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Connecticut Independent Schools Required to Perform Background Checks on Potential Employees Effective July 1, 2017

In 2016, Connecticut passed legislation that significantly expanded the scope of background check requirements for public schools when hiring new employees. That law, colloquially referred to as the “Pass the Trash” bill, was intended to make it harder for a school employee to quietly resign amidst allegations of abuse, neglect or sexual misconduct, only to be hired by another school unaware of the employee’s prior history. On June 27, 2017, Governor Malloy signed into law Public Act 17- 68 which extends the background check requirements applicable to public schools to any “nonpublic school” in Connecticut. Further, this new legislation reverses the applicability to independent schools of Connecticut’s “ban the box” legislation, which became effective earlier this year.

The new requirements became effective July 1, 2017. We therefore recommend that independent schools review and amend existing hiring policies and procedures to ensure compliance with these new requirements.

DCF Registry and Criminal History Records Checks

Under this new law, independent schools must now require applicants to:

- Submit to a check of the Department of Children and Families (“DCF”) abuse and neglect registry before hire;
- State whether they have ever been convicted of a crime or have criminal charges pending against them; and
- Undergo a state and national criminal history records check within thirty days from the date of employment.

Although applicants are required to undergo these criminal history records checks effective July 1, 2017, the law is clear that independent schools may also require employees hired prior to July 1, 2017 to undergo the criminal history records checks, even though such checks are not required. Independent schools may use regional educational service centers (“RESCs”) to arrange for the fingerprinting and processing of the criminal history records checks, but the school remains responsible for paying any fees associated with conducting the required criminal history records check.

State Department of Education Check

In addition to the above requirements, part of the comprehensive background check process will require independent schools to request information from the Connecticut State

Department of Education regarding an applicant. Specifically, as a result of this new law, schools must contact the Department of Education and ask for information concerning (1) the applicant's eligibility for employment for any position requiring a teaching certificate, license or permit; (2) whether the Department has knowledge that the applicant has been disciplined for a finding of abuse, neglect or sexual misconduct; and (3) whether the Department has information about any criminal convictions or pending charges against the applicant.

(Don't) Ban the Box

You may recall that Connecticut recently joined other states with its passage of "ban the box" legislation, which expressly limited a prospective employer's ability to ask questions about criminal history on initial employment applications. This law, Public Act 16-83, *An Act Concerning Fair Chance Employment*, became effective on January 1, 2017. This law does not apply, however, if another state or federal law explicitly requires the employer to ask about an applicant's criminal history during the initial application process. For the past six months, independent schools have been prohibited from making these inquiries on initial job applications because they were not otherwise required by law to ask. With the passage of the new mandatory background check legislation, which requires independent schools to ask such questions of applicants, independent schools can go back to making inquiries about criminal history at the initial application stage.

Employment History and Reference Checks

Connecticut law currently limits an employer's ability to disclose information from an employee's personnel file without the written authorization of the employee, even after the employee leaves his or her job. This restriction, intended to protect the privacy of employees, has had the unintended effect of making it more difficult for prospective employers to get accurate and reliable information from former employers about an applicant, including information as to whether an applicant has a history of sexual misconduct, child abuse or neglect.

Under this new law, independent schools must now require anyone applying for a job that would require direct contact with students to provide:

- the name and contact information of each current and former school where the applicant worked, and any other employer if such employment involved contact with children;¹
- 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

¹ Additional legislation (Public Act 17-220) is pending that if enacted, would limit the employment look back period to twenty (20) years.

- 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 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.

For purposes of these requirements, sexual misconduct is defined to mean any verbal, nonverbal, written or electronic communication, or any other act directed toward or with a student that is designed to establish a sexual relationship with the student, including a sexual invitation, dating or soliciting a date, engaging in sexual dialog, making sexually suggestive comments, self-disclosure or physical exposure of a sexual or erotic nature, and any other sexual, indecent, or erotic contact with a student. With respect to abuse and neglect, these terms are given the same definitions as referenced in Connecticut's mandatory reporting laws and relevant criminal violations.

Checking References and Contacting Prior Employers

Like public schools, independent schools are now required to review the applicant's employment history by contacting the current and former employers listed by the applicant. Such review can be done telephonically or through written communications, but in either case, the school must use the form developed by the State Department of Education, which requires current and former employers to answer the three specific questions concerning potential allegations against the applicant related to abuse, neglect or sexual misconduct. The State Department of Education's form can be sent directly to current and former employers for completion. Schools that receive such forms must respond within five business days. According to the new law, these forms were to be made available to nonpublic schools by June 30, 2017, though similar forms for public schools currently exist and presumably can be adapted for use by independent schools.

Independent schools may request more information concerning any response made by a listed employer, and the employer is similarly required to respond within five business days of receiving the request. Employers providing this information are immune from criminal and civil liability, provided that the employer does not knowingly supply false information. Schools conducting these checks must make a "documented good faith effort" to contact the current and former employer listed 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.

Offering Employment

Independent schools may employ or contract with an applicant only on a temporary basis for a period not to exceed ninety days pending the school's review of the applicant's

employment history, provided that:

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

An independent school may offer a permanent position of employment only after it has conducted the employment history review required by statute and confirmed that the applicant is not disqualified from employment.

An independent school 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 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 law expressly acknowledges that the applicant will be subject to discipline by the school, 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.

Other Requirements

There are several other important provisions of this new legislation worth noting. First, the background check requirements apply to substitute teachers and contractors as well as to an independent school's regular employees. With respect to substitute teachers, criminal history records checks that are conducted within one year prior to the date of employment will satisfy the criminal records history check requirements, so long as the information is provided to the school. Substitutes must undergo an updated criminal records history check once every five years, unless they are "continuously employed" by the school (i.e. employed at least one day of each school year by the school). All other requirements regarding DCF checks, employment history and the Department of Education check are also applicable upon hire. Once a school determines which applicants for substitute teaching positions are suitable, the school must maintain a list of these individuals and may not hire anyone as a substitute who is not on the list without complying with the background check requirements.

As for contractors, the new statute requires the contractor – rather than the school – to be responsible for following the applicant background check procedures for any employee with such contractor who would be in a position involving direct contact with students. The State Department of Education is required to develop a form for schools to use to provide to a contractor for this purpose.

Second, any independent school in receipt of information that an applicant or employee has been disciplined for a finding of abuse, neglect, or sexual misconduct, is required under this law to report this information to the Department of Education.



Finally, and importantly, this new law prohibits any school – public or independent – from entering into any contracts or agreements, or taking any action, that would:

- suppress information relating to an investigation of a report of suspected abuse or neglect or sexual misconduct by a current or former employee;
- otherwise affect the ability of the school to report suspected abuse, neglect, or sexual misconduct to authorities; or
- require the school to expunge information about allegations or findings of suspected abuse, neglect or sexual misconduct from any documents maintained by the school, unless the allegation is dismissed or found to be false.

Conclusion

The recent legislative changes of Public Act 17-68 impose myriad and detailed requirements upon independent schools with respect to the hiring and vetting of new employees. Despite the fact that the legislation was signed only days ago, the requirements are effective July 1, 2017; therefore, independent schools must rapidly come into compliance with the many facets of the several applicant background checks. Please feel free to contact us if you have any questions regarding the new rules and procedures or otherwise need assistance with these new requirements.

Questions or Assistance:

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