply for the presidency, that individual must do so by way of a formal application prior to the closing date for the receipt of nominations. Any such internal candidate who does not formally apply for the position and participate in the entire search process will not be considered for the position. Interim Presidents may not be candidates for the presidency unless they have received the written permission of the Chancellor to participate as candidates.

### **IV. Approval**

The guidelines were approved by the State University of New York Board of Trustees effective January 25, 2012 and revised May 4, 2016

# Employment Searches Guidance

## Legal Issues Surrounding Employment Applications

SUNY offices receive thousands of employment applications each year. Recent changes in the law and its interpretation require guidance on legal requirements for some aspects of employment applications and searches for employees. The following guidance, prepared by the Office of General Counsel and issued via a [memorandum on February 14, 2013](#), covers the following areas related to employment searches and is applicable to classified, unclassified, and student applicants.

- I. [Non-Discrimination Language](#): Each State-operated campus should have an employment application. The application, or a document attached thereto, should contain language indicating the campus's policy of non-discrimination.
- II. [Prior Convictions and Pending Arrests](#): Pursuant to federal and state law, campuses may only make very limited use of prior convictions or pending arrests when making employment decisions.
- III. [Use of the Internet and Social Media in Employee Searches](#): Although the Internet, and social media in particular, may provide an employer with information that could qualify or disqualify an applicant, employers may also learn inappropriate information through these means. Such information includes membership in protected classes that is not otherwise disclosed on the application, status as an individual with a disability, statement of political or religious views, or membership in organizations. This information is irrelevant to an applicant's candidacy—and often impermissible to consider—but some search committee members may be tempted to use it in their decision making process. If a campus would like to use information gleaned from the Internet and social media in the hiring process, such information should be gathered by an appropriate Human Resources employee or Affirmative Action officer who is “walled-off” from the search committee for this purpose. The Human Resources or Affirmative Action employee may then use only appropriate information to remove candidates, if warranted.

### **I. Non-Discrimination Language:**

Each application, or a document attached to the application, should contain language indicating the college's policy of non-discrimination. The following paragraphs represent one way of meeting requirements under federal and state laws:

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<sup>4</sup> The information in this appendix is maintained by the SUNY General Counsel's Office and is not considered an approved part of the presidential search guidelines. This Appendix will be updated regularly to reflect the most up-to-date information regarding employment search policies and procedures.

Pursuant to University policy, the University is committed to fostering a diverse community of outstanding faculty, staff, and students, as well as ensuring equal educational opportunity, employment, and access to services, programs and activities, without regard to an individual's race, color, national origin, religion, creed, age, disability, sex, gender identity, sexual orientation, familial status, pregnancy, predisposing genetic characteristics, military status, domestic violence victim status, or criminal conviction. Employees, students, applicants or other members of the University community (including but not limited to vendors, visitors, and guests) may not be subjected to harassment that is prohibited by law, or treated adversely or retaliated against based upon a protected characteristic.

The University's policy is in accordance with federal and state laws and regulations prohibiting discrimination and harassment. These laws include the Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, Title VII of the Civil Rights Act of 1964 as Amended by the Equal Employment Opportunity Act of 1972, and the New York State Human Rights Law. These laws prohibit discrimination and harassment, including sexual harassment and sexual violence.

Inquiries regarding the application of Title IX and other laws, regulations and policies prohibiting discrimination may be directed to the campus Title IX office. Inquiries may also be directed to the United States Department of Education's Office for Civil Rights, 32 Old Slip 26th Floor, New York, NY 10005-2500; Tel. (646) 428-3800; Email [OCR.NewYork@ed.gov](mailto:OCR.NewYork@ed.gov).

Of note, in preparation for this guidance (issued via a [memorandum on February 14, 2013](#)), Counsel's Office took a fresh look at the precise list of protected classes (different SUNY campuses had different lists), and the list of protected groups above reflects a current analysis of those groups protected by federal and/or state laws.

## **II. Prior Convictions and Pending Arrests:**

Pursuant to federal and state law, campuses may only make very limited use of prior convictions or pending arrests when making employment decisions. Sections 296.15 and 296.16 of New York's Human Rights Law set out the proscriptions against unlawful inquiries and employment actions based on prior convictions. Under Section 296.16, it is unlawful for any person or agency, including the State, to make any inquiry about any arrest or criminal accusation of an individual if that arrest or accusation (1) is not pending, (2) has been resolved in favor of the accused, (3) has been resolved by a youthful offender adjudication, or (4) has resulted in a sealed conviction. A college's questions on its employment applications must reflect this paradigm ([see example below](#)).

Section 296.15 makes it unlawful to deny any employment or license to any person by reason of the individual's having been convicted of a prior criminal offense, or by reason of finding a lack of "good moral character" based on such convictions, if such denial is in

violation of Article 23-A of the Correction Law. For its part, Article 23-A provides that employment or licensure shall be denied only if there is a “direct relationship” between the previous criminal offense(s) and the specific employment or license sought or held, or if employment or licensure of the individual would involve “an unreasonable risk to property or to the safety or welfare of specific individuals or the general public.” Section 753 of Article 23-A goes on to list eight factors used to determine if there is a direct relationship or unreasonable risk. According to the Court of Appeals, each of the factors must be considered.

## **Sample Language**

Compliance with this legislative scheme requires very specific language. Applicants should be informed—whether in the documents attached to the employment application, or directly on the application itself—of the possible consequences of completing the employment application. This will give applicants actual, or at least constructive, notice, and they may feel less apprehension in disclosing relevant convictions and arrests. For example:

- Answering “YES” to the question about whether there is a prior felony conviction may or may not preclude employment, depending on the nature of the criminal offense, its relationship to the position sought, and other factors that must be considered before employment may be lawfully denied based on a prior conviction.
- Failure to disclose a prior conviction may result in denial of employment or subsequent termination of employment based on falsification of the employment application.

Actual questions posed to applicants should be carefully worded and followed by clear instructions that note four situations under which applicants should answer “NO”:

1. Do you have an arrest or criminal accusation currently pending against you? If “YES,” please describe. (If a prior arrest or criminal accusation resulted in a conviction, you may need to disclose this information in response to the next question.)
2. Have you even been convicted of a criminal offense (felony, misdemeanor, or violation)? If “YES,” please describe.

Note: You should answer “NO” if:

- a. Your conviction (felony, misdemeanor, or violation) was sealed by a court, OR
- b. The criminal action or proceeding was terminated in your favor (for example: the action was dismissed either at the initial stage or on appeal; you received an Adjournment in Contemplation of Dismissal and the adjournment period has elapsed; you were acquitted), OR

- c. The proceeding on the criminal offense resulted in a youthful offender adjudication or juvenile delinquency finding which has been sealed/expunged pursuant to the Family Court Act, OR
- d. After completing a treatment program, your plea to a felony or a misdemeanor was withdrawn and you were resentenced to a violation which was sealed by the court, or the completion of the program resulted in a dismissal of all charges by the court.

Questions about your status may be directed (anonymously) to the Office of Human Resources.

### **Procedural Safeguards**

Compliance also requires procedural safeguards. Disclosures of past conviction or present arrest that do not disqualify an applicant have the potential to be improperly considered, actively or subconsciously, by search committee members. Campus policy, therefore, must prevent search committee members from learning such inappropriate information. Campuses may require that applicants disclose past convictions or pending arrests, but must not allow that information to be considered by the search committee that is determining substantive merit for a position. Rather, the campus must develop a process wherein information about past conviction(s) or pending arrest(s) is available only to an employee in Human Resources, who will be “walled-off” from the search committee for this purpose.

When an applicant discloses a past conviction or pending arrest, a Human Resources employee, independent of that search committee, should review the information to determine if that conviction or arrest is relevant to the position sought. If the information is relevant and disqualifies the applicant, the Human Resources employee will then remove the applicant from the pool. If the information is irrelevant and/or does not disqualify the applicant, then the Human Resources employee will allow the applicant to remain in the search pool with absolutely no mention of the applicant’s disclosure to committee members.

### **III. Use of the Internet and Social Media in Employee Searches:**

Although the Internet, and social media in particular, may provide an employer with information that could qualify or disqualify an applicant, employers may also learn inappropriate information through these means. Such information includes membership in protected classes not otherwise disclosed on the application, status as an individual with a disability, political or religious views, or membership in organizations. This information is irrelevant to an applicant’s candidacy—and often impermissible to consider—but some search committee members may be tempted to use it in their decisions.

If a college would like to use information gleaned from the Internet and social media in the hiring process, such information should be gathered by an appropriate Human Resources employee or Affirmative Action officer who is “walled-off” from the search



committee for this purpose. That employee may conduct relevant searches to determine if any publicly-available information is relevant to the applicant and would disqualify him or her from the position, but must not attempt to gain access to password-protected or otherwise secure information, or attempt to “friend” an applicant so as to gain access to private information. Care should be taken to determine that the information available is actually about the applicant (and not about another person with a similar name or identifying information) and that it is not false, misleading, defamatory, or otherwise not appropriate. Use of RateMyProfessor.com and other anonymous rating and comment websites is cautioned against, as anonymous ratings may reflect underlying biases and are not as reliable as verifiable, in-class student ratings.

Faculty and staff on search committees should call references provided by applicants, verify all past employment, and seek explanation for unexplained gaps. Search committee members may review faculty candidates’ articles and papers that are published online, and may also relate their personal or professional experiences with candidates. Search committee members attending conferences or gatherings with potential candidates may attend candidates’ presentations or speak with them.

By avoiding inappropriate access to applicants’ information, even information publicly available on the Internet or social media, search committee members can better concentrate on relevant information, including experience, ability and past performance.

*Note: Office of General Counsel who prepared this guidance: Joseph Storch, Jim Jarvis, Andrea Stagg, Seth Gilbertson, and Will Versfelt.*

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*The information contained on the SUNY Compliance website is for general campus guidance only and is not intended, nor can be relied upon, as legal advice or the imposition on SUNY campuses of specific policies or requirements. The site is intended to be an informational-only clearinghouse for some of the laws, rules, and regulations that may impact the State University of New York’s campuses. Additionally, given the rapid, changing nature of laws, rules and regulations, there may be delays or omissions contained on this site which therefore cannot be relied upon as complete. For complete compliance information, consult your campus compliance officials or the [SUNY Director of Compliance](#). For legal advice, consult [your lawyer](#).*