

CHAPTER 8. CRIMINAL HISTORY BACKGROUND CHECKS

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Authority

The provisions of this Chapter 8 issued under section 111 of the Public School Code of 1949 (24 P. S. § 1-111), unless otherwise noted.

Source

The provisions of this Chapter 8 adopted August 3, 1990, effective August 4, 1990, 20 Pa.B. 4192, unless otherwise noted.

§ 8.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Applicant—A person who has submitted a job application to a school entity for a position which involves direct contact with children.

Criminal history background check—A report of criminal history record information from, or a statement that no information is on file with, the State Police; or, for nonresidents of this Commonwealth, a report of Federal criminal history record information from, or a statement that no information is on file with, the Federal Bureau of Investigation.

Direct contact with children—Possibility of care, supervision, guidance or control of children by a paid employe or contractor of, or an employe of a person under contract with, a school entity, and routine interaction with children by a paid employe of a school entity or a person under contract with a school entity.

School entity—A school district, intermediate unit, area vocational-technical school or private school administrative unit.

Substitute list—A list, approved by the hiring authority of a school entity, containing names of persons eligible to serve the school entity as substitute teachers or temporary replacements for other employes.

Cross References

This section cited in 22 Pa. Code § 101.142 (relating to additional staff application materials).

§ 8.2. Responsibilities of school entity.

(a) School entities shall require a criminal history background check prior to hiring an applicant or accepting the services of a contractor, if the applicant, contractor or contractor's employes would have direct contact with children. The

criminal history background check may not be more than 1 year old at the time of employment or engagement of contracted services.

(1) A criminal history background check is not required when an employe, contractor or contractor's employe, initially employed or engaged on or after January 1, 1986, continues to be employed within the same school entity but is moved from one site to another if the following apply:

(i) The employe, contractor or contractor's employe has previously submitted the original of a criminal history background check in accordance with section 111 of the Public School Code of 1949 (24 P. S. § 1-111).

(ii) A copy of the criminal history background check is maintained by the administrators of the school entity.

(2) If an employe, contractor or contractor's employe does not have direct contact with children, a criminal history background check is not required. A criminal history background check is required in accordance with section 111 of the Public School Code of 1949 before the employe, contractor or contractor's employe is permitted direct contact with children due to transfer, changed circumstances or for another reason.

(3) A criminal history background check is required only prior to the initial hiring of a substitute and remains in effect as long as the substitute continues to be employed by the same school entity. However, when a substitute seeks to have his name added to another school entity's substitute list, the substitute shall provide a current criminal history background check to the additional school entity. The fact that a substitute appears on one school entity's substitute list is not sufficient evidence to allow another school entity to add his name to its substitute list.

(b) The procedure which school entities shall follow in receiving criminal history background checks is as follows:

(1) The applicant or potential contractor may present a copy of his criminal history background check with an initial application, but shall present the original criminal history background check to the school entity prior to employment or engagement of services.

(2) The school entity shall make and keep a copy of the original in the applicant's or potential contractor's file.

(3) The school entity shall mark the copy with the date copied and note the name of the administrator of the school entity who has seen the original.

(4) The school entity shall return the original to the applicant or potential contractor for subsequent use.

(c) Prior to employing a person who would have direct contact with children, and prior to utilizing an employe in a manner which would cause an employe to have direct contact with children for the first time, a contractor at a school entity shall obtain a criminal history background check on each employe and present it to the school entity in the same manner as provided in subsection (b) for applicants and potential contractors.

(d) The commissioned officer or administrative head of each school entity is responsible for maintaining the confidentiality of the criminal history background check. The criminal history background check is not available to anyone who is not directly involved in making hiring decisions.

(e) A school entity may not employ an applicant who would have direct contact with children if the applicant's criminal history background check states that the applicant has been convicted of a crime specified in section 111(e) of the Public School Code of 1949, or an equivalent Federal or out-of-State crime, within 5 years or less of the date of a criminal history background check.

(f) A school entity may not engage or utilize the services of a contractor who would have direct contact with children or permit an employe of the contractor to have direct contact with children if the contractor or the contractor's employe's criminal history background check states that the contractor or contractor's employe has been convicted of a crime specified in section 111(e) of the Public School Code of 1949, or an equivalent Federal or out-of-State crime, within 5 years or less of the date of a criminal history background check.

(g) The school entity shall notify the applicant in writing if the decision not to hire or employ the applicant is based in whole or in part on the criminal history background check.

Cross References

This section cited in 22 Pa. Code § 101.142 (relating to additional staff application materials).

§ 8.3. Exceptions.

To be exempt from the requirements of presenting a criminal history background check, all of the following requirements shall be met:

- (1) The applicant is 20 years of age or younger.
- (2) The applicant would be employed for a period of 90 days or less.
- (3) The applicant is part of a job development or job training program, or both, funded in whole or in part by public or private sources.

Cross References

This section cited in 22 Pa. Code § 101.142 (relating to additional staff application materials).

§ 8.4. Rules of construction.

(a) No provision of this chapter may be construed to make submission of a criminal history background check by a person continuously employed by a school entity since January 1, 1986 a condition of the employe's continued employment with the school entity.

(b) No provision of this chapter may be construed to obviate compliance with or to excuse a person or school entity from failure to comply with section 111 of the Public School Code of 1949 (24 P. S. § 1-111), between January 1, 1986 and August 4, 1990.

Cross References

This section cited in 22 Pa. Code § 101.142 (relating to additional staff application materials).

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