

Act 168 – Frequently Asked Questions regarding the employment history review for all new employees having direct contact with children and the additional pre-employment requirements for educators.

Employment History Review:

1. Q: What entities are required under Act 168 to conduct employment history reviews?

A: Act 168 applies to all school entities and independent contractors of school entities (referred to collectively herein as “hiring entity”). School entity includes any public school, including a charter or cyber charter school, private school, nonpublic school, intermediate unit or area vocational-technical school operating within Pennsylvania.

2. Q: Which employees must have an employment history review?

A: Employment history reviews must be conducted for applicants who will be employed in positions involving direct contact with children. Current employees may not be required to undergo an employment history review as long as they remain employed by the same hiring entity. There may be situations where an employee is moving from a position where they did not have direct contact with children to a position where they will have direct contact with children. You must determine, in consultation with your solicitor, whether an Act 168 review would be prudent in these cases.

Employees of independent contractors must have an employment history review prior to being hired or, if they were hired before December 22, 2015, prior to the start of employment with a new school entity even if they remain employed by the same independent contractor. After the employment history review has been conducted, the review is valid as long as the employee continues to work for the independent contractor, even if they work for different school entities.

3. Q: What does “direct contact with children” mean?

A: “The possibility of care, supervision, guidance or control of children or routine interaction with children.” When determining whether a prospective employee would have “routine interaction with children,” consider the prospective employee’s role within your entity and whether their contact with children will be regular, ongoing contact that is part of their day to day job responsibilities. If you

are unsure about whether this applies to a particular position, consult your legal counsel. Child safety should be at the forefront of any decision making. If a determination is made that a prospective employee will not have direct contact with children, an Act 168 employment history review is not required for that prospective employee.

4. Q: Do I have to conduct an employment history review for every applicant or just the applicant(s) I want to hire?

A: The employment history review is not required for every applicant. Act 168 only requires hiring entities to conduct an employment history review prior to offering employment to an applicant who would be employed in a position involving direct contact with children.

5. Q: Are individuals who work as volunteers in a school entity required to undergo an employment history review?

A: No. Act 168's requirements apply only to employees of school entities and independent contractors. However, volunteers may be required to obtain other clearances. Consult your legal counsel about the requirements related to volunteers.

6. Q: Are student teachers required to undergo an employment history review?

A: No. Act 168's requirements apply only to employees of school entities and independent contractors. However, student teachers may be required to obtain other clearances. Consult your legal counsel about the requirements related to student teachers.

7. Q: What information must be included in the employment history review?

A: In addition to contact information, the hiring entity must require the applicant to provide a list of the following:

(1) The applicant's current employer; (2) All former employers that were school entities; and (3) All former employers where the applicant was employed in a position that involved direct contact with children.

The applicant must also provide a written statement of whether the applicant: (1) has 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 (unless the investigation resulted in a finding that the allegations were false); (2) has ever been 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 (3) has ever 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.

The hiring entity must then obtain answers to the same questions from each of the current and former employers listed by the applicant.

8. Q: What is “abuse”?

A: “Conduct that falls under the purview and reporting requirements of the Child Protective Services Law (“CPSL”), 23 Pa.C.S. Ch. 63, is directed toward or against a child or a student, regardless of the age of the child or student.” Consult your legal counsel when determining whether certain conduct meets this definition.

9. Q: What is “sexual misconduct”?

A: “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 invitation; (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.”

Note that “sexual misconduct” is not limited to sexual contact or criminal behavior, but rather includes “grooming” behaviors that are a precursor to an inappropriate relationship. An inappropriate relationship between a teacher and a student is usually the result of a prolonged process of gaining trust, blurring boundaries and desensitization. Common grooming behaviors include: taking an undue interest in a student; giving gifts or special privileges to the student; getting the student out of class repeatedly to visit the teacher or inviting the student to come to the classroom at non-class times; being alone with the student in private spaces; complimenting the student’s appearance or body; engaging in peer-like behavior with the student; talking to the student about

matters that would normally be discussed with adults (e.g., marital and other personal problems, sexual experiences, etc.); telling the student secrets and having secrets with the student; contact with the student beyond the school day; using e-mail, text-messaging, or websites to discuss personal topics or interests with students; engaging in talk containing sexual innuendo or banter with students; telling sexually-explicit jokes; or hugging, kissing, or other physical contact with a student.

A child or student will NEVER be deemed to consent to engage in sexual misconduct or sexual abuse or exploitation regardless of the student's age.

10. Q: Are applicants and employers required to disclose information related to allegations determined to be false?

A: No. Act 168 specifically excludes from its requirements information related to false allegations of abuse and/or sexual misconduct. Therefore, applicants and employers are not required to disclose this information.

11. Q: What are acceptable ways of collecting the information required under Act 168?

A: Hiring entities shall use the forms developed by the Pennsylvania Department of Education ("Department") to receive and/or provide the required information (A link to the forms is provided at the end of this FAQ). Applicants must complete one **Commonwealth of Pennsylvania Sexual Misconduct/Abuse Disclosure Release** form for each: 1. Current employer, 2. Former employer(s) that were school entities, and 3. Former employers where the applicant was employed in a position that involved direct contact with children. The hiring entity must then send the form(s) to the employers listed by the applicant for completion. It is acceptable to transmit the forms electronically (fax, email, etc.). Phone verification in lieu of using the approved forms is **not acceptable**. The hiring entity must maintain the completed forms in their files.

The information on the form must be provided by the applicant or they cannot be hired for a position involving direct contact with children. If an applicant has no current or previous employer, this must be acknowledged on the form and the applicant must still answer the abuse and sexual misconduct background questions.

12. Q: Do I have to send the Commonwealth of Pennsylvania Sexual Misconduct/Abuse Disclosure Release form to every person/entity for whom the applicant ever worked?

A: No, Act 168 specifically states that the form must be distributed to: (a) the applicant's current employer(s); (b) all former employers that were school entities; and (c) all former employers where the applicant was employed in a position that involved direct contact with children. Former employers who do not meet these criteria do not need to be included in the employment history review.

13.Q: Does the employment history review have to include current employers that are not school entities and where the applicant did not have direct contact with children?

A: Yes.

14.Q: Must the employment history review include out-of-state employers?

A: Yes.

15.Q: Must the employment history review include volunteer positions that the applicant held?

A: No. However, prospective employers may wish to contact the entities for which the applicant worked as a volunteer, particularly if the applicant had direct contact with children.

16.Q: Is there a limit on the number of years we have to go back when reviewing the applicant's work history?

A: No. Act 168 requires the applicant to disclose all former employers that were school entities and/or where the prospective employee had direct contact with children, and the employment history review conducted by the hiring entity must include all such employers listed by the applicant.

17.Q: What if the applicant is not truthful or does not reveal completely the requested information?

A: An applicant who provides false information or willfully fails to disclose the information requested on the form shall be subject to discipline up to, and including, termination or denial of employment and may be subject to criminal prosecution under 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities), civil penalties and professional discipline under the Educator

Discipline Act (24 P.S. § 2070.1a *et seq.*). To view a copy of the Educator Discipline Act and more specific information related to the educator misconduct complaint process, visit the Professional Standards and Practices Commission webpage at:

http://www.portal.state.pa.us/portal/server.pt/community/professional_standards_practices_commission/8829.

18. Q: How long do employers have to respond to the initial request for information?

A: The applicant's current and former employers have **20 calendar days** to provide the information requested on the Commonwealth of Pennsylvania Sexual Misconduct/Abuse Disclosure Release form.

19. Q: What if the applicant and/or current or past employer answers "yes" to any of the abuse and sexual misconduct background questions?

A: If the employer wants to continue to consider the applicant, they must request additional information from the current/former employer by completing the **Commonwealth of Pennsylvania Sexual Misconduct/Abuse Information Request** form. Hiring decisions are left to the discretion of the school entity, and should be made after evaluating all relevant factors and consultation with your legal counsel. Please be advised that even if you elect not to consider the applicant after you receive information related to an affirmative response, you may have reporting obligations under the CPSL, the Educator Discipline Act, and/or other legal mandates.

20. Q: If the applicant is still under consideration for employment with the hiring entity, what type of additional information must the current/former employer provide?

A: The current/former employer must provide all relevant information, records and documentation in their possession or within their control, including information, records or documentation that may otherwise be confidential under the CPSL and/or the Educator Discipline Act. The information, records and documentation must be provided to the hiring entity within **60 calendar days** of the request.

21. Q: Is the information and documentation received as part of the employment history review considered public information?

A: No. The information and documentation, including the completed forms, is not considered public information subject to the “Right-To-Know-Law” of February 14, 2008 (P.L. 6, NO. 3).

22. Q: What if a current and/or former employer does not respond to the initial request for information or a request for additional information? Can I still hire the applicant?

A: This is a decision within the discretion of the hiring entity. Current and former employers who do not provide the required information may be subject to penalties up to \$10,000 and the imposition of professional discipline where appropriate. Please contact the Department’s School Services Unit at 717-787-4860 with complaints related to the willful violation of the requirement to provide information. In addition, you can use the Unit’s Resource Account at ra-edact168@pa.gov to report a violation.

23. Q: What if the former employer responds that they no longer have any information regarding the applicant?

A: This is a decision within the discretion of the hiring entity. Records should reflect this lack of information. We encourage you to consider all other information available when making a hiring decision.

24. Q: What if the former employer is out of business with no person to contact regarding the pre-employment history review?

A: This is a decision within the discretion of the hiring entity. Records should reflect this lack of information. We encourage you to consider all other information available when making a hiring decision.

25. Q: What is the provisional hiring period?

A: A hiring entity may hire an applicant on a provisional basis for **90 calendar days** pending receipt of the information requested, **as long as**: (1) the applicant has provided all relevant information on the form(s); (2) the hiring school administrator has no knowledge of information related to the applicant that would disqualify the applicant from employment; (3) the applicant swears or affirms that he/she is not disqualified from employment; and (4) the applicant is not permitted to work alone with children and is required to work in the immediate vicinity of a permanent employee.

26. Q: If an applicant completes the employment history review for a school entity and then transfers to another school entity in the same district, diocese or religious judicatory, or to another school within the same organization, does the applicant have to undergo the same review again?

A: No.

27. Q: What are Act 168 requirements related to substitute employees?

A: For substitute employees, the employment history review shall be conducted prior to the initial hiring or placement on the school entity's approved substitute list, or prior to employment with an independent contractor, intermediate unit or other entity that provides substitute staffing services to school entities. It is not necessary to repeat the reviews as long as the substitute employee continues to be employed by the school entity or remains on the school entity's approved substitute list. **The appearance of a substitute employee on one school entity's substitute list does not relieve another school entity from its responsibilities under Act 168.** However, an employment history review conducted upon initial hiring of a substitute employee by an independent contractor, intermediate unit or other entity that furnishes substitute staffing services to school entities shall satisfy the Act 168 requirements for all school entities using the services of the independent contractor, intermediate unit or other entity.

28. Q: What are the responsibilities of independent contractors conducting employment history reviews?

A: The independent contractor must maintain records documenting the employment history reviews and, upon request, shall provide the employee's records to the school entity to which the employee is assigned. When an independent contractor receives an affirmative response to any of the abuse and sexual misconduct background questions, the independent contractor shall inform the school entity, and if the school entity objects to the assignment, the independent contractor may not assign the employee to the school entity.

29. Q: Can a third party entity conduct the Act 168 reviews as a service to hiring entities?

A: Yes, as long as the hiring entity ensures that the Act 168 reviews are completed appropriately, following any procedure dictated by the Act. The hiring entity is ultimately responsible for ensuring that any and all employment history reviews are conducted.

30.Q: If an employer or third party wants to charge me to provide a response to Act 168 form(s), must we pay for the form(s) to be completed?

A: Yes. The fact that payment is required for the information is not grounds to not comply with the provisions of Act 168.

31.Q: What are my reporting responsibilities if an applicant or an employer answers “yes” to any of the abuse and sexual misconduct background questions?

A: If the applicant is an educator, you must report the information to the Department’s Office of Chief Counsel. The mandatory report forms can be accessed on the Department’s website. Information related to non-educators should not be reported to the Department of Education. You may also be required to report the information under the CPSL and may report the information to other child protective services, law enforcement or licensing agencies and to other school entities or prospective employers as appropriate. If you are unsure about your reporting requirements, consult your legal counsel.

32.Q: Does Act 168 offer me any protection for providing information or records about a current or former employee?

A: Yes. Unless the information provided is knowingly false, you are immune from criminal liability under the CPSL, the Educator Discipline Act, and from civil liability. Act 168 also requires applicants for positions involving direct contact with children to provide a written authorization that consents to and authorizes the disclosure of the requested information by the applicant’s current and former employers, as well as a written release that releases those employers from any liability arising from the disclosure of the information or any related records.

33.Q: What if we are asked to provide information about a former employee and (1) prior to the effective date of Act 168 (December 22, 2014) we entered into a separation agreement with the former employee that contained a confidentiality clause and/or (2) the union contract has restrictive language concerning what information can be shared regarding the former employee?

A: You should consult your legal counsel. However, the applicant's written authorization and release from liability should allow you to release the information or records.

34. Q: What impact does Act 168 have on collective bargaining agreements, separation agreements and other similar contracts or agreements entered into after December 22, 2014?

A: On or after December 22, 2014, a hiring entity may not enter into a collective bargaining agreement, employment contract, agreement for resignation or termination, a severance agreement or any other contract or agreement or take any action that suppresses information related to abuse or sexual misconduct, interferes with the reporting of information related to abuse or sexual misconduct, or requires an employer to expunge information related to abuse or sexual misconduct unless after investigation the allegations are found to be false.

If these types of agreements/contracts were entered into prior to December 22, 2014, the applicant's written authorization and release from liability should allow you to release the information or records. If this situation arises, where a request for information or records is made and there is a pre-existing agreement/contract precluding the release of information related to abuse or sexual misconduct, you should consult your legal counsel.

Effective February 18, 2014, the Educator Discipline Act requires chief school administrators to file within 15 days a mandatory report with the Department for any educator who (1) has been given notice of intent to dismiss or remove for cause; (2) resigned, retired or otherwise separated from employment after any allegations of misconduct; (3) is alleged to have committed sexual abuse or exploitation involving a child or student or who is alleged to have engaged in sexual misconduct with a child or student; (4) or who the chief school administrator has reasonable cause to suspect has caused physical injury to a child or student as a result of negligence or malice. The Educator Discipline Act also includes other mandatory reporting requirements for chief school administrators and educators. See 24 P.S. § 2070.9a for a complete listing of the mandatory reporting requirements.

35. Q: Does Act 168 contain any other requirements for applicants who are educators?

A: Yes. In addition to having the applicant complete the employment history review process, you must: (1) determine the applicant's eligibility for employment by verifying that their certification status reflects valid and active certification appropriate for the position; (2) check to see if the educator was the subject of public professional discipline; and (3) inquire whether the Department has received notification of pending criminal charges against the educator. This information is available on the Department of Education's Teacher Information Management System ("TIMS"). Instructions for accessing pending criminal charge information in TIMS are provided below.

An educator is anyone who (1) holds either a private or public school certificate; (2) who is a charter or cyber charter school staff member; or (3) who is a contracted educational provider staff member. See 24 P.S. § 2070.1b for the definitions of "charter school staff member" and "contracted educational provider staff member".

School entities and independent contractors must complete these additional steps for all applicants who are educators even if the applicant is not being hired for a position for which certification is required. However, the Department of Education only receives notification of pending criminal charges for educators who hold a private or public school certificate and/or who have been issued a Professional Personnel Identification ("PPID") number.

Pre-Employment Requirements (For Educators Only)

36.Q: What does "pending criminal charges" mean?

A: Criminal charges have been filed against an educator and are pending disposition such as a plea of guilty, a finding of guilt or an acquittal, and/or dismissal. "Pending criminal charges" is also an accurate status when an educator is participating in a pre-trial diversionary program, such as the accelerated rehabilitative disposition (ARD) program. "Pending criminal charges" may remain as a status following conviction and sentencing for a crime, unless we receive formal notification that the criminal charge has been expunged. In addition, the Department may elect to maintain the flag in cases involving criminal conduct warranting the revocation of an educator's teaching certification and employment eligibility. In these situations, the flag may remain temporarily after sentencing for the criminal offense. Please be advised that there may be a

short time lapse between the time criminal charges are filed and the time this information is reflected in TIMS as a “yes” for pending criminal charges.

37. Q: How can we find out whether an applicant who holds a private or public school certificate or who has a PPID has pending criminal charges?

A: This information is available in TIMS. There are two ways that the information can be accessed. If you are provisioned in TIMS, you may search the applicant by name or by PPID number. If you are not provisioned in TIMS, you may search the applicant on the public TIMS website by PPID number **only**. If you search the applicant by name on the public site information relating to pending criminal charges will not be displayed. The screen will reflect either “Yes-The Department has information of pending criminal charges” or “No-The Department has no information of pending criminal charges”. **You must still comply with the pre-existing background check requirements under section 1-111 of the Public School Code of 1949 and the CPSL.**

38. Q: Does the Department of Education receive notification of pending criminal charges for individuals who do not hold a private or public school certificate or a PPID number?

A: No. The Department only receives notification of pending criminal charges for educators who hold a private or public school certificate and/or who have been assigned a PPID number. Therefore, you should not contact the Department regarding applicants who do not have a certificate or a PPID number to obtain information regarding pending criminal charges.

39. Q: Can I hire an applicant who has pending criminal charges?

A: Hiring decisions are left to the discretion of the school entity. You should consult your legal counsel before offering employment to an applicant with pending criminal charges. Please be advised that sections 111(e) and (f.1) of the Public School Code of 1949 contain employment prohibitions for individuals who have been convicted of certain crimes.

40. Q: If TIMS reflects that an applicant has pending criminal charges, how do I find out further information about the charges?

A: You may contact the Pennsylvania Department of Education’s Office of Chief Counsel, at 717-787-5500. You may also find publicly available criminal

information on the Pennsylvania Judiciary Web portal:
<https://ujportal.pacourts.us/DocketSheets.aspx>

Links to Forms Referenced in the Act 168 FAQ

[Commonwealth of Pennsylvania's Sexual Misconduct-Abuse Disclosure Release.pdf](#)

[Commonwealth of Pennsylvania Sexual Misconduct-Abuse Disclosure Information Request.pdf](#)