

Pass the Trash: A Summary of the Employment History Review Requirements Under Act 168 for Schools

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Act 168 of 2014, the “Pass the Trash” Act, creates increased responsibilities and procedures a school district must follow when hiring new employees. The purpose of the Act is to eliminate the practice whereby a school district terminates an employee for inappropriate conduct toward a student, without publicly reporting the inappropriate conduct. Confidentiality agreements which conceal this type of conduct are void and unenforceable if entered after the effective date of the Act (December 22, 2014). In addition to prohibiting these types of confidentiality arrangements, the Act requires school districts, and independent contractors, to take the steps listed below. These steps are in addition to the background check requirements which remain in effect:

1. Every applicant for a job involving direct contact with children must complete Section 1 of the Commonwealth of Pennsylvania Sexual Misconduct/Abuse Disclosure Release, created by the Pennsylvania Department of Education.

Each applicant must fill out a separate form for each of the following: 1) the applicant's current employer, 2) any past school employer, and 3) any past employer which employed the applicant in a position involving direct contact with children. The form asks the applicant to disclose any incidents of abuse or sexual misconduct at the applicant's current and prior jobs. By signing the form, the applicant authorizes employers to disclose incidents of abuse or sexual misconduct, and related investigations or allegations. A school district may not hire an employee who will have direct contact with children if that employee has not completed this form for all eligible current and prior jobs.

2. After receiving completed forms from the applicant, the school district or independent contractor must forward each form to the current and previous employers identified on the forms. The current and former employers must complete Section 2 of the form, stating whether the employers have any knowledge of abuse or sexual misconduct, or related investigations or allegations. Employers must complete and return the forms within 20 days.

3. If an employer responds that the applicant did engage in abuse or sexual misconduct, the school district or independent contractor may further consider the applicant for employment. However, in order to do so the school district or independent contractor must request additional information and all related records regarding the abuse or sexual misconduct. Former and current employers have 60 days to provide this additional information. The Pennsylvania Department of Education has created the following Sexual Misconduct/Abuse Disclosure Information Request form in order to obtain this additional information.

For more information, contact David J. Mongillo or any other member of the Municipal & School Group.