

To: Public School Superintendents, Charter School Principals

 and Non-Public School Principals

From: Risa A. Regnier, Assistant Superintendent

 Center for School Achievement and Support Services

Date: June 8, 2016

Re: Legislative expansion of school employer required background check policies and addition of expanded child protection index checks for school employees (certified and noncertified); use of information obtained through an expanded child protection index check; employee self-reporting of substantiated reports of child abuse or neglect; confidentiality agreements.

Background:

In 2009 the Indiana General Assembly enacted IC 20-26-5-10 requiring all school corporations, charter schools and accredited nonpublic schools to adopt and administer a policy as of July 1, 2009 requiring each applicant for noncertified or certificated employment to obtain an expanded criminal history check. The definition of “expanded criminal history check” found at IC 20-26-2-1.5 includes a search of records from all Indiana counties in which the applicant resided, all counties in other states in which the applicant resided, and the national sex offender registry or the sex offender registries of all fifty (50) states; or a national criminal history background check and a search of the national sex offender registry or the sex offender registries of all fifty (50) states.

In 2015 the General Assembly passed HEA 1068 which amended requirements for an “expanded criminal history check” to include a verification of the applicant’s identity, a search of all names associated with the applicant and, if the expanded criminal history check is public records based, expanded the public records search to include United States district court records from the districts where the applicant resided and a multistate criminal data base search. Expanded criminal history checks can also be fingerprint based (as defined in IC 10-13-3-12) and must include a check of sex offender registries in all fifty (50) states or the national sex offender registry maintained by the United States Department of Justice.

2016 General Assembly action:

In 2016, the General Assembly once again addressed the topic of background checks for school employees. The legislature made several significant changes:

1. Amended IC 20-26-5-10 to expand the requirement for a governing body to have a policy requiring background checks for new hires **to include non-public schools, regardless of their accreditation status, that employ one (1) or more employees.** This is in addition to public school corporations and charter schools that were covered by the prior version of the statute. The addition of nonpublic schools that employ one (1) or more employees is effective July 1, 2016.
2. Expanded the required background check policy to include both the expanded criminal history check previously required in IC 20-26-5-10 (as defined at IC 20-26-2-1.5) **and a** **new expanded child protection index check** that is defined at IC 20-26-2-1.3. Both the expanded criminal history check and the expanded child protection index check must be completed before or not later than three (3) months after the applicant’s employment by the school corporation, charter school or nonpublic school.

The newly required expanded child protection index check is defined at IC 20-26-2-1.3 as follows:

Sec. 1.3. "Expanded child protection index check" means:

(1) an inquiry with the department of child services as to whether an individual has been the subject of a substantiated report of child abuse or neglect and is listed in the child protection index established under IC 31-33-26-2;

(2) an inquiry with the child welfare agency of each state in which the individual has resided since the individual became eighteen (18) years of age as to whether there are any substantiated reports that the individual has committed child abuse or neglect; and

(3) for a certificated employee, an inquiry with the department of education or other entity that may issue a license to teach of each state in which the individual has resided since the individual became eighteen (18) years of age as to whether the individual has ever had a teaching license suspended or revoked.

School employers should contact their expanded criminal history check vendors as soon as possible to ensure the vendor includes the required components of the expanded child protection index check as of July 1, 2016. Please go to the DCS website at <https://secure.in.gov/dcs/> and follow the links, or go to the page regarding Indiana’s Expanded Child Protection Index Checks for school personnel at <http://www.in.gov/dcs/3761.htm> . There you will find the Indiana School Personnel Request for an Expanded Child Protection Index Check form (state form # 56025) and details on modes of submission and how long an ECPI check should take.

1. The 2016 General Assembly also amended IC 20-26-5-11 to address the use of information discovered through an expanded child protection index check and employee self-reporting requirements. Newly added language as subsections (d) and (e) provides:

(d) A school corporation, charter school or entity (described in IC 20-26-5-11(a)(3)) with which the school corporation contracts for services and that has employees who are likely to have direct, ongoing contact with children within the scope of the employees’ employment may use information obtained under section 10 of this chapter (IC 20-26-5-10) concerning an individual being the subject of a substantiated report of child abuse or neglect as grounds to not employ or contract with the individual.

(e) An individual employed by a school corporation, charter school or entity described in IC 20-26-5-11(a)(3) shall notify the governing body of the school corporation if, during the course of the individual’s employment, the individual is the subject of a substantiated report of child abuse or neglect.

1. The General Assembly also addressed the issue of confidentiality agreements (also called nondisclosure agreements) between schools and employees or former employees relative to substantiated reports of child abuse or neglect. The new statutory language added as IC 20-26-5-11.5, effective July 1, 2016, is shown below. School employers should consult their legal counsel for advice on current and future confidentiality agreements.

 Sec. 11.5. (a) As used in this section,

"school" includes:

(1) a charter school, as defined in IC 20-24-1-4;

(2) a nonpublic school, as defined in IC 20-18-2-12, that

employs one (1) or more employees;

(3) a public school, as defined in IC 20-18-2-15(1); and

(4) an entity in another state that carries out a function

similar to an entity described in subdivisions (1) through (3).

(b) Notwithstanding any confidentiality agreement entered into

by a school and an employee of the school, a school that receives a

request for an employment reference, from another school, for a

current or former employee, shall disclose to the requesting school

any incident known by the school in which the employee committed

an act resulting in a substantiated report of abuse or neglect under

IC 31-6 (before its repeal) or IC 31-33.

(c) A school may not disclose information under this section

that:

(1) identifies a student; or

(2) is confidential student information under the federal

Family Education Rights and Privacy Act (20 U.S.C. 1232g et seq.).

(d) A confidentiality agreement entered into or amended after

June 30, 2016, by a school and an employee is not enforceable

against the school if the employee committed an act resulting in a

substantiated report of abuse or neglect under IC 31-6 (before its

repeal) or IC 31-33.

Please refer to the accompanying FAQ on Expanded Criminal History Checks, Expanded Child Protection Index Checks and Confidentiality Agreements updated May 2016.