



white paper

**THE IMPACT OF PA ACT
153 ON EMPLOYMENT
SCREENING IN HIGHER
EDUCATION**



Act 153 of 2014 and Act 15 of 2015 amended Pennsylvania's Child Protective Services Law (CPSL) to require individuals that have contact with children to obtain state required certifications and clearances every 60 months.

Specifically, the law requires school employees and volunteers having contact with children to obtain the required clearances prior to employment and then again every 60 months. This requirement applies to all school employees—primary, secondary and post-secondary, however, Act 15 provides an exception that excludes many employees of institutions of higher education from the background check requirements.

APPLICABILITY OF THE LAW

1. Exception for Employees of Institutions of Higher Education

Act 15 of 2015 provides an exception for most employees of institutions of higher education, who will not be subject to the certification and clearance requirements.

Act 15 states that the certification and clearance requirements do 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 students visiting a campus operated by the institution of higher education; or
- (B) “matriculated students” who are enrolled with the institution.

The law defines “matriculated student” as “a student who is enrolled in an institution of higher education and pursuing a program of study that results in a postsecondary credential, such as a certificate, diploma or degree.” However, the language of the law only refers to employees, so volunteers in institutions of higher education who have “direct volunteer contact” with children will continue to be subject to the certification requirements (except student volunteers who are also exempt by the law).

2. All Other School Employees Having Contact with Children

Section 6344(a.1) lists “school employees” as individuals subject to the clearance requirements. The law defines “school” as a facility providing elementary, secondary or post-secondary educational services. CPSL 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. A “child” is defined as an individual younger

than 18 years of age. Section 6303 also defines “direct contact with children” as the care, supervision, guidance or control of children or routine interaction with children.

Specifically, § 6344(a.1) applies the clearance requirements to two sets of school employees:

- (1) School employees governed by the provisions of the Public School Code of 1949; and
- (2) School employees not governed by the provisions of the Public School Code of 1949.

This distinction is important because the first group—namely primary and secondary school employees—already had background check requirements in place, with the only change being that the checks must now be renewed on a periodic basis. The second group—namely post-secondary and higher education employees—had no such requirement in place prior to the passing of Act 153. Pursuant to the provision of Act 153, those school employees who do not fall within the Act 15 exception will now be required to obtain the specified background checks prior to employment for new employees and on a periodic basis.

Because the term “school employee” excludes individuals who do not have direct contact with children, schools must now conduct an individualized assessment of each employee to determine whether the employee fits within the definition of having “direct contact with children.”

The Pennsylvania Department of Education (the “Department”) has issued a FAQs document that provides two areas for employers to consider when making this determination. The first is whether the employee has direct contact with children because he or she provides care, supervision, guidance or control of children or has routine interaction with children. Since these terms are not defined in the statute, the Department suggests 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 not provide care,

supervision, guidance or control of children, employers should then move on to the second area for consideration—whether the employee has routine interaction with children. With regard to routine interaction, consideration should be given to what the employee’s role is within the agency, and based on that role, a determination should be made whether his or her contact with children is regular, ongoing contact that is integral to his or her day-to-day job responsibilities. If a determination is made that the employee does not have direct contact with children, clearances are not required.

Please be sure to consult your legal counsel when making these determinations. You should also consult with your insurer regarding possible insurance coverage implications.

3. Volunteers Having Contact with Children

Section 6344.2 provides that “volunteers having contact with children” are also subject to the same clearance requirements.

Beginning July 1, 2015, any adult applying for an unpaid position as a volunteer responsible for a child’s welfare or having “direct volunteer contact” with children must obtain the required clearances. The definition of “child” is the same as it is for school employees having direct contact with children. “Direct volunteer contact” is defined as “the care, supervision, guidance or control of children and routine interaction with children.” “Routine interaction” is defined as “regular and repeated contact that is integral to a person’s employment or volunteer responsibilities.”

In order to determine who in your agency or organization is required to obtain clearances as a condition of volunteering with children, you must first confirm that the applicant is an adult, as only adult volunteers are required to obtain clearances. An “adult” is defined as an individual 18 years of age or older.

Next, you should carefully consider whether the volunteer is responsible for the child’s welfare or has direct volunteer





contact with children. Determining whether a volunteer is responsible for the welfare of a child means that the volunteer is acting in lieu of or on behalf of a parent. If a determination is made that the volunteer is not responsible for the welfare of a child, you then move on to the second area for consideration—whether the volunteer has “direct volunteer contact” with children, as previously mentioned above.

If a determination is made that the volunteer is not responsible for the child’s welfare and does not have direct volunteer contact with children, clearances are not required.

Please be sure to consult your legal counsel when making these determinations. You should also discuss with your insurers possible insurance coverage implications.

The law provides an exception for student volunteers at school events. An individual is not required to obtain the mandated certifications if all of the following apply:

- 1) The individual is currently enrolled in a school.
- 2) The individual is not a person responsible for the child’s welfare.
- 3) The individual is volunteering for an event that occurs on school grounds.
- 4) The event is sponsored by the school in which the individual is enrolled as a student.

- 5) The event is not for children who are in the care of a child-care service.

The law also provides an exception from the fingerprint-based federal criminal history requirement for certain volunteers who are applying for an unpaid position and can satisfy certain requirements. The clearance requirements are discussed in more detail below.

CLEARANCE REQUIREMENTS

1. School Employees Having Contact with Children

All school employees having contact with children who do not fall within the Act 15 exception must obtain the following clearances:

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

Beginning Dec. 31, 2014, clearances must be submitted prior to the commencement of employment or service. Clearances must then be obtained every 60 months. Any employee with a current certification issued prior to Dec. 31, 2014 shall be

required to obtain the required certifications within 60 months from the date of the person's oldest certification or, if the current certification is older than 60 months, by Dec. 31, 2015. An employee without a certification or who was previously not required to have a certification must obtain the required certifications no later than Dec. 31, 2015.

2. Volunteers Having Contact with Children

For prospective volunteers, the following clearances must be obtained:

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

However, a volunteer is not required to submit a fingerprint-based federal criminal history through the Pennsylvania State Police or its authorized agent (FBI) if the following apply:

- (1) The position the prospective volunteer is applying for is unpaid; and
- (2) The prospective volunteer has been a resident of this Commonwealth of Pennsylvania during the entirety of the previous 10-year period or, if not a resident of this Commonwealth during the entirety of the previous 10-year period, has received certification under (3) above at any time since establishing residency in this Commonwealth and provides a copy of the certification to the person responsible for the selection of volunteers.

Volunteers who are not required to obtain the FBI clearance because they are applying for an unpaid

position and have been a continuous resident of Pennsylvania for the past 10 years (or previously obtained the FBI clearance) must swear or affirm in writing that they are not disqualified from service based upon a conviction of an offense under § 6344.

Beginning Aug. 25, 2015, prospective volunteers must submit clearances prior to the commencement of service and will be required to obtain clearances every 60 months from the date of the person's most recent certification or, if the current certification is older than 60 months, by Aug. 25, 2016. A volunteer without a certification or who was previously not required to have a certification must obtain the required certifications no later than July 1, 2016.

USE OF A THIRD-PARTY VENDOR

The Department has stated that third-party vendors may be used to process the Child Abuse and Pennsylvania State Police clearance requirements.

Third-party vendors are not permitted to conduct background checks or clearances through other databases in lieu of the steps outlined by the Department. The fingerprint-based federal criminal history search through the FBI must be done through the state's mandated vendor. In addition, institutions remain responsible for the employment decision based on the information obtained.

For additional information on the Act 153 requirements, see the Department's FAQ documents for public school code employees and non-public school code employees.

