



STATE OF NEW JERSEY

N J L R C

NEW JERSEY LAW REVISION COMMISSION

FINAL REPORT

relating to

CRIMINAL HISTORY RECORD CHECKS FOR SCHOOL EMPLOYEES

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Introduction

Current law requires all school employees who will have regular contact with pupils to undergo a criminal history record check when they are hired. This requirement was first enacted in 1986 and has been expanded and tightened in a number of amendments since that time. The latest of these was enacted last year. The purpose of these provisions is to protect school pupils. While these laws appear to function well in general, two related problems with the administration of them have been brought to the Commission's attention.

The first of these problems concerns volunteer school employees, including those employees whose only compensation is reimbursement for out-of-pocket expenses. Some of these employees have regular contact with pupils. A volunteer athletic coach may work with students in the same way as a paid coach. If a school can use criminal history record checks to screen paid coaches, it should be able to use them to screen volunteer coaches. But while it may be appropriate to screen some volunteers, it may be completely unnecessary for others. Each school system is the best judge of when background checks are advisable. As a result, the Commission recommends giving school systems discretion as to when to require them.

The second problem concerns payment for criminal history record checks. Even though it may be necessary for some volunteers to undergo these checks, it seems wrong to require the volunteers to pay for them. Volunteers are already giving time and effort to assist their local schools. It is not appropriate to ask volunteers to pay for the privilege of helping their communities. The Commission recommends that when a school system asks that a volunteer have a criminal history record check, the school system, not the volunteer should pay for it. The fact that the school system will be paying for record checks further supports the conclusion that the decision of when they are necessary must be left to the school system.

However, the problem of payment for record checks is broader. Some school systems now reimburse new employees for the cost of a criminal history record check. Other school systems believe that current law makes reimbursement improper. The Commission concluded that current law is not clear on this issue. It decided that there is no reason to restrict a school system in deciding to reimburse the cost to some or all applicants. The local school authority is in the best position to decide what is necessary to attract the most qualified applicants for employment.

To implement these findings, the Commission recommends the following amendments to current law:

18A:6-7.1. Criminal record check in public school employment

A facility, center, school, or school system under the supervision of the Department of Education and board of education which cares for, or is involved in the education of children under the age of 18 shall not employ for pay or contract for the paid services of any teaching staff member or substitute teacher, teacher aide, child study team member, school physician, school nurse, custodian, school maintenance worker, cafeteria worker, school law enforcement officer, school secretary or clerical worker or any other person serving in a paid position which involves regular contact with pupils unless the employer has first determined consistent with the requirements and standards of this act,

that no criminal history record information exists on file in the Federal Bureau of Investigation, Identification Division, or the State Bureau of Identification which would disqualify that individual from being employed or utilized in such capacity or position. An individual employed by a board of education or a school bus contractor holding a contract with a board of education, in the capacity of a school bus driver, shall be required to meet the criminal history record requirements pursuant to section 6 of P.L.1989, c.104 (C.18A:39-19.1). ~~This section shall not apply to any individual who provides services on a voluntary basis.~~ A facility, center, school, or school system under the supervision of the Department of Education or a board of education which cares for, or is involved in the education of children under the age of 18 may, but need not, require criminal history record checks for individuals who, on an unpaid voluntary basis, provide services that involve regular contact with pupils.

An individual, except as provided in subsection g. of this section, shall be permanently disqualified from employment or service under this act if the individual's criminal history record check reveals a record of conviction for any crime of the first or second degree; or

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18A:6-7.2 Finger printing

An applicant for employment or service in any of the positions covered by this act shall submit to the Commissioner of Education his or her name, address and fingerprints taken in accordance with procedures established by the Commissioner. The Commissioner of Education is hereby authorized to exchange fingerprint data with and receive criminal history record information from the federal Bureau of Investigation and the Division of State Police for use in making the determinations required by this act. No criminal history record check shall be performed pursuant to this act unless the applicant shall have furnished his or her written consent to such a check. The applicant shall bear the cost for the criminal history record check, including all costs for administering and processing the check. In cases where a school board has required a criminal history record check for an unpaid volunteer, the school board shall reimburse the applicant for its costs. A school board may also reimburse these costs to applicants for paid positions.