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Disclosure and Review of Applicant's

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[See POLICY ALERT No. 216]

R 1613 DISCLOSURE AND REVIEW OF APPLICANT'S
EMPLOYMENT HISTORY

A school district, charter school, nonpublic school, or contracted service provider holding a contract with a school district, charter school, or nonpublic school shall not employ for pay or contract for the paid services of any person serving in a position which involves regular contact with students and is offered employment or commences employment following June 1, 2018 unless the school district, charter school, nonpublic school, or contracted service provider complies with the requirements of N.J.S.A. 18A:6-7.6 et seq. as outlined in Policy and Regulation 1613.

A. Definitions (N.J.S.A. 18A:6-7.6 et seq.)

For the purposes of this Policy and Regulation:

1. "Applicant" means any person considered for employment or offered employment for pay or contract for the paid services of any person serving in a position which involves regular contact with students.
2. "Child abuse" means any conduct that falls under the purview and reporting requirements of N.J.S.A. 9:6-8.8 et seq. and is directed toward or against a child or student, regardless of the age of the child or student.
3. "Disclosure Information Request Form" shall be the State of New Jersey Sexual Misconduct/Child Abuse Disclosure Information Request, P.L. 2018, Chapter 5 or a similar form developed by the hiring entity.
4. "Disclosure Release Form" shall be the State of New Jersey Sexual Misconduct/Child Abuse Disclosure Release, P.L. 2018, Chapter 5 or a similar form developed by the hiring entity.

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5. "Hiring entity" means all school entities including school districts, charter schools, nonpublic schools, or contracted service providers holding a contract with a school district, charter school, or nonpublic school.
6. "Sexual misconduct" means any verbal, nonverbal, written, or electronic communication, or any other act directed toward or with a student that is designed to establish a sexual relationship with the student, including a sexual invitation, dating or soliciting a date, engaging in sexual dialogue, making sexually suggestive comments, self-disclosure or physical exposure of a sexual or erotic nature, and any other sexual, indecent, or erotic contact with a student.

B. Hiring Entity Required Application and Review Process (N.J.S.A. 18A:6-7.7)

1. A hiring entity shall not employ for pay or contract for the paid services of any person serving in a position which involves regular contact with students unless the hiring entity complies with the provisions of N.J.S.A. 18A:6-7.6 et seq.
 - a. The hiring entity shall require an applicant to provide a Disclosure Release Form which must include the following information:
 - (1) A list, including name, address, telephone number, and other relevant contact information of the applicant's:
 - (a) Current employer;
 - (b) All former employers within the last twenty years that were schools; and
 - (c) All former employers within the last twenty years where the applicant was employed in a position that involved direct contact with children; and

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- (2) A written authorization that consents to and authorizes disclosure of the information requested under b. below pursuant to N.J.S.A. 18A:6-7.7.a.(2) and the release of related records by the applicant's employers listed under B.1.a.(1) above, and that releases those employers from liability that may arise from the disclosure or release of records;
- (3) A written statement as to whether the applicant:
 - (a) Has been the subject of any child abuse or sexual misconduct investigation by any employer, State licensing agency, law enforcement agency, or the Department of Children and Families, unless the investigation resulted in a finding the allegations were false or the alleged incident of child abuse or sexual misconduct was not substantiated;
 - (b) Has ever been disciplined, discharged, non-renewed, asked to resign from employment, resigned from or otherwise separated from any employment while allegations of child abuse or sexual misconduct were pending or under investigation, or due to an adjudication or finding of child abuse or sexual misconduct; or
 - (c) Has ever had a license, professional license, or certificate suspended, surrendered, or revoked while allegations of child abuse or sexual misconduct were pending or under investigation, or due to an adjudication or finding of child abuse or sexual misconduct.

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- (4) The hiring entity must comply with the requirements of N.J.S.A. 18A:6-7.6 et seq. for every applicant who will be employed by the hiring entity.
 - (a) However, the provisions of N.J.S.A. 18A:6-7.6 et seq. may be required by the hiring entity for any applicant.
- b. The Superintendent or designee of the hiring entity will review the applicant's Disclosure Release Form. Upon determining to continue the application process, the Superintendent or designee shall provide the applicant's Disclosure Release Form to all employers listed by the applicant under the provisions of N.J.S.A. 18A:6-7.7.a.(1) and B.1.a.(1) above and provide all employers listed with the applicant's written authorization that consents to and authorizes disclosure in accordance with N.J.S.A. 18A:6-7.7.a.(2) and B.1.a.(2) and request the following information:
 - (1) The dates of employment of the applicant; and
 - (2) A statement as to whether the applicant:
 - (a) Was the subject of any child abuse or sexual misconduct investigation by any employer, State licensing agency, law enforcement agency, or the Department of Children and Families, unless the investigation resulted in a finding that the allegations were false or the alleged incident of child abuse or sexual misconduct was not substantiated;
 - (b) Was disciplined, discharged, non-renewed, asked to resign from employment, resigned from or otherwise separated from any employment while allegations of child abuse or sexual misconduct were pending or under investigation, or due to an adjudication or finding of child abuse or sexual misconduct; or

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- (c) Has ever had a license, professional license, or certificate suspended, surrendered, or revoked while allegations of child abuse or sexual misconduct were pending or under investigation, or due to an adjudication or finding of child abuse or sexual misconduct.
- c. The review of the applicant's employment history may be conducted through telephonic, electronic, or written communications in accordance with N.J.S.A. 18A:6-7.7.
 - (1) If the review is conducted by telephone, the results of the review shall be documented in writing by the Superintendent or designee responsible for reviewing the applicant's employment history. The Superintendent or designee may use the Disclosure Release Form to complete this review.
- 2. After reviewing the information disclosed by an employer under B.1.b. above and finding an affirmative response to any of the inquiries listed and if the Superintendent or designee of the hiring entity determines to continue with the applicant's job application process, the Superintendent or designee shall make further inquiries of the applicant's current and/or former employer(s) to ascertain additional details regarding the matter disclosed pursuant to N.J.S.A. 18A:6-7.10.
 - a. The Superintendent or designee shall make these additional inquiries by requesting the current and/or former employer to complete the Disclosure Information Request Form and attach additional information, including the initial complaint and final report, if any, regarding the incident of child abuse or sexual misconduct.
 - b. The Superintendent, upon receiving and reviewing the additional information disclosed in accordance with B.2.a. above, will make a determination to continue with the applicant's job application process.

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3. All employment history documentation for each applicant employed by the hiring entity in accordance with N.J.S.A. 18A:6-7.6 et seq. shall be maintained in the employee's personnel file. All employment history documentation for an applicant not hired shall be maintained by the Superintendent or designee and destroyed in accordance with the New Jersey Department of Revenue – Records Management Services Records Retention and Disposition Schedule.
 4. Employment history review pursuant to N.J.S.A. 18A:6-7.6 et seq. is not required for applicants the hiring entity does not wish to employ.
 5. The hiring entity, in accordance with N.J.S.A. 18A:6-7.9.b., in conducting the review of the employment history of an out-of-State applicant, shall make, and document with specificity, diligent efforts to:
 - a. Verify the information provided by the applicant pursuant to N.J.S.A. 18A:6-7.7.a. and B.1.a. above; and
 - b. Obtain from any out-of-State employers listed by the applicant the information requested pursuant to N.J.S.A. 18A:6-7.7.b. and B.1.b. above.
- C. Completing a Disclosure Request from a Hiring Entity Regarding a Current or Former Employee (N.J.S.A. 18A:6-7.9)
1. All requests for information from a hiring entity regarding a current or former employee of this school district, charter school, or nonpublic school in accordance N.J.S.A. 18A:6-7.6 et seq. shall be directed to the Superintendent or designee.
 - a. The Superintendent or designee, upon receiving a request from a hiring entity for information, shall provide the information requested in accordance with N.J.S.A. 18A:6-7.6 et seq. to the hiring entity submitting the request if:

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- (1) The employment relationship is confirmed pursuant to N.J.S.A. 18A:6-7.7.a.(1) and B.1.a.(1) above; and
 - (2) The written authorization is in compliance with N.J.S.A. 18A:6-7.7.a.(2) and B.1.a.(2) above.
- b. At the discretion of the Superintendent, the requested information may be provided through telephonic, electronic, or written communications, pursuant to N.J.S.A. 18A:6-7.7 and B.1.c. above.
2. In the event a hiring entity requests additional information from this school district, charter school, or nonpublic school beyond a response to the questions as outlined in N.J.S.A. 18A:6-7.7.b. and B.1.b. above, the Superintendent or designee will review the written request and will make a determination as to the additional information and/or documentation to be provided to the hiring entity. Any request for additional information and/or documentation must be submitted by the hiring entity in writing to the Superintendent or designee before providing any additional information and/or documentation.
- a. Upon providing such additional information and/or documentation, the Superintendent or designee will take every measure to ensure privacy and confidentiality, consistent with State and Federal laws and regulations regarding student privacy and the privacy rights of others.
 - b. Any personally identifiable information regarding any student or other individual other than the applicant's personally identifiable information shall be redacted prior to the release of any additional information.
 - c. The requested additional information should be provided to the hiring entity within twenty days, as required by statute.

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3. A copy of all requests for information and any information provided to a hiring entity, in accordance with the provisions of Policy and Regulation 1613 and N.J.S.A. 18A:6-7.6 et seq., shall be maintained by the Superintendent or designee in the applicant's personnel file and shall only be destroyed in accordance with the New Jersey Department of Revenue – Records Management Services Records Retention and Disposition Schedule.

D. Timeline for Current or Former Employers to Disclose Information (N.J.S.A. 18A:6-7.9)

1. No later than twenty days after receiving a request for information under N.J.S.A. 18A:6-7.7.b. and B.1.b. above, an employer that has or had an employment relationship within the last twenty years with the applicant shall disclose the information requested pursuant to N.J.S.A. 18A:6-7.6 et seq.
2. The failure of an employer to provide the information requested pursuant to N.J.S.A. 18A:6-7.7.b. and B.1.b. above within the twenty day timeframe established under N.J.S.A. 18A:6-7.9.a. and D.1. above may be grounds for the automatic disqualification of an applicant from employment with a hiring entity. A hiring entity shall not be liable for any claims brought by an applicant who is not offered employment or whose employment is terminated:
 - a. Because of any information received by the hiring entity from an employer pursuant to N.J.S.A. 18A:6-7.7 and B. above; or
 - b. Due to the inability of the hiring entity to conduct a full review of the applicant's employment history pursuant to N.J.S.A. 18A:6-7.7.b. and B.1.b. above.

E. Provisional Employment (N.J.S.A. 18A:6-7.10)

A hiring entity may employ or contract with an applicant on a provisional basis for a period not to exceed ninety days pending review by the hiring entity of

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information received pursuant to N.J.S.A. 18A:6-7.7 and B. above, provided that all of the following conditions are satisfied:

1. The applicant has complied with N.J.S.A. 18A:6-7.7.a. and B.1.a. above;
2. The hiring entity has no knowledge or information pertaining to the applicant that the applicant is required to disclose pursuant to N.J.S.A. 18A:6-7.7.a.(3) and B.1.a.(3); and
3. The hiring entity determines that special or emergent circumstances exist that justify the temporary employment of the applicant.

F. Penalties to Applicants (N.J.S.A. 18A:6-7.8)

1. An applicant who willfully provides false information or willfully fails to disclose information required in N.J.S.A. 18A:6-7.7.a. and B.1.a. above:
 - a. Shall be subject to discipline up to, and including, termination or denial of employment;
 - b. May be deemed in violation of subsection a. of N.J.S.A. 2C:28-3; and
 - c. May be subject to a civil penalty of not more than \$500 which shall be collected in proceedings in accordance with the "Penalty Enforcement Law of 1999," P.L. 1999, c.274 (N.J.S.A. 2A:58-10 et seq.).
2. A hiring entity shall include a notification of the penalties set forth in N.J.S.A. 18A:6-7.8 and F.1. above on all applications for employment for positions which involve regular contact with students.

G. Termination (N.J.S.A. 18A:6-7.9.d.)

1. A hiring entity shall have the right to immediately terminate an individual's employment or rescind an offer of employment if:

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- a. The applicant is offered employment or commences employment with the hiring entity following June 1, 2018; and
 - b. Information regarding the applicant's history of sexual misconduct or child abuse is subsequently discovered or obtained by the hiring entity that the hiring entity determines disqualifies the applicant or employee from employment.
2. The termination of employment pursuant to the provisions outlined in G.1. above and pursuant to N.J.S.A. 18A:6-7.9 shall not be subject to any grievance or appeals procedures or tenure proceedings pursuant to any collectively bargained or negotiated agreement or any law, rule, or regulation.
- H. Information Not Deemed Public Record and Immunity (N.J.S.A. 18A:6-7.11)
1. Information received by an employer in accordance with Policy and Regulation 1613 and N.J.S.A. 18A:6-7.6 et seq. shall not be deemed a public record under N.J.S.A. 47:1A-1 et seq. or the common law concerning access to public records.
 2. An employer, school district, charter school, nonpublic school, school administrator, or contracted service provider that provides information or records about a current or former employee or applicant shall be immune from criminal and civil liability for the disclosure of the information, unless the information or records provided were knowingly false. The immunity shall be in addition to and not in limitation of any other immunity provided by law.
- I. Prohibited Actions Relative to Certain Agreements and Employment Contracts (N.J.S.A. 18A:6-7.12)
1. On or after June 1, 2018, a school district, charter school, nonpublic school, or contracted service provider may not enter into a collectively bargained or negotiated agreement, an employment contract, an agreement for resignation or termination, a severance agreement, or any other contract or agreement or take any action that:

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- a. Has the effect of suppressing or destroying information relating to an investigation related to a report of suspected child abuse or sexual misconduct by a current or former employee;
 - b. Affects the ability of a school district, charter school, nonpublic school, or contracted service provider to report suspected child abuse or sexual misconduct to the appropriate authorities; or
 - c. Requires the school district, charter school, nonpublic school, or contracted service provider to expunge information about allegations or finding of suspected child abuse or sexual misconduct from any documents maintained by the school district, charter school, nonpublic school, or contracted service provider, unless after investigation the allegations are found to be false or the alleged incident of child abuse or sexual misconduct has not been substantiated.
2. Any provision of an employment contract or agreement for resignation or termination or a severance agreement that is executed, amended, or entered into after June 1, 2018 and that is contrary to N.J.S.A. 18A:6-7.12 shall be void and unenforceable.
- J. Public Awareness Campaign (N.J.S.A. 18A:7.13)
1. The New Jersey Department of Education (NJDOE) shall establish a public awareness campaign to publicize the provisions of N.J.S.A. 18A:6-7.6 et seq. and to ensure applicants and employers are aware of their respective rights and responsibilities under N.J.S.A. 18A:6-7.6 et seq. The NJDOE shall post on its website guidance documents and any other informational materials that may assist applicants and employers in the implementation of and compliance with N.J.S.A. 18A:6-7.6 et seq.

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2. The NJDOE developed forms for applicants and employers may be used to comply with the requirements of Policy and Regulation 1613 and N.J.S.A. 18A:6-7.7, as well as any other forms necessary to carry out the provisions of N.J.S.A. 18A:6-7.6 et seq.

Adopted: November 12, 2018