

School Employees Not Governed by the Public School Code **Frequently Asked Questions**

Who needs clearances?

School employees not governed Section 111 of the provisions of the act of March 10, 1949 (P.L. 30, No. 14), known as the Public School Code of 1949, but covered by Act 153 (such as pertaining to school employees in higher education).

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. This term excludes an individual who has direct contact with children.

The definition of school is as follows:

"School." 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 school 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) A community college which is an institution now or hereafter created pursuant to Article XIX-A of the act of March 10, 1949 (P.L.30, No.14), known as the Public School Code of 1949, or the act of August 24, 1963 (P.L.1132, No.484), known as the Community College Act of 1963.
- (11) An independent institution of higher education which is an institution of higher education which is operated not for profit, located in and incorporated or chartered by the Commonwealth, entitled to confer degrees as set forth in 24 Pa.C.S. § 6505 (relating to power to confer degrees) and entitled to apply to itself the designation "college" or "university" as provided for by standards and qualifications prescribed by the State Board of Education pursuant to 24 Pa.C.S. Ch. 65 (relating to private colleges, universities and seminaries).
- (12) A State-owned university.
- (13) A State-related university.
- (14) A private school licensed under the act of December 15, 1986 (P.L.1585, No.174), known as the Private Licensed Schools Act.
- (15) The Hiram G. Andrews Center.
- (16) 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 institution 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 children. To make this determination, think about the employee's role within your agency and the contact they have with children. This determination has two avenues to consider.

These avenues for consideration are whether the employee has direct contact with children because they provide care, supervision, guidance or control of children or have routine interaction with children. As these terms are not defined in the statute we suggest that the common meaning of these terms be used, with child safety serving as the paramount consideration. If you determine that they do not provide care, supervision, guidance or control of children, you then move on to the second consideration; whether they have 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 determine if their contact with children is regular, ongoing contact that is integral to their 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.

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?

Beginning Dec. 31, 2014, clearances must be submitted prior to the commencement of employment or service.

What is the renewal requirement for clearances?

Beginning Dec. 31, 2014, clearances must be obtained every 36 months. Timelines 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.

Persons employed prior to Dec. 31, 2014 are required to obtain updated clearances as follows:

- Within 36 months of the date of the most recent clearance;
- By Dec. 31, 2015, if the clearance is older than 36 months; or
- By Dec. 31, 2015, if they have not received a clearance because they were employed in the same position and were not required to obtain a clearance under prior law (grandfathered).

For individuals that received clearances prior to 2008 and were not required to obtain the FBI clearance, the three required clearances would be obtained consistent with the timeframes above. Therefore, if either of the individual's Child Abuse and State Police Clearances were obtained within the past 36 months, all three clearances must be obtained within 36 months of the date of the most recent clearance. If all clearances were obtained more than 36 months ago, all three clearances must be obtained by Dec. 31, 2015.

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 <http://www.dhs.state.pa.us/findaform/childabusehistoryclearanceforms/index.htm>.

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. They are **not** permitted to conduct background checks or clearances through other databases in lieu of the steps outlined above. In addition, institutions remain responsible for the employment decision based on the information obtained.

How much do the clearances cost?

- The Pennsylvania State Police Criminal Record Check costs \$10.
- The Pennsylvania Child Abuse History Clearance costs \$10.
- The Federal Bureau of Investigation (FBI) Criminal Background Check costs \$27.50 through the Department of Human Services.

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

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 institution pay for clearances?

Child Abuse clearances:

Yes, institutions 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, www.compass.state.pa.us/cwis, which goes live on Dec. 31, 2014. The business account will allow institutions to purchase child abuse history 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 history clearance results once those results are processed.

FBI clearances:

An agency pay agreement/business account can also be created between an institution 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 Human Services can be found at https://www.pa.cogentid.com/index_dpwNew.htm.

PSP Clearances:

A business account can be requested from the Pennsylvania State Police to pay for clearances in bulk by calling the Criminal Records Section Supervisor at 717-787-9092. Institutions 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 § 6344 (c) 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 the 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 employment decisions or acceptance of the individual to serve in any capacity requiring clearances, shall maintain copies of the required information and require the individual to produce the original documents prior to employment or acceptance to serve in any such capacity, except provisional employees for limited periods as described in § 6344 (m) and outlined above. 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. Institutions are reminded that the child abuse history clearance information is confidential and may not be release to other individuals.

Can an employer or organization institute additional standards?

Yes, nothing prohibits the employer, program, activity or service from making employment, discipline or termination decisions or establishing additional clearance standards.

Can my 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.

NOTE: when an employee begins employment with a new agency, institution, organization or other entity that is responsible for the care, supervision, guidance or control of children new clearances must be obtained.