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SCHOOL EMPLOYEE NOT GOVERNED BY THE PUBLIC SCHOOL CODE

F R E Q U E N T L Y A S K E D Q U E S T I O N S

Who needs clearances?

Pursuant to the provision of Act 153 of 2014, those categories of school employees who are required to obtain background checks pursuant to Section 111 of the Public School Code will continue to be required to obtain background checks prior to employment in accordance with that section and on the periodic basis required by Act 153. The Child Protective Services Law §6344(a. 1) states that school employees not governed by the provisions of the Public School Code of 1949 shall be governed by this section.

The Act defines school employee as an individual who is employed by a school or who provides a program, activity or service sponsored by a school. The term excludes an individual who has no direct contact with children.

This shall not apply to an employee of an institution of higher education whose direct contact with children, in the course of employment, is limited to either:

- A prospective student visiting a campus operated by the institution of higher education; or
- Matriculated students who are enrolled with the institution.

The definition of school is a facility providing elementary, secondary, or postsecondary educational services. The term includes the following:

1. Any school of a school district;
2. An area vocational-technical school;
3. A joint school;
4. An intermediate unit;
5. A charter or regional charter school;
6. A cyber charter school;
7. A private school licensed under the act of January 28, 1988 (P.L.24, No.11), known as the Private Academic Schools Act;
8. A private school accredited by an accrediting association approved by the State Board of Education;
9. A nonpublic school;
10. An institution of higher education;
11. A private school licensed under the act of December 15, 1986 (P.L.1585,

No.174), known as the Private Licensed Schools Act;

12. The Hiram G. Andrews Center; or
13. A private residential rehabilitative institution as defined in section 914.1-A(c) of the Public School Code of 1949.

What is the definition of child?

For purposes of clearances, a child is an individual under 18 years of age.

How is direct contact with children defined?

Direct contact with children is defined in § 6303 (relating to definitions) as the care, supervision, guidance or control of children, or routine interaction with children.

How do I determine who in my agency needs clearances?

In order to determine who in your agency is required to obtain clearances as a condition of hire, you should carefully consider who within your agency, organization or institution has direct contact with



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children. To make this determination, think about the employee's role within your agency and the contact they have with children. Consider these two avenues to make a determination:

1. Does the employee have direct contact with children due to providing care, supervision, guidance, or control of children? The terms care, supervision, guidance or control are not defined in the statute and as such, it is suggested that the common meaning of these terms be used, with child safety serving as the paramount consideration. If it is determined that the employee does provide care, supervision, guidance or control of children, they will need clearances.
2. Does the employee have routine interaction with children? Routine interaction is defined as regular and repeated contact that is integral to a person's employment responsibilities. Consideration should be given to what the employee's role is within the agency, and based on that role, determine if their contact with children is regular and repeated contact that is integral to their employment responsibilities. If you determine that the employee does have direct contact with children, they need clearances.

Please be sure to consult your legal counsel when making these determinations. You should also consult

with your insurer regarding possible insurance coverage implications.

Which clearances are needed?

Employees having contact with children must obtain the following three clearances:

- Report of criminal history from the Pennsylvania State Police (PSP);
- Child Abuse History Clearance from the Department of Human Services (Child Abuse); and
- Fingerprint based federal criminal history submitted through the Pennsylvania State Police or its authorized agent (FBI).

When are clearances needed?

Clearances must be submitted prior to the commencement of employment or service.

What is the renewal requirement for clearances?

Clearances must be obtained every 60 months. Timeframes for renewed clearances are based upon the date of each individual clearance. If an individual or agency elected to renew all clearances at the same time, the date of the oldest clearance rather than the most recent would be used.

How do I obtain my clearances?

The Child Abuse, PSP, and FBI clearances can all be applied and paid for electronically. The FBI clearance

also requires a fingerprint submission. All necessary instructions and links to apply for these clearances can be found at the "Get a Clearance" page of the KeepKidsSafe.pa.gov website

Is the use of a third-party vendor to process clearances acceptable?

Third-party vendors may be used to process Child Abuse, PSP, and FBI clearances using the steps established above. However, agencies are not permitted to conduct background checks or clearances through other databases in lieu of the steps outlined above. In addition, school administrators remain responsible for the employment decision based on the information obtained.

How much do clearances cost?

- The PSP clearance costs \$22.
- The Child Abuse clearance costs \$13.
- The FBI clearance costs \$23.85 through the Department of Education.

Who pays for clearances?

The applicant or employee is responsible for paying the cost of the required clearances. However, some employers choose to pay for these clearances and are able to establish business accounts to pay for clearances. The only time an employer is required to bear the cost of the clearances is when there is reasonable



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belief that the employee was arrested or convicted of an offense that would deny employment or named as a perpetrator in an indicated or founded report. In these situations, the employer must immediately require the employee to obtain their clearances.

Can an agency or organization pay for clearances?

Child Abuse clearances

Yes, employers, agencies and organizations can pay for child abuse history clearances by registering for a Business Partner user account using the “Organization Account Access” link on the Child Welfare Portal website at www.compass.state.pa.us/cwis. The business account will allow organizations to purchase Child Abuse clearance payment codes to be distributed to applicants or employees. Individual applicants or employees will then go onto the Child Welfare Portal to apply for the clearance using the code. The pre-purchased codes can only be used once and allows the organization to have access to the applicant’s Child Abuse clearance results once those results are processed.

FBI clearances

An agency pay agreement/business account can also be created between an organization and the FBI, or its authorized agent, for payment of FBI clearances. Information on creating

an agency pay agreement for FBI clearances through the Department of Education can be found at the “Get a Clearance” page of the KeepKidsSafe.pa.gov website.

PSP clearances

An agency business account can be requested from the Pennsylvania State Police to pay for clearances in bulk by calling 1-888-783-7972 and selecting option 3. Organizations are, also able to pay for an applicant’s PSP clearance on an individual basis by using a credit card if applying online or submitting a paper check if applying by mail.

Are there any other requirements?

If an employee is arrested for or convicted of an offense that would constitute grounds for denying employment or participation in a program, activity or service, or is named as a perpetrator in a founded or indicated report, the employee must provide the administrator or their designee with written notice not later than 72 hours after the arrest, conviction or notification that the person has been listed as a perpetrator in the statewide database.

An employee who willfully fails to disclose information as required above commits a misdemeanor of the third degree and shall be subject to discipline up to and including termination or denial of employment.

What is the provisional hiring period for employees?

Individuals may be employed for a single period, not to exceed 90 days if all of the following conditions are met:

- The applicant has applied for the three required clearances and they provide a copy of the completed forms to their employer.
- The employer has no knowledge of information pertaining to the applicant which would disqualify him from employment.
- The applicant swears or affirms in writing that he is not disqualified from employment pursuant to the grounds for denying employment in § 111 (e) or (f.1) or has not been convicted of an offense of a similar nature to those crimes under the laws or former laws of the United States, or one of its territories or possessions, another state, the District of Columbia, the Commonwealth of Puerto Rico or a foreign nation, or under a former law of this Commonwealth.
- The applicant is not permitted to work alone with children and must work in the immediate vicinity of a permanent employee.

Is my employer required to keep a copy of my clearances?

Yes, pursuant to § 6344 (b.1), the employer, administrator, supervisor or other person responsible for



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employment decisions or acceptance of the individual to serve in any capacity requiring clearances, shall maintain copies of the required information. An employer, administrator, supervisor or other person responsible for employment decisions that intentionally fails to require an applicant to submit the required clearance before the applicant's hiring commits a misdemeanor of the third degree.

School administrators are reminded that pursuant to Department of Education regulation, the

commissioned officer or administrative head of each school entity is responsible for maintaining the confidentiality of the criminal history background checks and may not be made available to anyone not directly involved in making hiring decisions.

Can an employer or organization institute additional standards?

Yes, nothing prohibits the employer or person responsible for a program, activity or service from making employment, discipline or termination decisions or establishing additional

standards as per of the hiring or selection process for employees or volunteers. Administrators are urged to consult with any legal counsel prior to instituting any such additional standards.

Can clearances be transferred?

Any person who obtained their clearances may transfer or provide services to another subsidiary or branch established and supervised by the same organization during the length of time the person's clearances are current.

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