

## Background Checks

### Background Checks of Prospective Employees; Conviction of Employees of Certain Offenses

#### Act 24 of 2011 Changes to 24 P.S. §1-111

DATE OF ISSUANCE: December 12, 2011

#### PURPOSE

Act 24 of 2011 (Act 24), signed into law on June 30, 2011, significantly amended Section 111 of the Pennsylvania Public School Code, which requires background checks for employees of public and private schools, intermediate units and area vocational-technical schools (AVTS), including independent contractors and their employees. The purpose of this circular is to provide school administrators with guidance concerning the duties imposed on them as the result of these important amendments.

#### BACKGROUND

Added to the School Code by Act 34 of 1985, Section 111 for the first time required background checks for prospective employees of public and private schools, intermediate units and AVTS, including independent contractors and their employees, except those employees and independent contractors and their employees who have no direct contact with children. For ease of reference, unless otherwise specified, this circular refers to all persons who are subject to the provisions of Section 111 as "school employees," regardless of the person's actual employment position.

Under the 1985 law, prospective school employees who were residents of Pennsylvania were required to obtain *state* police background checks and non-resident prospective school employees were required to obtain *federal* background checks. The 1985 law expressly exempted any school employee who was employed as of the law's effective date (January 1, 1986) from obtaining state or federal background checks as a condition of continued employment. The law also provided that once a school employee had obtained a background check, the school employee would not be required to obtain a new background check to transfer to another school in the same school district or established and supervised by the same organization. Under the Charter School Law, passed in 1997, 24 P.S. § 17-1724-A, all individuals (which the law states expressly includes volunteers) having direct contact with children must have Section 111 background checks.

Section 111 was substantially amended by Act 114 of 2006 to require *state* and *federal* background checks for all prospective school employees. Act 114 also clarified that the definition of employee includes, without limitation, teachers, substitutes, janitors, cafeteria workers, independent contractors and their employees, and bus drivers, unless such persons have no direct contact with children. These amendments also specified that student teacher candidates must have Section 111 background checks before participation in any classroom teaching, internship, clinical or field experience.

The primary responsibility for ensuring that the requirements of Section 111 are met for each school entity falls upon school administrators and those other persons responsible for employment decisions in the school entity. Section 111 requires that the school administrator or other person responsible for employment decisions in a school entity review the background

check reports and determine whether prospective employees, contractors or their employees are barred from positions in which they will have contact with children before hiring the applicant or before contracting. The reports must be kept on file by the school administrator, together with a notation as to who reviewed the report.

Under the previous version of Section 111, in effect before September 28, 2011, no person was to be employed at a public or private school, intermediate unit or AVTS if the criminal background check indicated that he or she had been convicted of a Section 111(e) offense in the five years preceding the criminal history report. Section 111 also specifies that student teacher candidates are not permitted to participate in classroom teaching, internship, clinical or field experience if Section 111 would prohibit their employment as a teacher. Under these provisions, administrators of educator preparation programs are required to review background checks for student teacher candidates to determine whether the student teacher candidates are suitable for field experience.

Section 111 authorizes the Department to determine violators of the section and, following a hearing, assess a civil penalty on a school administrator of up to \$2,500 for any willful violation of Section 111. The Department has previously issued a Basic Education Circular describing the procedures that will be followed by the Department when investigating alleged violations of Section 111. *See Basic Education Circular 24 P.S. § 1-111 Violations of Background Checks.* The Department's guidance concerning enforcement matters will be separately updated at a later date to reflect the additional requirements of Act 24.

Despite the important safety features of Section 111, before the passage of Act 24, Section 111 contained a number of limitations that restricted the criminal history information that was available to school administrators. Most importantly, because the provisions of Section 111 have previously applied only to prospective school employees and exempted current school employees from coverage, any school employee who has been continuously employed in the same school district since 1986 has not been required to have any background check. Any school employee hired between 1986 and 2007 continuously employed in the same school district has had to have only a state background check, unless he or she was a non-resident. These exemptions may have been perceived as potentially disparate treatment of current and prospective employees. In addition, since Section 111 requires background checks only at the time of application, and permits background checks to be up to a year old at the time of application, school administrators may not have been sure if a prospective school employee had been arrested or convicted since the date of the background check.

## **ACT 24 REQUIREMENTS**

### **Intent**

The Act 24 amendments to Section 111 are designed to enhance the safety of students. These changes include additions to the list of the most severe offenses contained in subsection (e), for which there is now a lifetime ban on employment; broadened protections to ensure that those convicted of similar offenses under former laws and outside of Pennsylvania are also included; a tiered system for offenses in addition to the lifetime bans included in Section 111(e); and the creation of reporting requirements for current and prospective employees arrested or convicted of Section 111(e) offenses. Importantly, the amendments provide school administrators with the information they need to know as to whether or not employees have been arrested for or convicted of Section 111(e) offenses. Another consequence of Act 24 is to equalize the treatment of current and prospective employees with respect to disclosure of arrests for or convictions of Section 111(e) offenses.

## **Brief Summary of Key Provisions**

The Section 111 amendments made by Act 24 were effective on September 28, 2011.

Act 24 adds several additional offenses under the Pennsylvania Crimes Code that specifically qualify as Section 111(e) offenses, including such offenses as institutional sexual assault, luring a child into a motor vehicle or structure, and solicitation of minors to traffic drugs. The amendments also clarify that, in addition to the specifically listed offenses, similar offenses under the laws or former laws of the United States, one of its territories or possessions, another state or the District of Columbia, Puerto Rico, foreign nations or under a former law of Pennsylvania, will also constitute Section 111(e) offenses.

The amendments also increase the period of disqualification for Section 111(e) offenses. The previous version of the law prohibited a school employee from being employed where the school employee's background check showed that the school employee had been convicted of a Section 111(e) offense within five (5) years of the date of the background check. Under Act 24, a person convicted of a Section 111(e) offense is permanently excluded from school employment if he or she has been convicted of a Section 111(e) offense at any time.

The Act 24 amendments include an important mechanism to help ensure that *current* school employees, who may not have been subject to previous background checks, are now required to provide assurances that they have not been previously arrested or convicted of Section 111(e) offense. Accordingly, under Act 24, the Department was required to develop a form to enable current and prospective school employees to report arrests and convictions of Section 111(e) offenses to their school administrator.

The amendments also require that if a school administrator has a *reasonable belief* that an employee was arrested or convicted of a Section 111(e) offense and the employee has not notified the school administrator of such arrest or conviction, the school administrator must require the school employee to submit to new Section 111 background checks at the expense of the employing entity.

Act 24 also deletes an exemption that had previously permitted certain persons under 21 in a job development or job training program to work at schools for up to 90 days without a background check. These persons will now be required to have the pre-employment background checks required by Section 111.

## **INSTRUCTIONS TO SCHOOL ADMINISTRATORS CONCERNING PDE-6004**

### **Availability of Form to School Administrators**

In accordance with the requirements of Act 24, the Department developed and on September 24, 2011, published in the *Pennsylvania Bulletin* the Arrest/Conviction Report and Certification Form, known as the PDE-6004. The form is available on the Department's website at: [Arrest or Convictions Report](#)

### **Dissemination by School Administrators to School Employees**

School administrators are responsible for disseminating the PDE-6004 to their employees. School administrators are urged to make copies of the PDE-6004 available to their current employees as soon as possible, together with instructions on when the form is due. As provided in Act 24, the PDE-6004 must be completed and submitted by any employee of a public or private school, intermediate unit or AVTS who has been *arrested* or *convicted* of a Section 111(e) offense after September 28, 2011, within 72 hours of the arrest or conviction.

In addition, by December 27, 2011, the PDE-6004 must be completed and submitted by all current school employees indicating whether or not they have *ever* been *arrested* or *convicted* of a Section 111(e) offense.

The PDE-6004 must be returned to the *school administrator* at the address specified when PDE-6004 was provided to the employee. School administrators should also note to school employees that the PDE-6004 *should not* be submitted by employees directly to the Department. With respect to applicable reporting by year end, the Department urges school administrators to make sure that the form is completed by school employees and is submitted to the school administrator as soon as possible, and in no event later than the statutory deadline of December 27, 2011. Any delay in collecting the forms may delay the identification of persons who should not be allowed to have contact with children.

### **School Administrator Forms**

School administrators should return their own PDE-6004 to the person or entity that is responsible for hiring them.

### **Employment Applications**

Although not specifically required by Act 24, the Department *strongly recommends* that school administrators require prospective school employees to submit the PDE-6004 as part of an employment application.

### **Independent Contractors/Student Teacher Candidates**

School Administrators are required to have the PDE-6004 completed and returned by independent contractors and their employees, including, without limitation, PIAA-registered sports officials. All PIAA sports' officials, as independent contractors, must complete the PDE-6004 for all PIAA member schools by Tuesday, December 27, 2011.

To assist PIAA-registered sports' officials in this process, the PIAA has developed an interactive PDE-6004 for submission to the PIAA Officials' database and is available by clicking on this link: <http://www.piaa.org/officials>. This form will be saved in the PIAA Officials' database and will be able to be accessed by all PIAA member schools.

Higher education administrators are required to have the form completed and returned by student teacher candidates.

### **Arrests**

The intent of the PDE-6004 is to provide school administrators with information concerning certain past acts of people who have direct contact with children. In that context, the Department takes a broad view of what constitutes an arrest. The established law in Pennsylvania is that an arrest is accomplished by any act of law enforcement personnel that indicates an intention to take a person into custody and subjects the person to the control of the person making the arrest. Accordingly, an "arrest" does not require, for example, that a person have been to a police station or have been fingerprinted. Whether or not charges have been subsequently withdrawn or an incident shows on the background check also is not determinative of whether or not it was an arrest for purposes of Act 24. It is important to keep in mind that the arrests that must be reported according to PDE-6004 are for Section 111(e) crimes only, crimes such as criminal homicide, kidnapping, among other severe crimes, for which there should usually be little confusion as to whether or not an arrest has actually taken place. The Department recommends that if any school employee has any doubt about whether or not there was an arrest, he/she should err on the side of disclosing the event. It

will be the school administrator's responsibility to inquire into the circumstances of the reported event.

### **Non-Section 111(e) Offenses/Expunged Records**

In accordance with Act 24, the PDE-6004 does not require a school employee to report an arrest or conviction for any offense not specified under Section 111(e). Specifically, the report does not require employees to report arrests or convictions for offenses that are enumerated under Section 111(f.1).

In addition, it is the Department's view that Act 24 and PDE-6004 do not require an employee to disclose an arrest or conviction that has been legally expunged in accordance with applicable law. School administrators and school employees should be cautioned, however, that not all criminal charges are legally capable of being expunged or, if capable of being expunged, have actually been legally expunged. School administrators are advised to consult their solicitor in the event that an employee claims that an arrest or conviction has been expunged.

### **Refusal to Return Form**

If a school employee refuses to return the PDE-6004, Section 111 requires that the school administrator direct the employee to submit to the state and federal background checks required under Section 111.

School administrators should consider discipline of the employee for failure to submit the PDE-6004, for failure to submit to a required background check, or for failure to report an offense that was required to be reported.

School administrators who willfully fail to ensure that school employees return the PDE-6004 in accordance with Section 111 and fail to order background checks for those refusing to return the PDE-6004 may be subject to the penalties of Section 111 and appropriate educator discipline proceedings.

### **SCHOOL ADMINISTRATOR REVIEW OF SUBMITTED PDE-6004**

School administrators are required to review PDE-6004 forms submitted and determine if the report discloses any information that requires further action.

The PDE-6004 should be kept in the employee's personnel file together with a notation as to the school administrator who reviewed the PDE-6004.

### **Incomplete, Unclear or Altered Forms.**

If a PDE-6004 submitted by a school employee is incomplete, unclear or altered, the administrator should follow-up with the employee for further information and require the re-submittal of the form if necessary. For example, if the employee has noted a positive response in Section 2 of PDE-6004 (*e.g.*, to report an arrest or conviction) and has failed to indicate whether the positive response was for an arrest or conviction, the administrator should ask the employee to provide this information.

If the school employee fails to comply with resubmittal or clarification instructions, the school administrator should treat the action as a failure to submit the PDE-6004 and require the employee to be subjected to a background check.

## **Reports Indicating a Conviction**

Section 111(e) states that “no person subject to this act shall be employed” in a school where a criminal background report indicates he/she has been convicted of a Section 111(e) offense. If a PDE-6004 indicates a conviction for a Section 111(e) offense, the administrator should initiate termination proceedings in accordance with local procedure.

## **Reports Indicating an Arrest**

If the PDE-6004 indicates an arrest for a Section 111(e) offense, the school administrator likely would need to inquire further into the facts underlying the arrest. Section 111 does not specifically require the termination of employees for arrests for Section 111(e) offenses.

## **False Reports**

False reports under Section 111 are subject to criminal prosecution. A school administrator who believes that a school employee has falsified the PDE-6004 should report the matter to the district attorney where the school is located and to the Department for consideration of professional discipline.

## **BACKGROUND CHECK FOR REASONABLE BELIEF OF SECTION 111(E) ARREST OR CONVICTION**

If a school administrator has a *reasonable belief* that any school employee was arrested or convicted of a Section 111(e) offense and the school employee has not notified the school administrator of such arrest or conviction, the school administrator must require the school employee to submit to new Section 111 background checks at the expense of the employing entity. School administrators should consider discipline of any employee who fails to submit to a required background check. School administrators who willfully fail to order background checks for those school employees whom they reasonably believe may have been arrested or convicted of a Section 111(e) offense may be subject to the penalties of Section 111 and/or educator discipline proceedings.

## **REPORTS TO THE DEPARTMENT**

Under Section 9.1 of the Professional Educator Discipline Act (24 P.S. § 2070.9a), the superintendent, assistant superintendent, executive director of an IU, chief administrator of an AVTS, or career and technology center, administrator of a charter school, or their designees, are required to report to the Department all instances of employees reporting an arrest or conviction noted on the PDE-6004 or which is otherwise known to them as the result of background checks or otherwise. The report must be made on a mandatory report form which can be found at: [Mandatory Report Form](#)

The report form must be filed within 30 days of the receipt of information concerning the arrest or conviction and must include all available information concerning the indictment or conviction.

The completed mandatory report form with supporting documentation should be sent to: Pennsylvania Department of Education, Office of Chief Counsel, 333 Market Street, 9<sup>th</sup> Floor, Harrisburg, PA 17126-0333.

**REFERENCES:**

Purdon's Statutes

24 P.S. § 1-111

24 P.S. § 2070.1a *et seq.*

State Board of Education Regulations

[22 Pa. Code Chapter 8](#)

**ATTACHMENTS:**

[PDE-6004](#) (Arrests or Convictions form - PDF)

**BUREAU/OFFICE CONTACT:**

School Services Office

Office of Elementary/Secondary Education

Pennsylvania Department of Education

333 Market Street, 5<sup>th</sup> Floor

Harrisburg, PA 17126-0333

Phone: 717 783 3750