

December 15, 2014

As part of our commitment to provide you with a legal resource that can offer cogent day-to-day advice and clear strategies for a secure future, we offer our pledge to also be your partner in information. We recognize the need for you to be immediately responsive to the changing requirements of the law, government regulations, and community needs. As such, our office will prepare *Action Papers* in response to the ever-changing laws and regulations affecting public education. Receipt of an Action Paper is an indication that your School District may want to consider changing a practice or policy. It also may indicate that your District is required by law to initiate or discontinue a practice or policy.

## **IN RE: ACT 153 (Child Protective Services Law)**

Act 153 of 2014 ("Act 153") was recently adopted by the Pennsylvania legislature and signed by the governor. Act 153 amends the Child Protective Services Law ("CPSL") and includes provisions creating clearance requirements for unpaid volunteers in schools, as well as requiring updated clearances for school employees and volunteers. The following highlights the new requirements applicable to school districts and its volunteers and employees.

### **A. Certification Compliance: Volunteers**

Prior to Act 153, CPSL permitted volunteers in schools without clearances so long as the volunteer was only in direct contact with children while supervised by a school employee. Similarly, many school districts adopted their own policies for such clearances depending upon the volunteer's actual direct contact with school children and position at the school. Typically, this included unpaid volunteers such as sports coaches, etc. Act 153 now mandates clearance requirements for unpaid volunteers and is codified at 23 P.S. Section 6344.2 of CPSL, effective immediately. The key provisions are discussed below.

*Action Paper*

1. 3 Clearances Required for Volunteers: Employers, administrators, supervisors or other persons responsible for selecting volunteers (“Administrators”) must require unpaid volunteer applicants to submit the three (3) clearances already required for paid school employees. These are (a) Pennsylvania State criminal history record; (b) Department of Public Welfare report of child abuse; and (c) Federal criminal history record (including fingerprinting). The records must be maintained on file at the school.
2. Which volunteers are subject to the clearance requirements? The provisions specifically apply to “an adult applying for an unpaid position as a volunteer responsible for the welfare of a child or having direct contact with children.” On its face, this provision appears to apply broadly to any and all unpaid volunteers applicants, whether they are volunteer sports coaches, or parents volunteering for a one-day school function or chaperone. However, this interpretation would likely discourage volunteers in light of clearance costs. It is our understanding that the Department will issue regulations clarifying the legislative intent relative to which volunteers now need clearances. Until these regulations or clarifications are issued, we would recommend that the District require all volunteer applicants to obtain clearances. Effective July 1, 2015, all volunteers must update clearances every 36 months.
3. Administrator Penalty: Administrators who fail to require volunteer applicants to submit these criminal history records commit a misdemeanor of the third degree.
4. Exception: The only listed exception to the volunteer clearance requirement applies if the volunteer applicant has been a Pennsylvania resident for ten (10) years prior to application, and swears by written affirmation that he or she is not disqualified due to a conviction for any crime listed in the CPSL. If these are satisfied, then only the federal criminal history report with fingerprinting is not required.
5. Administrators shall not hire a prospective volunteer if he or she is convicted of one or more of the offenses listed in CPSL. Act 153 now includes convictions for felony offenses under Pennsylvania’s Controlled Substance, Drug, Device and Cosmetic Act within the preceding five (5) years. Section 1-

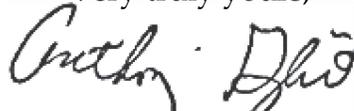
- 111 of the Pennsylvania School Code applicable to school employees also lists these offenses, along with a number of others not included in the CPSL.
6. **Provisional Clearance:** Administrators may allow out-of-state volunteers to serve on a provisional basis for a 30-day period if the volunteer demonstrates that he or she is in compliance with clearance standards from his or her domicile.
  7. **Costs:** Generally, Act 153 does not address the issue of who is responsible for the costs of the clearances required for unpaid volunteers. Therefore, as with other employee clearances, the cost is to be borne by the applicant unless the school district would otherwise wish to adopt a policy to pay for this cost. The only exception for this cost applies in circumstances where an Administrator has a reasonable belief that a current volunteer has been arrested or convicted of a crime listed in the CPSL, or is named as a perpetrator. Where the Administrator requests that the volunteer submit current criminal history records, the school district must cover the costs of the current records.
  8. **New Written Notice Requirements:** Current Volunteers are also now required to provide written notice to Administrators of any current arrests or convictions of crimes listed in the CPSL, or if he or she is named as a perpetrator the State's database. The written notice must be made within 72 hours of the arrest, conviction or being named as a perpetrator. Keep in mind that Section 1-111 of the Pennsylvania School Code already imposed these reporting requirements on school employees for the listed offenses.
  9. **Volunteer Penalty:** Any volunteer who willfully fails to disclose required information commits a misdemeanor of the third degree, and shall be subject to discipline, up to and including termination.
  10. **Continuing Record Updating Requirements:** Effective July 1, 2015, volunteers are required to submit the required criminal history records every 36 months. Administrators should implement the appropriate tracking systems to ensure that these records are updated.
  11. The information provided under Act 153 is deemed confidential and not subject to the Pennsylvania's Right to Know Law.

**B. New Certification Compliance – School Employees**

1. Effective December 31, 2014, school employees are now required to provide to the school district all updated clearance certifications every 36 months.
2. For current school employees with current certifications issued prior to December 31, 2014, those employees must provide updated certifications within 36 months of the date of the most recent certification.
3. For current school employees with current certifications that are older than 36 months, those employees must provide updated certifications by December 31, 2015.
4. The Act does not address those school employees who were hired prior to the initial adoption of the certification requirements in 1986. Under the School Code, these employees were not required to obtain clearances if they were hired prior to adoption of the initial clearance requirements. It is our understanding that the Department will be providing regulations or clarification on whether its intent was to now require these school employees to obtain the clearances, and update them every 36 months. As of now, PSBA and PDE are of the opinion that these “grandfathered” employees are now required to obtain the clearances by December 31, 2015, and updates every 36 months thereafter.
5. Costs: Generally, Act 153 does not address the issue of who is responsible for the costs of the new clearances required. Therefore, the cost is to be borne by the employee unless the school district would otherwise wish to adopt a policy to pay for this cost. The only exception for this cost applies in circumstances where an Administrator has a reasonable belief that an employee has been arrested or convicted of a crime listed in the CPSL or is named as a perpetrator. Where the Administrator requests that the employee submit current criminal records, the school district must cover the costs of the current records.
6. Tracking: In light of the penalty provisions for Administrators, school districts should begin tracking data relative to each employee and volunteer to ensure that the 36 month certification update requirements are satisfied.

Please share this action paper with all appropriate personnel. Should you have any questions, please feel free to contact our office.

Very truly yours,



Anthony Giglio