

Portability of Background Checks: What School Administrators Need to Know

By Nicole Wingard Williams, Esq.

Recently, the Pennsylvania Department of Education released direction, after receiving guidance from the Federal Bureau of Investigation (FBI), regarding the portability of background checks.



Nicole Wingard Williams

According to the FBI, and as authorized by both the School Code and the Child Protective Services Law (“CPSL”), school administrators may accept criminal history certifications obtained through the Department of Human Services (DHS) for employment purposes, so long as these background reports are no older than sixty (60) months old. If you are unfamiliar with the DHS letter, the letter itself will indicate whether no record exists, a record exists but the conviction(s) does not prohibit hiring in a child care position according to the CPSL, a record exists but no conviction(s) is shown, or there is a disqualification because a record exists and contains a conviction(s) that is grounds for denying employment in a childcare position according to the CPSL.

Administrators must review the report carefully to determine whether the individual is disqualified from employment.

However, schools must take note because the list of prohibitive offenses in the School Code is not identical to that in the CPSL. Therefore, if an applicant presents a letter from DHS which indicates that a conviction is shown, whether disqualifying under the CPSL or not, school administrators must review the report carefully to determine whether the individual is disqualified from employment under the School Code.

We encourage all school administrators to contact their solicitor, or the attorneys at Weiss Burkardt Kramer, for any questions that arise during the review of background checks for applicants, volunteers or independent contractors. ♦

This Month’s “Smoking” Hot Topic for Administrators

By Jocelyn P. Kramer, Esq.

The Pennsylvania Department of Health (DOH) recently provided temporary guidance for the use of medical marijuana in schools via its Safe Harbor Guidance for Schools and School Districts.



Jocelyn P. Kramer

According to the DOH guidance, a student must first have at least one of the serious medical conditions set forth in the Medical Marijuana Act (MMA) to be eligible to use medical marijuana during school hours. Federal law continues to prohibit the use and possession of marijuana, especially on school grounds. The DOH Guidance does not supersede federal law, but the U.S. Department of Justice previously addressed this conflict and will allow states to oversee and regulate legalized marijuana use so long as federal priorities are not compromised.

The Pennsylvania Department of Education will issue detailed guidance no later than November of 2017. In the meantime, the following relevant restrictions apply in Pennsylvania:

1. Medical marijuana may only be dispensed in the following forms: pill, oil, topical (e.g. gels and creams), tincture or liquid for vaporizing or nebulizing.
2. Patients may not have medical marijuana in dry leaf or plant form.
3. Smoking or consuming medical marijuana in other edible forms is strictly prohibited by law.
4. A caregiver must have a state-issued ID card that certifies he or she may dispense medical marijuana to the student.

The conflict between federal and state laws remains and could implicate a school’s federal funding if marijuana is permitted on school grounds or create liability under federal discrimination laws if the administration of medical marijuana at school is prohibited. If your school receives a request regarding the administration of medical marijuana to a student, contact your solicitor or the attorneys at WBK for assistance in navigating this new and complex school law issue. ♦

School Employee Home Addresses and the Right-to-Know Law Update

By Nicole Wingard Williams, Esq.

On October 18, 2016, the Pennsylvania Supreme Court issued its opinion in Pennsylvania State Educ. Ass'n ex rel. Wilson v. Com., Dept. of Community and Economic Development, __ A.3d __ (Pa. 2016, a case that has been ongoing since 2009.

The Court ultimately found that, in this specific case, there was no identified public interest or benefit in disclosing employees' home addresses and thus, the employees' constitutionally protected privacy interest in their home addresses outweighed the requester's interest in that same information. As such, the requester had no right to obtain the records via the Right-to-Know Law.

If your agency's open records officer ("ORO") receives a Right-to-Know request asking for employees' personal information, the ORO should evaluate the request and determine whether there is a public interest in disclosure that outweighs the individuals' right to privacy in the information.

Beyond what the Right-to-Know Law delineates, no comprehensive list exists as to which personal information is exempt or which public interests may outweigh private interests. Requesters should provide a reason for a prevailing public interest in disseminating the information and each request must be evaluated on a case-by-case basis. In most cases, public interest will not outweigh an individual's constitutional right to privacy.

Should your agency's ORO receive a request asking for records containing employees' personal information, we encourage you to contact your solicitor or the attorneys at WBK. ♦

We're Speaking...

- Attorney Jocelyn Kramer will be conducting an audioconference on the subject of Disability-Based Bullying and Harassment at 12:00 pm on February 23, 2017.
- Attorney Ira Weiss will be presenting a seminar at the 2017 PASBO Conference and Exhibits in Pittsburgh on March 22, 2017. Mr. Weiss' session is entitled "Fair Labor Standards Act – Changes and Final Rulings." The session will run from 11:30am to 12:30pm.
- Attorneys Jocelyn Kramer and Rebecca Hall will be presenting at the National Business Institute in Pittsburgh on April 26, 2017. Ms. Kramer and Ms. Hall will present separate sessions of the program titled "FBAs and BIPs: An Essential Legal Guide."

Omnibus School Code Amendments

By Lisa M. Colautti, Esq.

The Omnibus School Code Amendments were approved by the Pennsylvania General Assembly earlier this year and are currently in effect.



Lisa M. Colautti

The complete list of amendments can be found online at <http://www.legis.state.pa.us/CFDOCS/Legis/PN/Public/btCheck.cfm?txtType=PDF&sessYr=2015&sessInd=0&billBody=H&billType=B&billNbr=1606&pn=3723>; however, there are a few amendments that are specifically worth noting.

First, in terms of employees, school administrators should be aware that prospective teachers who provide proof of current enrollment in a teaching program in certain accredited colleges or universities and a certified transcript showing completion of at least sixty (60) credit hours or the equivalent may obtain a substitute teaching permit and serve as substitute teachers for a specific duration. Also, teachers are now entitled to receive paid bereavement leave for the death of a grandchild.

As for the student population, diabetic students may carry and self-administer diabetes medication, so long as the student has demonstrated competence in self-care. High school students who complete courses in computer science or information technology may apply one credit earned to meet mathematics or science credit requirements for graduation. And finally, schools must report to the state the number of students with disabilities that the School District serves, but spends less than \$25,000.00 on annually.

If you have questions regarding any of the Omnibus School Code Amendments, you are encouraged to consult with your solicitor or contact the attorneys at Weiss Burkardt Kramer. ♦

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This issue of In Brief: School Law Update is meant to be informational and does not constitute legal advice. Should districts wish legal advice on any matter, they should contact their legal counsel or request a legal opinion from Weiss Burkardt Kramer, LLC.

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