

MEMORANDUM

To: Public School Superintendents and Principals, Charter School Principals, and Non-Public School Principals

From: Dr. Scott Syverson, Chief Talent Officer

Date: July 6, 2017

Re: House Enrolled Act 1079 – School Employment and Teacher Licensure

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.

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.**
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.

3. 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.
4. The General Assembly 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 executed or updated on or after July 1, 2016.

Guidance on 2017 Legislative Action:

The 2017 General Assembly enacted HEA 1079 which included several changes to the expanded criminal history and expanded child protection index checks required for new and current school employees, effective July 1, 2017:

1. Each school corporation, charter school and nonpublic school shall adopt a policy that is uniformly applied to all individuals to whom the policy applies. The policy **must** include the following provisions:
 - a. An expanded criminal history check is required for each **applicant** for employment who is likely to have direct, ongoing contact with children within the scope of the individual's employment **before or not later than thirty (30) days after the start date of the applicant's employment by the school corporation, charter school or nonpublic school.** (Note this is a change from the previous allowable period of 3 months)
 - b. An expanded child protection index check is required for each **applicant** for employment who is likely to have direct, ongoing contact with children within the scope of the individual's employment **before or not later than sixty (60) days after the start date of the applicant's employment by the school corporation, charter school or nonpublic school.** An expanded child protection index check must include inquiries to each state in which information necessary to complete the expanded child protection index check is available. (Note this is a change from the previous allowable period of 3 months)
 - c. Require an expanded criminal history check for **employees** of the school corporation, charter school or nonpublic school every five (5) years. (see (i) and (j) below)

- d. An **applicant** for employment is responsible for all the costs associated with obtaining the expanded criminal history check and the expanded child protection index check unless the school corporation, charter school or nonpublic school agrees to pay the costs.
- e. An applicant or employee **may not** be required by a school corporation, charter school or nonpublic school to obtain an expanded criminal history check more than one (1) time during a five (5) year period. However, a school corporation, charter school or nonpublic school may obtain an expanded criminal history check or an expanded child protection index check at any time if the school employer has reason to believe the applicant or employee is the subject of a substantiated report of child abuse or neglect or has been charged with or convicted of a crime listed in IC 20-26-5-11
- f. The policy must prohibit the school corporation, charter school or nonpublic school from hiring a person (not limited to licensed educators) who has been convicted of an offense under IC 20-28-5-8(c) (felonies that require license revocation), unless the conviction has been reversed, vacated or set aside on appeal.
- g. Each school corporation, charter school and nonpublic school that employs one (1) or more employees shall adopt a policy requiring the school employer to contact employment references and, if applicable, the most recent employer provided by the prospective employee, before the school employer may hire the prospective employee.

The policy referenced in #1 above **may** include the following:

- h. The policy **may** require an **employee** to obtain an expanded child protection index check every five (5) years. If required, an **employee** of a school corporation, charter school or nonpublic school **may not** be required to pay the costs of an expanded child protection index check.
- i. The school corporation, charter school or nonpublic school **may** update the expanded criminal history checks and the expanded child protection index checks for employees who are employed as of July 1, 2017 over a period not to exceed five (5) years by annually conducting updated checks for at least one-fifth (1/5) of the number of employees who are employed by the school corporation, charter school or nonpublic school on July 1, 2017.
- j. A school corporation, charter school or nonpublic school **may** agree to pay the costs associated with obtaining an expanded criminal history check for an **employee**.



Dr. Jennifer McCormick
Superintendent of Public Instruction

DEPARTMENT OF EDUCATION

Working Together for Student Success

Please refer to the accompanying FAQ on Expanded Criminal History Checks, Expanded Child Protection Index Checks, Reference Checks and Confidentiality Agreements updated May 2017.

If you have any questions, please contact Risa Regnier at (317) 232-0501 or email rregnier@doe.in.gov.