

TEACHING IN PA: BACKGROUND CHECKS

~~UPDATED~~ Act 34 and 151 Background Checks

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF EDUCATION
SCHOOL SERVICES UNIT

November 3, 2008

**SUBJECT: ACT 34 of 1985 BACKGROUND CLEARANCE PROCEDURES
24 PS 1-111 as amended (Act 61 of 2008, Act 114 of 2006, Act 70 of 2004, Act 48 of
2003, Act 153 of 2002, Act 30 of 1997 and Act 211 of 1990)
22 Pa Code, Chapter 8**

TO: ALL PUBLIC, PRIVATE and NON-PUBLIC SCHOOLS

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ALL APPLICANTS FOR EMPLOYMENT with public and private schools including student teachers and independent contractors and their employees, but excluding employees who do not have direct contact with students must undergo background checks.

CRIMINAL HISTORY REPORTS SHALL BE NO MORE THAN ONE (1) YEAR OLD AT THE TIME OF EMPLOYMENT

Prospective employees/student teacher candidates/contractors and their employees, hereafter referred to collectively as applicant, are to submit with their employment application a State and Federal criminal history report or a copy of the completed form/request. Student teacher candidates are to submit the criminal history reports to the administrator of the educator preparation program prior to participation in any classroom teaching, internship, or clinical or field experience. Administrators shall require each applicant to produce the original criminal reports prior to employment or follow appropriate procedures to employ applicants on a provisional basis. Provided all conditions listed in the Law are met, when the applicant provides a copy of the completed form/request to the administrator the administrator may employ applicants on a provisional basis for a single period not to exceed 90 days. *After December 1, 2008, submission of the federal criminal history record information (CHRI) background report shall consist of the applicant providing access to the CHRI through the Department of Education's online system.*

An administrator, or other person responsible for employment decisions in a school or other institution under this section who willfully fails to comply with the provisions of this section commits a violation of this Act and shall be subject to civil penalty. A civil penalty shall not exceed \$2,500. Procedures that will be followed by staff of the School Services Unit when investigating alleged violations of 24 PS 1-111 are contained in Basic Education Circular 24 PS 1-111 Violations of Background Checks <http://www.pde.state.pa.us/k12/cwp/view.asp?A=11&Q=54218>

PENNSYLVANIA STATE CRIMINAL HISTORY RECORD

Fee: \$10.00 payable to Commonwealth of Pennsylvania

<http://www.psp.state.pa.us/psp/cwp/browse.asp?A=15&BMDRN=2000&BCOB=0&C=70427>

The Pennsylvania State Police has established a web-based computer application called "Pennsylvania Access to Criminal History" or PATCH. Using this system, a requestor can apply for a criminal background check on an individual. Eighty percent of the time, "No Record" certificates are returned immediately through the Internet to the requestor.

The information provided by the requestor will be checked against the criminal history database maintained by the Pennsylvania State Police Central Repository. If the subject's information does not hit on any information in the database, the requestor will receive the results instantly over the Internet and the requestor can print out the "No Record" certificate. If the subject's information hits on something in the database, the requestor receives an immediate "Request Under Review" response. A "Request Under Review" response does not necessarily mean that the individual has a record. At this point the information is manually reviewed. After the review the status will be updated to "No Record" or "Record". The requestor should check the PATCH website periodically for an updated status to their request. For all "No Record" responses, the certificate must be printed out at the requestor's computer. All "Record" responses will be mailed to the requestor at the address provided by the requestor. It may take up to two weeks for the status to be updated from a "Request Under Review" to a "No Record" or "Record".

PATCH accepts both Registered and Non-Registered Users.

REGISTERED USERS: Companies, agencies, or offices that routinely have a need to make criminal record checks. The company, agency, or office logs onto <https://epatch.state.pa.us> and then completes and submits the registration form.

NON-REGISTERED USERS: Individuals are considered non-registered users. They will not be accepted as registered users. Companies, agencies, or offices can also use the system as a non-registered user if they so desire. Non-registered users log onto <https://epatch.state.pa.us> and select "Submit a New Record Check" under credit card users. The non-registered user can submit up to ten record checks during one session.

VALIDATING CRIMINAL HISTORY RESULTS: The information on a "No Record" or "Record" certificate form can be validated by accessing the PATCH Record Check Status screen <https://epatch.state.pa.us/RCStatusSearch.jsp> and submitting a search request.

*Applicants may also use Form SP-164, Pennsylvania State Police Request for Criminal Record Check. <http://www.psp.state.pa.us/psp/cwp/view.asp?A=4&Q=48275>

1) Applicant must secure Form SP-164 from the schools, Pennsylvania State Police Barracks or from the Pennsylvania State Police web site: www.psp.state.pa.us.

2) Send the REQUEST FOR CRIMINAL RECORD CHECK with payment to the following address: Pennsylvania State Police Central Repository-164, 1800 Elmerton Avenue, Harrisburg, PA 17110-9758.

For status of the Criminal Record Check, call (717) 783-9144.

Applicant presents background check information to prospective employer. The school entity shall make and keep a copy of the original. The copy shall include the date copied and name of administrator who saw the original. The ORIGINAL should be RETAINED BY THE APPLICANT and is valid for one year after issuance.

FEDERAL (FBI) CRIMINAL HISTORY REPORT, AS OF MARCH 30, 2007

Fee: \$40.00 payable to Cogent Systems (prior to December 1, 2008)

Fee: \$36.00, additional fee of \$2.00 when the individual requests a paper copy. Fee is payable to Cogent Systems). (effective December 1, 2008)

The fingerprint-based background check is a multiple-step process:

1. The applicant must register prior to going to the fingerprint site. Walk in service without prior registration will not be provided at any fingerprinting location. Registration is completed online or over the phone. Registration is available online 24 hours/day, seven days per week at www.pa.cogentid.com. Telephonic registration is available at 1-888-439-2486 Monday through Friday, 8am to 6pm EST. During the registration process, all demographic data for the applicant is collected (name, address, SSN, etc.) there is no data entry required at the fingerprint collection site.
2. The applicant will pay a fee of \$40.00 for the fingerprint service and to secure the Criminal History Record. **The fee for individuals who register on or after December 1, 2008 will be \$36, an additional \$2 will be charged when the applicant requests a paper copy.**

Applicants may make their payment online at www.pa.cogentid.com using a credit card or debit card. Money orders or cashiers checks payable to Cogent Systems will be accepted on site for those applicants who do not have the means to pay electronically. **No cash transactions or personal checks are allowed.**

- a. Cogent Systems has established a billing procedure for these services from an appropriate requesting agency that is willing to pay the applicant's fee. Billing may only occur after the requesting agency has completed the Cogent Systems' Agency Pay Agreement. To establish a billing account visit the website www.pa.cogentid.com and download an application. The billing account must be established prior to sending applicants to the fingerprint site.
3. The applicant proceeds to the fingerprint site of their choice for fingerprinting. The location of the fingerprint sites and days and hours of operation for each site is posted on Cogent Systems' website at www.pa.cogentid.com. The location of fingerprint sites may change over time; applicants are encouraged to confirm the site location nearest to their location.
4. At the fingerprint site the Applicant Livescan Operators (ALO) manage the fingerprint collection process.
5. The fingerprint transaction begins when the ALO reviews the applicant's qualified State or Federal photo ID before processing the applicant's transaction. A list of

approved ID type may be found on the Cogent Systems' website at www.pa.cogentid.com. Applicants will not be processed if they cannot produce an acceptable photo ID.

6. After the identity of the applicant has been established, all ten fingers are scanned to complete the process. The entire fingerprint capture process should take no more than three to five minutes.
7. The applicant's scanned fingerprints will be electronically transmitted to the Pennsylvania State Police, who in turn submits the fingerprints and demographic information to the FBI as required by federal statute. **This process will be discontinued for all applicants fingerprinted on or after December 1, 2008. After that date, the fingerprints will be transmitted from Cogent Systems directly to the FBI.**

8. A. Process for individuals who are fingerprinted prior to December 1, 2008.

- PDE will receive a the Federal Criminal History Information (CHRI) Record, in paper form, from the FBI.
- PDE's School Services Unit will mail the Federal Criminal History Record to the applicant, via U.S. mail.
- The Record will be printed on standard 8.5" X 11" paper with the Commonwealth Seal imbedded on the paper. **This document constitutes an official Record.**
- If an applicant presents their Federal Criminal History Record and the Commonwealth Seal is not embedded on the paper, it should be considered as invalid and not an official Record.
- Applicants who do not receive the Criminal History Record from PDE within four weeks after being fingerprinted, should call (717) 783-3750 or email PDE at dwolfgang@state.pa.us.

8. B. Process for individuals who are fingerprinted on or after December 1, 2008.

- **Cogent Systems will forward the individual's registration information and fingerprints directly to the FBI, via its approved channeling process.**
 - **The FBI will complete the CHRI and forward the record to Cogent Systems.**
 - **Cogent Systems will follow all approved FBI processing activities, including provision of the reports to PDE.**
 - **Cogent will then include the record in its secure database. School administrators will have access to this official record, via online access. Only administrators of PDE approved entities (all public and private schools and Teacher Training institutions) will have such online access.**
 - **The applicant will include the TCN in applications to any public or private school or contractor of a public or private school.**
 - **Administrators will review the CHRI for applicants for employment.**
 - **The Administrator will make a determination as to the fitness of the individual for employment.**
 - **If the applicant is hired by the school or contractor, the school will make a copy of the CHRI for the employee's file.**
 - **The School Administrator is prohibited from making a copy of the CHRI for the applicant.**
9. The applicant will then provide the Federal Criminal History Record to their prospective employer. **This process will be discontinued for all applicants fingerprinted on or after December 1, 2008.**

** The Act allows that Administrators may employ any applicants on a provisional basis for a single period not to exceed ninety (90) days, except during a lawful strike proceeding under the provisions of the act of July 23, 1970, known as the "Public Employee Relations Act", provided that all of the following conditions are met:

- The applicant has applied for the information required under subsection (b) and, where applicable, under subsection (c) or (c.1) and the applicant provides a copy of the appropriate completed request forms to the Administrator.
- The Administrator has no knowledge of information pertaining to the applicant which would disqualify them from employment pursuant to subsection (e)
- The applicant swears or affirms in writing that they are not disqualified from employment pursuant to subsection (e)
- If the information obtained pursuant to subsection (b), (c), or (c1) reveals that the applicant is disqualified from employment pursuant to subsection (e), the applicant shall be suspended and subject to termination proceedings as provided for by law
- The Administrator requires that the applicant not be permitted to work alone with children and that the applicant work in the vicinity of a permanent employee.

Fingerprint Corrections and Resubmissions

In circumstances where a classifiable fingerprint record was not or cannot be obtained and immediately upon indication, Cogent Systems will take corrective action to re-submit, or re-print the applicant at no cost to the applicant. This corrective action will be completed at the earliest possible time, and when applicable, that is convenient for the applicant. Cogent Systems will contact the applicant directly should this occur. NOTE: Reprinting can be applied to each applicant one time only. If fingerprinting must take place a third time the applicant must pay the full fee.

Group Fingerprinting Support

If you have a requirement to fingerprint a large group of applicants (300 college education majors, a contractor's entire staff of 120 employees, 50 bus drivers, etc.) Cogent Systems and the fixed site providers will try to accommodate that request. Some fingerprint service sites have the ability to bring portable equipment to your site. If you are in need of Group Fingerprinting Support, visit www.pa.cogentid.com. Service sites in your area that have mobile equipment will be listed. NOTE: This mobile service requires the visited site to provide broadband internet access and access through any firewall. The sites that offer mobile services can provide you instructions, in advance of their visit, that would allow fingerprinting to occur at your site. You must however, plan ahead. Requirements for hosting a mobile Livescan operation can be found at www.pa.cogentid.com

We encourage you to utilize this service but you must plan ahead. Please do not overwhelm the service by sending large groups of applicants to the fixed site locations. If you must send your large group of applicants to a fixed site, please plan for their arrival to occur over days and weeks, not over hours.

Confidentiality (Security) of Applicant Information

On-site access to the Livescan equipment, and the data traveling from the equipment, is comprehensively secured and regulated by both Cogent Systems and the regulations governing the use of that data.

- **The Computer System** - The system will be housed within a secured network that is protected by firewall devices configured explicitly to allow only permissible protocols and traffic. Cogent Systems will ensure that all devices procured under this process continue to adhere to the Commonwealth's Security requirements. The proposed systems will be configured to provide a point of defense with controlled access from both inside and outside the network. The Livescan systems will be configured to support logging and audit capability. Furthermore, the Livescan solution will support 128 bit encryption.

Inquiries or Questions

All information regarding process, policy, and fingerprinting locations may be found at www.pa.cogentid.com

Fingerprint Services Sites should contact Blake Godard at bgodard@cogentsystems.com

Fingerprint applicants should contact Denise Wolfgang at (717) 783-3750 or dwolfgang@state.pa.us

CHILD ABUSE REPORT

You may obtain forms from schools and the Department of Public Welfare <http://www.dpw.state.pa.us/ServicesPrograms/ChildWelfare/003671038.htm> For status of a request, please call the Department of Public Welfare, Childline and Abuse Registry at (717) 783-6211.

24 PS 1-111 AS AMENDED

Background checks of prospective employees; conviction of employees of certain offenses

(a) This section shall apply to all prospective employees of public and private schools, intermediate units and area vocational-technical schools, including independent contractors and their employees, except those employees and independent contractors and their employees who have no direct contact with children. This subsection shall expire March 31, 2007.

(a.1) Beginning April 1, 2007, this section shall apply to all prospective employees of public and private schools, intermediate units and area vocational-technical schools, including, but not limited to, teachers, substitutes, janitors, cafeteria workers, independent contractors and their employees, except those employees and independent contractors and their employees who have no direct contact with children.

(1) Beginning April 1, 2007, this section shall apply to bus drivers offered employment by a school district, private school, nonpublic school, intermediate unit or area vocational-technical school or by an independent contractor.

(2) Beginning April 1, 2007, this section shall apply to student teacher candidates assigned to all public and private schools, intermediate units and area vocational-technical schools.

(3) For purposes of this section, "student teacher candidate" shall mean an individual participating in a classroom teaching, internship, clinical or field experience who, as part of a program for the initial or advanced preparation of professional educators, performs classroom teaching or assists in the education program in a public or private school, intermediate unit or area vocational-technical school under the supervision of educator preparation program faculty.

(4) Prior to a student teacher candidate's participation in any classroom teaching, internship, clinical or field experience, that candidate shall provide to the administrator of his or her educator preparation program all criminal history record information required of an employe or prospective employe who is subject to this section.

(5) The student teacher candidate may not participate in any classroom teaching, internship, clinical or field experience if this section would prohibit an employe or prospective employe subject to this section from being employed under those circumstances.

(6) During the course of a student teacher candidate's participation in an educator preparation program, the administrator of the student teacher candidate's educator preparation program shall maintain a copy of the criminal history record information that was provided by the student teacher candidate. The penalty provisions of subsection (g) shall be applicable to the administrator of a student teacher candidate's educator preparation program.

(7) If a student teacher candidate is continuously enrolled in an educator preparation program, the criminal history record information initially submitted by that candidate to that program shall remain valid during that period of enrollment. If a student teacher candidate's enrollment in an educator preparation program is interrupted or if that candidate transfers to another educator preparation program, the candidate shall provide to the administrator of his or her educator preparation program all criminal history record information required of an employe who is subject to this section.

(b) Administrators of public and private schools, intermediate units and area vocational-technical schools shall require prospective employes to submit with their employment application, pursuant to 18 Pa.C.S. Ch.91 (relating to criminal history record information), a report of criminal history record information from the Pennsylvania State Police or a statement from the Pennsylvania State Police that the State Police central repository contains no such information relating to that person. Such criminal history record information shall be limited to that which is disseminated pursuant to 18 Pa.C.S. § 9121(b)(2) (relating to general regulations) and shall be no more than one (1) year old. An applicant may submit a copy of the required information with the application for employment. Administrators shall maintain a copy of the required information and shall require each applicant to produce the original document prior to employment. Administrators shall require contractors to produce the original document for each prospective employe of such contractor prior to employment.

(c) Where the applicant has not been a resident of this Commonwealth for at least two (2) years immediately preceding the date of application for employment, administrators shall require the applicant to submit with the application for **employment** a set of fingerprints which may be submitted to the Federal Bureau of Investigation for Federal criminal history record information pursuant to the Federal Bureau of Investigation appropriation of Title II of Public Law 92-544, 86 Stat. 1115 or a copy of such Federal criminal history record. Administrators shall forward the set of **fingerprints** for the Federal criminal history record to the Department of Education. The Department of Education shall be the intermediary for the purposes of this section. The Department of Education shall return the Federal criminal history record to the applicant. When the applicant provides a copy of the Federal criminal history record, it shall be no more than one (1) year old. Administrators shall maintain a copy of the required information and shall require each applicant to produce a Federal criminal history record that may not be more than one (1) year old at the time of employment. The original Federal criminal history record shall be returned to the applicant. This subsection shall expire March 31, 2007.

(c.1) Beginning April 1, 2007, administrators shall require the applicant to submit with the application for employment a copy of the Federal criminal history record in a manner prescribed by the Department of Education. When the applicant provides a copy of the Federal criminal history record, it shall be no more than one (1) year old. Administrators shall maintain a copy of the required information and shall require each applicant to produce a Federal criminal history record that may not be more than one (1) year old at the time of employment. The original Federal

criminal history record shall be returned to the applicant.

(d) The State Board of Education shall, in the manner provided by law, promulgate the regulations necessary to carry out this section. The regulations shall provide for the confidentiality of criminal history record information obtained pursuant to this act.

(e) No person subject to this act shall be employed in a public or private school, intermediate unit or area vocational-technical school where the report of criminal history record information indicates the applicant has been convicted, within five (5) years immediately preceding the date of the report, of any of the following offenses:

(1) An offense under one or more of the following provisions of Title 18 of the Pennsylvania Consolidated Statutes:

Chapter 25 (relating to criminal homicide).

Section 2702 (relating to aggravated assault).

Former section 2709(b) (relating to stalking).

Section 2709.1 (relating to stalking).

Section 2901 (relating to kidnapping).

Section 2902 (relating to unlawful restraint).

Section 3121 (relating to rape).

Section 3122.1 (relating to statutory sexual assault).

Section 3123 (relating to involuntary deviate sexual intercourse).

Section 3124.1 (relating to sexual assault).

Section 3125 (relating to aggravated indecent assault).

Section 3126 (relating to indecent assault).

Section 3127 (relating to indecent exposure).

Section 4302 (relating to incest).

Section 4303 (relating to concealing death of child).

Section 4304 (relating to endangering welfare of children).

Section 4305 (relating to dealing in infant children).

A felony offense under section 5902(b) (relating to prostitution and related offenses).

Section 5903(c) or (d) (relating to obscene and other sexual materials and performances).

Section 6301 (relating to corruption of minors).

Section 6312 (relating to sexual abuse of children).

(2) An offense designated as a felony under the act of April 14, 1972 (P.L. 233, No. 64), known as "The Controlled Substance, Drug, Device and Cosmetic Act."

(3) An out-of-State or Federal offense similar in nature to those crimes listed in clauses (1) and (2).

(f) The requirements of this section shall not apply to employees of public and private schools, intermediate units and area vocational-technical schools who meet all the following requirements:

(1) The employees are under twenty-one (21) years of age.

(2) They are employed for periods of ninety (90) days or less.

(3) They are a part of a job development and/or job training program funded in whole or in part by public or private sources. Once

employment of a person who meets these conditions extends beyond ninety (90) days, all requirements of this section shall take effect.

(g) An administrator, or other person responsible for employment decisions in a school or other institution under this section who wilfully fails to comply with the provisions of this section commits a violation of this act and shall be subject to civil penalty as provided in this section.

(1) The department shall have jurisdiction to determine violators of

this section and may, following a hearing, assess a civil penalty not to exceed two thousand five hundred dollars (\$ 2,500).

(2) The civil penalty shall be payable to the Commonwealth.

(h) No person employed in a public or private school on the effective date of this section shall be required to obtain the information required herein as a condition of continued employment. Any person who has once obtained the information required under this section may transfer to another school in the same district or established and supervised by the same organization and shall not be required to obtain additional reports before making such transfer.

(i) Notwithstanding subsections (b), (c) and (c.1), administrators, before April 1, 2007, may employ in-State applicants on a provisional basis for a single period not to exceed thirty (30) days and may employ out-of-State applicants on a provisional basis for a single period not to exceed ninety (90) days and, after March 31, 2007, may employ any applicants on a provisional basis for a single period not to exceed ninety (90) days, except during a lawful strike proceeding under the provisions of the act of July 23, 1970 (P.L. 563, No. 195), known as the "Public Employee Relations Act," provided that all of the following conditions are met:

(1) the applicant has applied for the information required under subsection (b) and, where applicable, under subsection (c) or (c.1) and the applicant provides a copy of the appropriate completed request forms to the administrator;

(2) the administrator has no knowledge of information pertaining to the applicant which would disqualify him from employment pursuant to subsection (e);

(3) the applicant swears or affirms in writing that he is not disqualified from employment pursuant to subsection (e);

(4) if the information obtained pursuant to subsection (b), (c) or (c.1) reveals that the applicant is disqualified from employment pursuant to subsection (e), the applicant shall be suspended and subject to termination proceedings as provided for by law; and

(5) the administrator requires that the applicant not be permitted to work alone with children and that the applicant work in the immediate vicinity of a permanent employe.

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