

Public School Employer Third-Party Contracting for Non-Instructional Services Pursuant to Section 528 of the Public School Code

24 P.S. § 5-528

DATE OF ISSUE: August 29, 2018

PURPOSE

This Basic Education Circular (BEC) provides brief guidance concerning the application of section 528 of the Public School Code, 24 P.S. § 5-528, to a covered public school employer's contracting for non-instructional services with third-parties. This section was added to the School Code by Act 39 of 2018.

BECs provide guidance and do not establish binding norms or requirements. Please consult the applicable statutes, regulations, or case law for additional information concerning the matters discussed in this BEC. This BEC is subject to revision or rescission based on subsequent changes in statutory, regulatory, or decisional law.

DISCUSSION

Applicability

Section 528 applies to school districts, intermediate units, and area vocational-technical schools. 24 P.S. § 5-528(d). A third-party under this section is a for-profit service provider, including a business or corporation; it does not include government entities, non-profit corporations, other public school employers, or individuals. *Id.* Section 528 only applies to non-instructional services currently provided by a school employee whose employment is governed by a collective bargaining agreement, excluding services provided by a professional employee, substitute, or temporary professional employee. *Id.* If a covered school employer had commenced solicitation to identify a third-party for non-instructional services but had not finalized and executed a contract with the third-party provider for those services before July 1, 2018, the school employer must comply with solicitation, application, and other requirements of section 528.

Solicitation/Applications

Before entering into a contract with a third-party for non-instructional services that are being provided by a school employee or school employees, a school district, intermediate unit, or area vocational-technical school must solicit applications from the third-parties. 24 P.S. § 5-528(a)(1). Each third-party applicant is required to include in its application a minimum three-year cost projection to the school employer; information concerning any violation by the third-party of federal or state law; information about the criminal or disciplinary records of the third-party's current employees, including any traffic violation or chargeable accident occurring during the term of employment with the third-party; and, any additional information the school employer deems appropriate. 24 P.S. § 5-528(a)(2).

Public Notice

The school district, intermediate unit, or area vocational-technical school must present to the public the proposal of the selected third-party at at least one public hearing, which must take place prior to a regularly-scheduled meeting of the school board. 24 P.S. § 5-528(a)(3). Public notice of the date, time, and location of the first public hearing on the proposal must be made at one of the following times that would provide greater prior notice: (1) on or before the initial date that bids for the non-instructional services are solicited; or (2) a minimum of 30 days prior to the public hearing. *Id.*

Third-Party Obligations

The third-party contracted to provide non-instructional services must give consideration of employment to a school employee whose employment is terminated as a result of the contract for services. 24 P.S. § 5-528(b)(1). Consideration of employment must include an interview, and only applies when the third-party is hiring a new employee for the same or substantially similar position previously held by the school employee and only during such time as the third-party contract is in effect. *Id.* Upon request, the school employer must provide information regarding the employee's performance and employment duties to the third-party.

Limitations/Exclusions

The requirements in section 528 do not supersede the requirements of the National Student Lunch Program set forth in 7 C.F.R. Part 210. 24 P.S. § 5-528(c). Further, section 528 does not supersede the rights, remedies, and procedures afforded to a school employee or to a labor organization under federal or state law or any provision of a collective bargaining agreement applicable between the employee or organization and the school employer. *Id.*

Section 528 is intended to provide additional transparency and accountability in third-party contracting, and it does not supersede or exempt the school employer from the requirements of the Sunshine Act, 65 Pa.C.S. §§ 701 – 716, the Right to Know Law, 65 P.S. §§ 67.101 – 67.3104, the Public Official and Employee Ethics Act, 65 P.S. §§ 1101 – 1113, or other applicable public notice or public disclosure laws and regulations.

REFERENCES

Statutes

24 P.S. § 5-528
65 Pa.C.S. §§ 701 – 716
65 P.S. §§ 1101 – 1113
65 P.S. §§ 67.101 – 67.3104
7 C.F.R. Part 210

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