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## Effective July 1, 2016, School Districts Subject to New Requirements for Employee Background Checks

Previously, Conn. Gen. Stat. § 10-222c merely required school districts to make a documented good faith effort to contact previous employers of applicants to obtain “information and recommendations which may be relevant to the [applicant’s] fitness for employment” before hiring that applicant. As of July 1, 2016, however, local and regional boards of education, charter school governing councils, and interdistrict magnet school operators (collectively, “school districts”) are required to implement additional, more extensive background check procedures when hiring any applicant for employment in a position that would involve direct contact with students, including contracted positions. These new requirements are imposed by Section 2 of Public Act 16-67, which amended Conn. Gen. Stat. § 10-222c.

As described more fully below, the new background check procedures imposed by Public Act 16-67 require schools districts to request specific information from an applicant, from the applicant’s prior employers, and from the State Department of Education before hiring an applicant for a permanent position involving direct student contact. The new procedures further require that current and former employers respond to requests for information pursuant to the statute within a specified timeframe. Moreover, Public Act 16-67 permits school districts to hire an applicant for a position involving direct student contact on a temporary basis only, pending successful completion of the new background check process and review of the applicant’s employment history.

### **What information must school districts require from applicants?**

Prior to hiring any applicant for a position that would involve direct student contact, school districts must require that the applicant provide:

- the name and contact information of each current and former school district where the applicant worked, and any other employer if such employment involved contact with children;
- written authorization that:
  - o consents to the disclosure of certain required information and records from those current and former employers;
  - o consents to the disclosure of certain required information and records from the State Department of Education; and
  - o releases current and former employers and the State Department of Education from any liability that may arise from the disclosure or release of such information and

- records; and
- a written statement regarding whether the applicant has:
  - o been the subject of an abuse, neglect, or sexual assault investigation by a former employer, state agency, or municipal police department, unless the investigation concluded that all allegations were unsubstantiated;
  - o ever been disciplined, asked to resign, resigned, or otherwise separated from employment while an allegation of abuse, neglect, or sexual misconduct was pending or under investigation, because an allegation of abuse, neglect, or sexual misconduct was substantiated, or because the applicant was convicted of abuse, neglect, or sexual misconduct; or
  - o has ever had a professional or occupational license or certificate suspended or revoked, or has ever surrendered such a license or certificate, while an allegation of abuse, neglect, or sexual misconduct was pending or under investigation because an allegation of abuse, neglect, or sexual misconduct was substantiated, or because the applicant was convicted of abuse, neglect, or sexual misconduct.

### **What must school districts do under the new background check process?**

First, school districts must conduct a review of the applicant's employment history by contacting the current and former employers disclosed by the applicant. Such review must be conducted telephonically or through written communication, but in either case, school districts must use the form developed by the State Department of Education, which requires current and former employers to answer three specific questions concerning allegations against the applicant of abuse, neglect, and sexual misconduct. The State Department of Education's form can be sent directly to current and former employers for completion. School districts that receive requests for information pursuant to the statute must respond within five business days of receiving the request.

Second, school districts must make a "documented good faith effort" to contact the current and former employers disclosed by the applicant in order to obtain "information and recommendations which may be relevant to the applicant's fitness for employment." The statute now defines "documented good faith effort" to mean three telephonic requests made on three separate days. This is the same inquiry that school districts were required to make under the previous version of the statute, and it is distinct from the employment background check described above that school districts must conduct using the State Department of Education's form.

Third, school districts must request information from the State Department of Education concerning (1) the eligibility status for employment of any applicant for a position requiring a certificate, authorization, or permit; (2) whether the department has knowledge that a finding has been substantiated by the Department of Children and Families of abuse or neglect or of sexual misconduct against the applicant, and any information concerning such a finding; and (3) whether the department has received notification that the applicant has been convicted of a crime, or of criminal charges pending against the applicant, and any information concerning such charges.

The statute, as amended, applies to substitute teachers and contractors as well as to regular employees. With respect to substitute teachers, the statute requires that the school district

determine who is employable as a substitute teacher, maintain a list of such persons, and hire substitute teachers only from that list. A substitute teacher may remain on the list as long as he or she is continuously employed (i.e., employed at least one day of each school year) by the school district as a substitute teacher, provided the school district has no knowledge of a reason why the substitute should be removed from the list, and provided further that the substitute is subjected to a state and national criminal history records check at least once every five years. With respect to contractors, the statute requires that the contractor -- rather than the school district -- follow the procedures regarding applicant background checks for any employee with such contractor who would be in a position in the school district involving direct student contact. The State Department of Education created a form for use by contractors, which school districts must provide to the contractor if the district is seeking to hire the contractor's employee(s).

### **When may school districts offer employment to applicants for positions involving direct student contact?**

School districts may employ or contract with an applicant only on a temporary basis for a period not to exceed ninety days pending the district's review of the applicant's employment history, provided that:

- the applicant provided the information required by statute (described above);
- the school district has no knowledge of information pertaining to the applicant that would disqualify the applicant from employment with the school district; and
- the applicant affirms that the applicant is not disqualified from employment with the school district.

Only after the school district has conducted the employment history review required by statute and confirmed that the applicant is not disqualified from employment on the basis of that review may the district offer the applicant a permanent position.

### **When must (or may) school districts deny employment to an applicant?**

Under the amended statute, school districts must not hire an applicant for employment involving direct contact with students if the applicant:

- does not provide the information required by statute (described above); or
- has had any previous employment contract terminated by a school district or who resigned from such employment, if such person has been convicted of a violation of Conn. Gen. Stat. § 17a-101a (mandated reporting statute), when an allegation of abuse or neglect or sexual assault has been substantiated.

In addition, if an applicant knowingly provides false information or knowingly fails to disclose the information required by statute, the applicant will be subject to discipline by the school district, which discipline may include (1) denial of employment or (2) termination of the contract of a certified employee, in accordance with the provisions of Conn. Gen. Stat. § 10-151.



In light of the amendments to Conn. Gen. Stat. § 10-222c, we recommend that school districts review and amend existing hiring policies and procedures to ensure compliance with the amended statute.

To assist school districts in conforming their policies and procedures with the new requirements, we have updated our model policy addressing employment checks to reflect the statutory changes. In addition, we have developed a series of forms that school districts may use in their hiring processes to facilitate compliance with Conn. Gen. Stat. § 10-222c. Our model forms reference and incorporate the forms developed by the State Department of Education, which are described above. In addition, we are in the process of developing an extensive hiring checklist which will include the procedures required by Conn. Gen. Stat. § 10-222c, as well as hiring procedures required by other statutes, such as state and national criminal history records checks and records checks of the Department of Children and Families child abuse and neglect registry. We believe school districts may find such a checklist useful given the ever-growing list of statutory requirements concerning the employee hiring process.

Please feel free to contact us if you have any questions regarding the new rules concerning employee background checks, or if you would like a copy of our revised forms and/or hiring checklist.

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