

# BCU Child Caring Agency Frequently Asked Background Check Questions 11-2019

## USEFUL ACRONYMS

AW	Adam Walsh Child Protection and Safety Act of 2006, also referred to as Adam Walsh.
APS	Adult protective services. Also known as adult abuse investigations.
BCU	Background Check Unit, a shared service of the Department of Human Services and Oregon Health Authority.
CCA	Child Caring Agency
CCLU	Children's Care Licensing Unit, a shared service of the Department of Human Services and Oregon Health Authority, and part of the Office of Training, Investigation and Safety.
CPS	Child protective services. Also known as child abuse investigations.
CRIMS	Criminal Records Information Management System, the current background check data management system for BCU.
DHS	Department of Human Services
FBI	Federal Bureau of Investigations
FFPSA	Family First Prevention Services Act, also often referred to as the Family First Act or FFA.
JJIS	Juvenile Justice Information System, Oregon's juvenile justice records data management system maintained by the Oregon Youth Authority.
LEDS	Law Enforcement Data System, Oregon's criminal records data management system maintained by Oregon State Police.
OAR	Oregon Administrative Rule
OHA	Oregon Health Authority

ORCHARDS	Oregon Criminal History and Abuse Records Data System, BCU's new background check data management system being implemented by the end of 2019.
ORS	Oregon Revised Statute
OSP	Oregon State Police
OTIS	Office of Training, Investigations and Safety, a shared service of the Department of Human Services and Oregon Health Authority. In addition to being responsible for CCA abuse and neglect investigations, OTIS contains the CCLU.
OYA	Oregon Youth Authority

## WEB RESOURCES

BCU Main Page: <https://www.oregon.gov/DHS/BUSINESS-SERVICES/CHC/Pages/index.aspx>

BCU Provider Rules for DHS: <https://www.oregon.gov/DHS/BUSINESS-SERVICES/CHC/Pages/Policy-Rules.aspx>

BCU Forms Page including background check request, hearings request, and instruction forms: <https://www.oregon.gov/DHS/BUSINESS-SERVICES/CHC/Pages/Forms.aspx>

CCLU Main Page: <https://www.oregon.gov/DHS/PROVIDERS-PARTNERS/LICENSING/CCLU/Pages/index.aspx>

CCLU Licensing Rules:  
[http://www.dhs.state.or.us/policy/childwelfare/manual\\_1/division\\_215.pdf](http://www.dhs.state.or.us/policy/childwelfare/manual_1/division_215.pdf)

## FEDERAL LEGISLATIVE SUMMARIES

Adam Walsh Child Protection and Safety Act of 2006:  
[https://www.govtrack.us/congress/bills/109/hr4472/summary#library\\_ofcongress](https://www.govtrack.us/congress/bills/109/hr4472/summary#library_ofcongress)

Family First Preservation Services Act of 2018, found in Division E, Title VII of the Bipartisan Budget Act of 2018:  
<https://www.congress.gov/bill/115th-congress/house-bill/1892>

## FREQUENTLY ASKED QUESTIONS

### 1. **Why do I have to recheck an employee when they change their position title or job description?**

The background check administrative rules [OAR 407-007-0220] require a new background check any time there is a *change in position*, or there is reason to believe a new check is needed. Some examples are a break in service, leave of absence, or new criminal or protective service history. Currently there is no recheck requirement for child caring agency employees or volunteers; having new checks at position change allow for any new criminal or abuse history to be determined and recognized.

In addition, a main component of the BCU process is the weighing test. If there are potentially disqualifying crimes or conditions, BCU will consider several factors. One very important factor is the relevancy of any criminal or abuse history to the subject individual's position. This dynamic means that a person could be approved for one position but denied for another (even with the same history) due to the requirements of the position.

The background check administrative rules require a new background check for a *change in position*. If there is a change in position leading to a need for a new position description, then a new background check is needed.

**Change in position** may include but is not limited to promotion, transfer, demotion, re-employment, job rotation, developmental assignment, restoration, or recall from layoff. Under current Licensing and background check administrative rules a change of position always requires a new background check.

### 2. **Is preliminary hire allowed for Child Caring Agencies?**

Depending on the type of position, preliminary hire may be prohibited as follows:

- Proctor foster homes: Prohibited.
- CCA staff under FFPSA: Prohibited.
- CCA staff (non-FFPSA): Potentially allowed under requirements found in OAR 407-007-0315.

**3. Does the executive director need a re-check every year?**

An Executive Director needs a re-check every **two** years at time of license renewal.

**4. Do proctor foster parents need a re-check every year?**

Proctor foster parents new a new re-check every year as part of the annual reapproval process.

**5. Can a CCA do fingerprints in house? Where can people go to get fingerprints completed?**

By Oregon law, fingerprints must be electronically captured for background checks. While OSP will still accept ink-rolled fingerprint cards, the turnaround time due to mailing and handling is longer.

CCAs may work with the vendor Fieldprint to become a vendor for fingerprint capture. There are requirements for access to the public and minimum open hours during the week which may result in additional staffing needed to provide the Fieldprint services. In addition, livescan equipment can be expensive.

If you would like more information, please feel free to contact BCU at [bcu.info@dhsosha.state.or.us](mailto:bcu.info@dhsosha.state.or.us) or (503) 378-5470.

**6. Do all volunteers require a background check? What if they have no contact with clients? What if the contact with clients supervised by an approved staff?**

Per OAR 413-215-0061, all employees, contractors and volunteers of a CCA must comply with background check rules through BCU, under OAR 407-007-0200 to 407-007-0370. As with employees, the relevancy of any criminal or protective service history to any duties of the volunteer will be considered.

**Please note:** certain volunteers may not need to complete a background check. If a group of volunteers have no contact with clients or client information and are continuously working offsite for their volunteer activities (ex., at an offsite community garden), this may be a volunteer that can be excluded from completing a background check.

Review 407-007-0210 (8) (a) and (b) to determine if a volunteer is a subject individual which is required to have a background check or contact the BCU for clarification.

**7. Does an employee who was just checked by the school district or another organization need to be rechecked again by DHS?**

Yes: The background checks for education, other organizations, and CCAs are authorized by different state and federal statutes and requirements. The results of the background checks may not be shared between the state agencies that perform them.

In addition, the background checks are always completed in reference to the specific position or license for which they are required. In addition, the criteria for the checks are often different. For example, the background check for CCAs through the Background Check Unit includes an abuse check of adult abuse and child abuse records held by the Department of Human Services (DHS). This kind of abuse check is not available to most other state agencies.

**8. Is there a way to know how long it will take for a check to be completed?**

No. The turnaround time for a background check is contingent on several factors that make estimation difficult. While it is possible to complete a background check as quickly as one day when BCU has direct access to all information, when BCU must rely on others for information timelines may extend. Examples of such external information requirements are fingerprints, archived records, or out-of-state records.

There are also situations where more information is required from the subject individual. BCU's turnaround time is affected by how quickly the individual or other agencies can provide the requested information.

The Family First Prevention Services Act (FFPSA), which is applicable to Child Welfare Contracted Programs, also requires out-of-state child protective service (CPS) checks for any states or territories in which the individual lived within the last 5 years. Depending on the state or territory response time for such requests can take as much as 6-14

weeks. For example, as of April 2019, Texas' website advised a 90-day turnaround time for out-of-state CPS requests.

Due to these frequent delays in acquiring out-of-state CPS information, the Department of Human Services Background Check Unit and Child Welfare have worked together to develop a process for completion of the background check if everything has been received and the only check pending is the out of state CPS check. If everything BCU has would result in an approval, BCU will complete the background check, allowing you to hire the subject individual. If a subsequent receipt of out of state CPS might alter this decision, BCU will contact you.

**9. How long will the check take if the applicant is from out of state?**

Delays depend on several factors. Once fingerprints are submitted, Oregon State Police reports a 3-5 days average turnaround processing for fingerprint results.

Fingerprint results can be infrequently delayed beyond this average by the OSP or the FBI if the fingerprints are unreadable (requiring reprints), there are missing dispositions, other states do not respond to the FBI request quickly, or there is a backlog at OSP or the FBI.

If the subject individual is having an out-of-state CPS check, each state has differing turn-around times as discussed in question 6. In addition, some states require notarization for at least the signature of the subject individual and at times the agency representative as well.

When documents or actions (like fingerprinting) are required, encouragement from the CCA for the individual to submit or complete the requirements as quickly as possible helps speed the check along.

**10. Do CCAs and Applicants work with BCU only or do they need to work with other states to complete a check?**

The background check is completed through BCU. If a subject individual has criminal history in another state, BCU may request the subject individual to get copies of police reports or court records. If the subject individual is found to have out-of-state CPS history, BCU may request the subject individual to get copies of the abuse investigations.

**11. Does BCU notify the CCA if the applicant does not complete required actions timely?**

If the BCU requests something from the subject individual, there is usually a deadline. Extensions can be requested by the subject individual. If the subject individual does not complete the actions timely, the background check is closed due to a failure to participate. The QED who submitted the background check from the CCA is notified via email. Closure means the subject individual may not work, but the QED can request that the check be reopened to allow the subject individual another opportunity to submit required information or fingerprints.

**12. Is a QED prohibited from disclosing information about their findings to their supervisor or the CCA executive director or the CCA board?**

If the supervisor or CCA executive are not QEDs, then information may not be shared. CCA board members are not employees, would likely never be QEDs, and therefore cannot have access to the information. The QED may only report that background checks have been submitted and when, that the subject individual may or may not work pending the background check outcome, and that the subject individual has been approved or not approved.

The Background Check Unit provides training and testing to an employee of a CCA to become a QED. The QED acts as a designee of the DHS while handling background check tasks and must comply with the rules and statutes governing background checks.

Currently the QED sees any disclosures made by the subject individual and may see much of the documentation the subject individual may want to give to BCU for the background check process. This information, and all documentation from the background check process, is confidential and may only be disclosed to the subject individual, another QED on a need to know basis, Child Welfare Licensing staff on a need to know basis, and BCU.

### 13. What background is reviewed in a background check and what does BCU receive?

- **Juvenile records**

JJIS is an independent system that must be separately reviewed but is not regularly consulted since most juvenile justice records are sealed. LEDS and FBI records do not reveal juvenile record info.

Oregon JJIS is used to specifically check juvenile records when BCU has *reason to believe* there are pertinent and unsealed juvenile records that may affect the fitness determination. Examples of such unsealed records may be Measure 11 crimes whose dispositions do not transfer completely to LEDS, or juvenile convictions that were not sealed by a judge due to court discretion.

- **Adult abuse investigations**

Only APS investigations since 2010 that are for neglect, financial abuse, physical abuse, or sexual abuse, and are determined to be serious by DHS are considered potentially disqualifying.

- **Child abuse Investigations**

BCU considers any substantiated or founded child abuse investigated by DHS (including OTIS) as potentially disqualifying, regardless of type or how long ago. If the subject individual is subject to the Adam Walsh Act or FFPSA, the background check may require an out-of-state child abuse check; any founded or substantiated out-of-state CPS is considered potentially disqualifying.

- **Mental health or addictions concerns**

BCU does not automatically check if there are mental health or addictions-related concerns. BCU may consider mental health or addictions-related concerns when the following occur:

- Criminal or protective service history, or the subject individual's disclosure about such history relates mental health or addictions history to the criminal or protective service history.
- The criminal or protective service history is potentially disqualifying and a weigh test is required.



In such cases, if documents addressing those concerns are not available via court or protective service documentation, nor have already been submitted by the subject individual, BCU may follow-up with the subject individual regarding mental health and/or addictions counseling or treatment completions.

- **Arrests**

Arrests come with any criminal records check.

- **Convictions**

Convictions come with any criminal record check. If a criminal records check has missing dispositions, BCU will research the outcomes.

#### **14. What do you do if you know that someone is being investigated for an allegation of abuse or a crime?**

BCU generally does not receive notice of abuse investigated by the DHS until there is a final order. This means that until the alleged perpetrator/respondent has been given notice of the investigation outcome and review rights, and review rights have been exhausted either by an appeal or by the deadline to an appeal passing, BCU will not consider the substantiation.

Senate Bill 1515 (2016) required that BCU consider open protective service investigations *specifically* for only proctor foster parents. In addition, SB 1515 requires BCU to report to CCAs any open investigations and substantiated history found for the proctor foster applicant.

**Please note:** as an employer, if a CCA is aware of a criminal or protective service investigation occurring on an employee, please do not submit a new background check. Instead please contact BCU and BCU will request a new check if something has occurred that is potentially disqualifying.

#### **15. What conditions are potentially disqualifying or will result in a denial?**

There are no conditions which are automatically disqualifying and thus always lead to a denial.

Under the current background check rules, an unresolved arrest, charge, or a pending indictment for any crime in any jurisdiction is potentially disqualifying. Potentially disqualifying conditions are described in detail in OAR 407-007-0290. Briefly, they are:

Material false statement	Registered as a sex offender	Outstanding warrant
Diversion (including conditional discharge)	Probation or post-prison supervision	Violation of probation or post-prison supervision
Unresolved arrest, charge or pending indictment	Arrested as fugitive from another state	Adjudication in a juvenile court
A finding of guilty except for insanity	Potentially disqualifying abuse	

Denials are determined only when:

- A subject individual has potentially disqualifying crimes or conditions; and
- BCU has completed a weighing test, considering any available information in several categories of factors; and
- At the conclusion of the weighing test, BCU determines that the subject individual is a risk to the financial, emotional, or physical well-being of vulnerable individuals.

## 16. Are there any never-never crimes for CCAs?

The only crimes that would impact CCAs in making employees ineligible or mandatorily excluded are the following:

- If the program is dually licensed by DHS Child Welfare and certified by OHA Health Services Division (mental health services), then the employees are subject to ORS 443.004. The crimes included are: Aggravated Murder, Murder, Sodomy I, Sexual Abuse I, Rape I, Unlawful Sexual Penetration I.

Only the Oregon crimes would result in immediate ineligibility; if the conviction for one or more of these crimes was out of state, BCU would conduct a weighing test to determine fitness.

- If the program licenses its own child foster homes or child adoptive homes, the adults living in homes are subject to the Adam Walsh Act of 2006, which has several mandatory exclusion crimes. Please see OAR 407-007-0279.
- If the program is subject to the FFPSA, receiving Title IV-E funding, all the employees working at the CCA are subject to the FFPSA, which has the same mandatory exclusion crimes as the Adam Walsh Act. Please see OAR 407-007-0290.

Please note that ineligibility or mandatory exclusion allows no hearing rights and thus is a different status than denial. Denials are eligible for hearing or “contested case” rights through the Office of Administrative Hearings (OAH).

#### **17. What recourse is there for a denial?**

The only recourse for a denial is the responsibility of the subject individual: appealing the denial. However, if the subject individual believes that the reasons for the denial (which are listed in the notice for the subject individual) are materially incorrect, the subject individual can contact the BCU.

#### **18. Is there a way to know how long an appeal will take? Can a CCA check this on any day? Can it be displayed publicly? What about appeals. Break out into separate questions**

If a subject individual has been denied by the Background Check Unit, the CCA must remove the individual immediately from any work. The decision to appeal is the responsibility of the subject individual alone. Although denials only make up less than 3% of all fitness determinations, there is an appeals backlog.

Backlogs currently exist both in BCU’s administrative review of a denial and the Office of Administrative Hearings (OAH) that provides a third-party contested case hearing in front of an administrative law judge. Depending on responsiveness from subject individuals and all

scheduling factors, the appeal process currently can take from 4-12 months once the hearing request has been submitted. BCU is currently working on a variety of process improvements to attempt to reduce the BCU backlog.

The CCA Qualified Entity Designee (QED) can see in CRIMS if the status of the subject individual is in "Appeals" but no further information is available until the process is complete.

**19. Can the applicant provide supporting information to the BCU to explain background history?**

Yes. The instructions to the subject individual (in the paper background check request form and online in CRIMS) encourages the subject individual to disclose any criminal history. With the exception of proctor foster parents, most subject individuals do not need to disclose abuse, but the instructions tell the subject individuals that the abuse check will happen.

The instructions explain the weighing test and encourage the subject individual to provide detailed explanations of potentially disqualifying history, any circumstances which have changed since then, and any information and documentation the subject individual believes would be helpful to BCU in making an informed fitness determination. The subject individual can give the documents to the CCA QED to upload into CRIMS.

Examples of copied documents you could include to explain background history:

- Mental health counseling or treatment records;
- Mental health evaluations, letters, or recommendations from clinicians;
- Addictions counseling or treatment records;
- Addictions evaluations, letters, or recommendations from clinicians;
- Probationary or parole documents;
- Medical documentation;

- Conviction-related rehabilitation program completion records (ex., Theft Talk);
- Anger management, domestic violence, or other counseling and training programs.

**20. Can the applicant provide additional information to mitigate history or show evidence of rehabilitation?**

Copies of the following information can be submitted to demonstrate rehabilitation and mitigate risk. Such documentation is most valuable when the activities have occurred since any potentially disqualifying condition(s) occurred and consequently are considered as rehabilitative activities.

- Pertinent training records or certificates;
- Diplomas from certification or degree programs;
- Employer, manager, educator or other pertinent letters of recommendation speaking to paid or volunteer work, community service, or educational and other achievements.

Such letters are most valuable when the individual providing the recommendation demonstrates awareness of the potentially disqualifying history in the letter.

- Employment records that may show pertinent work history for the current position.

**21. Can the CCA provide supporting information to the BCU to explain applicant's background to avoid denial? How can a CCA advocate for the applicant?**

The subject individual's supervisors and others may provide supporting information for the Background Check Unit review in a weighing test. Please note however, that the QED, when working on any background check processing or activities, is working as a designee of the DHS and should not advocate in any way for the subject individual.

It is the responsibility of the QED to submit the background check requests, monitor the processing of the checks, ensure that required steps are completed, and if necessary ensure the subject individual is

immediately removed from the facility if hiring on a preliminary basis is revoked or if the subject individual is denied.

**22. How is the background check process different for a foster parent?**

The standards for foster parents are in the Child Welfare Oregon Administrative Rules for CCAs. The only part of the process that BCU does is the background check. Foster parents, like any adult household member in the foster home, are subject to the Adam Walsh Act of 2006. The Act includes a list of crimes that exclude the individual from being a foster parent (or household member) for either 5 years or permanently, depending on the crime.

For any conviction not on the exclusion list, and for any potentially disqualifying condition listed in OAR 407-007-0290, BCU will conduct a weighing test to determine if the individual poses a risk to the financial, emotional or physical well-being of vulnerable individuals.

SB 1515 (2016) also added the requirement that BCU must consider protective orders (such as restraining and stalking orders) against the proctor foster parent as potentially disqualifying.

Finally, SB 1515 (2016) added the requirement to BCU that it report back to the CCA any open or pending abuse investigations and any previous abuse history, regardless of it being potentially disqualifying or not under BCU rules. To this end, the background check for proctor foster parents includes a check of the Exclusion List of the Office of the Inspector General and the Oregon Board of Nursing websites as these include abuse information.

**23. What if an applicant is in recovery or has completed treatment, would that make an exception for them to allow them to work?**

If a subject individual has any potentially disqualifying crimes or conditions, per OAR 407-007-0300 one of the factors in the weighing test is to consider “Evidence of alcohol or drug issues directly related to criminal activity or potentially disqualifying conditions.” As noted in question 19, if the subject individual wants to provide treatment or counseling information unrelated (or not directly related) to criminal or

potentially disqualifying conditions, BCU will also review it during the weighing test.

#### **24. Can there be a registry for CCA employees?**

A background check registry is a list of qualified individuals who have successfully passed a background check of the required depth to allow staff to move from one agency to another without a new background check during a specific certification period. This ability is also referred to as statewide portability.

An example of such a registry is the BCU Long Term Care Registry which grants successful applicants within the long-term care industry (including home care workers) statewide portability within covered long-term care roles for a 2-year certification period. At the end of the 2-year certification, individuals submit new background checks to renew certification and statewide portability.

While currently not possible in CRIMS, ORCHARDS will provide the technology needed to create a CCA Registry within similar groups. For example, CCA roles requiring FFA checks could be placed on a CCA FFA Registry that allows staff to be certified and gain portability for most CCA roles. Since non-FFA covered CCA staff have lower background check requirements, any registry created for those staff would not necessarily be able to qualify for a CCA FFA Registry, but could gain portability between non-FFA CCA positions. Because of SB 1515 requirements, proctor foster parents would need to have their own registry, however anyone on such a registry could be granted portability for all other CCA roles.

If any CCA registries were to be created, they would need to be designed in collaboration with Child Welfare, CCLU, OHA, OYA, CCAs, and other stakeholders. Such a registry would require changes to both BCU and CCA licensing rules, including recertification periods for each registry.

#### **25. Can BCU notify the CCA when an employee has completed stages of a background check?**

Currently, BCU notifies the QED when:

- The subject individual completed data entry before the background check request is submitted. This notice is granted by status change in CRIMS and by email.
- The subject individual has submitted fingerprints (by status change);
- Fingerprint results have been returned to BCU (by status change);
- The subject individual has submitted requested documents (by status change); and,
- The background check is complete or closed (by status change and email).