

Act 168 of 2014 - Procedures and Forms

24 P.S. § 1-111

DATE OF ISSUE: December 19, 2014

PURPOSE

This circular describes the process for completing the employment history review process related to Act 168, explains the use of forms for employment screening, and details the process for accessing "pending criminal charge" information as required by Act 168.

BACKGROUND AND AUTHORITY

Act 168 amends the act of March 10, 1949 (P.L. 30, No.14), known as the "Public School Code of 1949," to provide direction regarding employment history review processes and for monitoring of electronic public safety and criminal justice information related to educators.

PROCEDURES

Employment History Review

As of December 22, 2014, a school entity or an independent contractor (collectively referred to herein as "hiring entity") may not hire any applicant for a position in which the employee will have direct contact with children until the school entity has complied with the employment history review process delineated in Act 168. (24 P.S. § 1-111.1).

Under Act 168, in addition to satisfying pre-existing employment requirements under the Public School Code of 1949 and 23 Pa.C.S. §§ 6354-58 (the Child Protective Services Law), a hiring entity must require an applicant for any position in which there is direct contact with children to complete Section 1 of the Commonwealth of Pennsylvania Sexual Misconduct/Abuse Disclosure Release form for all employers that fall within the following categories:

- (1). The applicant's *current employer* (regardless of whether the employer was a school entity and/or where the applicant had direct contact with children);
- (2). All former employers of the applicant *that were school entities*; and
- (3). All former employers where the applicant was employed in a position *where he or she had direct contact with children*.

Note that the applicant must fill out a separate Sexual Misconduct/Abuse Disclosure Release form for each employer that falls within the above-listed categories. The applicant is not required, however, under Act 168 to disclose current or previous volunteer positions. The applicant must also consent to the current/former employer's disclosure of any information regarding abuse and/or sexual misconduct. Under Act 168, the hiring entity is prohibited from hiring an applicant for a position involving direct contact with children unless the applicant provides the required information on the form and consent.

In addition to disclosing current/prior employers, an applicant must respond affirmatively or negatively to the following questions on the form: whether they have ever been the subject of an abuse or sexual misconduct investigation by any employer, state licensing agency, law enforcement agency or child protective services agency; whether they were disciplined, discharged, non-renewed, asked to resign from employment, resigned from or otherwise separated from employment while allegations of abuse or sexual misconduct were pending or under investigation or due to adjudication or findings of abuse or sexual misconduct; and/or had a license, professional license or certificate suspended, surrendered or revoked while allegations of abuse or sexual

misconduct were pending or under investigation or due to an adjudication or findings of abuse or sexual misconduct.

[Sexual Misconduct/Abuse Disclosure Release form](#)

If, upon receipt of the completed Sexual Misconduct/Abuse Disclosure Release form, the applicant is still under consideration for employment, the hiring entity must then inquire of the current and prior employers the following: whether the prospective employee was ever the subject of an abuse or sexual misconduct investigation, was disciplined, asked to resign from employment, resigned from or otherwise separated from employment while allegations of abuse or sexual misconduct were pending or under investigation or due to adjudication or findings of abuse or sexual misconduct; and/or had a license, professional license or certificate revoked while allegations of abuse or sexual misconduct were pending or under investigation or due to an adjudication or findings of abuse or sexual misconduct. This inquiry is made by submitting the applicant-completed Sexual Misconduct/Abuse Disclosure Release form to each current/former employer for completion of Section 2. The current/former employer has twenty (20) days to complete Section 2 and return the completed form to the hiring entity.

If the current and/or any past employer responds in the affirmative to any of the abuse or sexual misconduct disclosure questions and the hiring entity *still* wants to consider hiring the applicant, the hiring entity must submit a second form, entitled the Commonwealth of Pennsylvania Sexual Misconduct/Abuse Disclosure Information Request form, to the current/former employer who responded in the affirmative. The current and/or past employer has sixty (60) days to provide all information related to the disclosure to the hiring entity.

[Sexual Misconduct/Abuse Disclosure Information Request form](#)

Failure by current or past employers to respond and/or provide the information requested can result in civil penalties and/or violations of the Educator Misconduct Act, 24 P.S. § 2070.1a *et seq.*

Provisional employment of applicants pending responses by current/former employers is permitted for up to 90 days as long as: the applicant has completely filled out the Commonwealth of Pennsylvania Sexual Misconduct/Abuse Disclosure Release form; the hiring entity's administrator has no knowledge of any information that would make the applicant disqualified from employment; and the applicant swears/affirms that he/she is not disqualified from employment. During any period of provisional employment, the employee cannot work alone with children and must work in the immediate vicinity of a permanent employee.

Verifying Employment Certification, Disciplinary Status and Pending Criminal Charges (Educators only)

In addition to verifying the applicant's history regarding abuse and/or sexual misconduct, Act 168 requires that when the applicant holds a public or private school certification or has been assigned a Professional Personnel Identification number ("PPID"), the hiring entity must ensure that the applicant has a valid and active certification appropriate for the position, determine whether the applicant has been the subject of public professional discipline and ascertain whether the educator has pending criminal charges.

Information concerning certification status and public professional discipline can be found in the Teacher Information Management System ("TIMS"). In addition, information concerning pending criminal charges will also now be available through TIMS. Hiring entities that are provisioned users of TIMS can determine whether an educator has pending criminal charges by searching the educator by name or PPID and clicking on "View Complete Profile". Hiring entities that are not provisioned can access the same information by searching the educator by PPID from the public access site:

<http://www.teachercertification.pa.gov/Screens/wfSearchEducators.aspx>

A "Pending Criminal Charges" indicator means that the educator has been criminally charged with a misdemeanor or felony crime, which includes crimes pending pre-trial diversionary program completion (i.e. an ARD program).

The information reflected in TIMS on pending criminal charges has been received by the Department from the Pennsylvania Justice Network ("JNET"), which provides the Department with limited public information about criminal charges. If it is noted that the applicant has pending criminal charges in TIMS, the hiring entity may

contact the Office of Chief Counsel, Department of Education, at 717-787-5500, for information regarding charge information, the date of the charges and the county where the charges were incurred. Hiring entities may also verify the charges and obtain this information by accessing the Pennsylvania Judiciary Web Portal, which is a free database of publicly available criminal information. Access to the portal can be made at <https://ujportal.pacourts.us>.

Please note that the information available on TIMS is only provided for educators holding a Pennsylvania public or private teaching certification and/or a PPID number. **Information for any other applicants is not available on TIMS.**

Relevant Definitions

“Direct contact with children” is defined as “the possibility of care, supervision, guidance or control of children or routine interaction with children.”

“School entity” is defined as “any public school, including a charter or cyber charter school, private school, nonpublic school, intermediate unit or area vocational-technical school operating within this Commonwealth.”

“Sexual misconduct” is defined as “any act, including, but not limited to, any verbal, nonverbal, written or electronic communication or physical activity, directed toward or with a child or a student regardless of the age of the child or student that is designed to establish a romantic or sexual relationship with the child or student. Such acts include, but are not limited to: (1) sexual or romantic invitations; (2) dating or soliciting dates; (3) engaging in sexualized or romantic dialogue; (4) making sexually suggestive comments; (5) self-disclosure or physical exposure of a sexual, romantic or erotic nature; or (6) any sexual, indecent, romantic or erotic contact with the child or student.”

“Abuse” is defined as “conduct that falls under the purview and reporting requirements of 23 Pa.C.S. Ch. 63, the Child Protective Services Law, is directed toward or against a child or a student, regardless of the age of the child or student.”

REFERENCES

Purdon's Statute:

24 P.S. § 1-111 *et seq.*

23 Pa.C.S. §§ 6354-58

24 P.S. § 2070.1a *et seq.*

ATTACHMENTS

[Sexual Misconduct/Abuse Disclosure Release](#)
[Sexual Misconduct/Abuse Disclosure Information Request](#)

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