

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](#)

CONTACT BUREAU/OFFICE

Pennsylvania Department of Education
Office of Chief Counsel
333 Market Street, 9th Floor
Harrisburg, PA 17126-0333
Phone: (717) 787-5500; Fax: (717) 783-0347

**COMMONWEALTH OF PENNSYLVANIA
SEXUAL MISCONDUCT/ABUSE DISCLOSURE RELEASE
(under Act 168 of 2014)**

(Hiring school entity or independent contractor submits this form to ALL current employer(s) and to former employer(s) that were school entities and/or where the applicant had direct contact with children)

To:	Name of Current or Former Employer:	<input type="checkbox"/> No applicable employment
	Street Address:	
	City, State, Zip:	
	Telephone Number:	

The named applicant is under consideration for a position with our entity. The Pennsylvania General Assembly has determined that additional safeguards are necessary in the hiring of school employees to ensure the safety of the Commonwealth's students. The individual whose name appears below has reported previous employment with your entity. We request you provide the information requested in SECTION 2 of this form within **20 business days** as required by Act 168 of 2014.

SECTION 1: APPLICANT CERTIFICATION AND RELEASE (TO BE COMPLETED BY THE APPLICANT EVEN IF THE APPLICANT HAS NO CURRENT OR PRIOR EMPLOYMENT TO DISCLOSE)

Applicant's Name (First, Middle, Last):	
Any former names by which the Applicant has been identified:	
DOB:	
Last 4 digits of Applicant's Social Security Number:	PPID (if applicable):
Approximate dates of employment with the entity listed above:	
Position(s):	

Have you (Applicant) ever:

Yes No 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)?

Yes No 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?

Yes No 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?

By signing this form, I certify under penalty of law that the statements made in this form are true, correct and complete. I understand that false statements herein, including, without limitation, any willful failure to disclose the information

required, shall subject me to criminal prosecution under 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities) and to discipline up to, and including, termination or denial of employment, and may subject me to civil penalties and disciplinary action under the Educator Discipline Act. I also hereby authorize the above-named employer to release to the entity listed on page 3, the information requested in SECTION 2 of this form and any related records. I hereby release, waive, and discharge the above-named employer from any and all liability of any kind that may arise from such disclosure or release of records.

Signature of Applicant

Date

SECTION 2: CURRENT/FORMER EMPLOYER VERIFICATION (TO BE COMPLETED BY THE APPLICANT'S CURRENT EMPLOYER(S) AND ALL FORMER EMPLOYERS THAT WERE SCHOOL ENTITIES AND/OR WHERE THE APPLICANT HAD DIRECT CONTACT WITH CHILDREN)

Employing Entity receipt date _____ Received by _____
Contact telephone # _____

Dates of employment of Applicant: _____

To the best of your knowledge, has Applicant ever:

Yes No 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)?

Yes No 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?

Yes No 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?

Former Employer Representative Signature and Title

Date

Pursuant to Act 168, an employer, school entity, administrator, and/or independent contractor that provides information or records about a current or former employee or applicant shall be immune from criminal liability under the CPSL, the Educator Discipline Act, and from civil liability for the disclosure of the information, unless the information or records provided were knowingly false. Such immunity shall be in addition to and not in limitation of any other immunity provided by law or any absolute or conditional privileges applicable to such disclosure by the virtue of the circumstances of the applicant's consent thereto.

Under Act 168, the wilful failure to respond to or provide the information and records as requested may result in civil penalties and/or professional discipline, where applicable.

Return all completed information to:

School Entity:			
Address:		Phone:	
State:	Zip:	Fax:	

COMMONWEALTH OF PENNSYLVANIA
SEXUAL MISCONDUCT/ABUSE DISCLOSURE RELEASE
(Pursuant to Act 168 of 2014)

Instructions

This standardized form has been developed by the Pennsylvania Department of Education, pursuant to Act 168 of 2014, to be used by school entities and independent contractors of school entities and by applicants who would be employed by or in a school entity in a position involving direct contact with children to satisfy the Act's requirement of providing information related to abuse or sexual misconduct. As required by Act 168, in addition to fulfilling the requirements under section 111 of the School Code and the Child Protective Services Law ("CPSL"), an applicant who would be employed by or in a school entity in a position having direct contact with children, must provide the information requested in SECTION 1 of this form and a written authorization that consents to and authorizes the disclosure by the applicant's current and former employers of the information requested in SECTION 2 of this form. The applicant shall complete one form for the applicant's current employer(s) and one for each of the applicant's former employers that were school entities or where the applicant was employed in a position having direct contact with children (therefore, the applicant may have to complete more than one form). Upon completion by the applicant, the hiring school entity or independent contractor shall submit the form to the applicant's current and former employers to complete SECTION 2. **A school entity or independent contractor may not hire an applicant who does not provide the required information for a position involving direct contact with children.**

Relevant Definitions:

Direct Contact with Children is defined as: "the possibility of care, supervision, guidance or control of children or routine interaction with children."

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 designated 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."

Abuse is defined as "conduct that falls under the purview and reporting requirements of the 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."

Please Note

A prospective employer that receives any requested information regarding an applicant may use the information for the purpose of evaluating the applicant's fitness to be hired or for continued employment and shall report the information as appropriate to the Department of Education, a state licensing agency, law enforcement agency, child protective services agency, another school entity or to a prospective employer.

If the prospective employer decides to further consider an applicant after receiving an affirmative response to any of the questions listed in SECTIONS 1 and 2 of this form, the prospective employer shall request that former employers responding affirmatively to the questions provide additional information about the matters disclosed and include any related records. The **Commonwealth of Pennsylvania Sexual Misconduct/Abuse Disclosure Information Request** can be used to request this follow-up information. Former employers shall provide the additional information and records within 60 days of the prospective employer's request.

The completed form and any information or records received shall not be considered public records for the purposes of the Act of February 14, 2008 (P.L. 6, No. 3) known as the "Right to Know Law."

The Department of Education shall have jurisdiction to determine wilful violations of Act 168 and may, following a hearing, assess a civil penalty not to exceed \$10,000. School entities shall be barred from entering into a contract with an independent contractor who is found to have wilfully violated the provisions of Act 168.