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## SCHOOL VOLUNTEERS MUST BE CLEARED: JULY 2015 UPDATE

Act 15, which was passed on July 1, 2015 and is effective immediately, modifies some of the requirements of Act 153 which became effective December 31, 2014. This act requires all volunteers who are responsible for the welfare of a child or have direct contact with children to obtain the following clearances prior to engaging in volunteer activities<sup>1</sup>:

1. Pennsylvania criminal history certification – cost waived one time every 57 months completed online;
2. Pennsylvania child abuse history certification – cost waived one time every 57 months - completed via mail;
3. FBI criminal history background check which requires fingerprinting – cost \$27.00 completed online and in person.

Clearances are generally good for five years. Volunteers who have not yet obtained certifications have until July 1, 2016 to do so. There are some additional timeline considerations for volunteers who have previously obtained their certifications.

If the following three criteria are met, the most expensive FBI clearance is not mandatory. If the volunteer position is:

- a) unpaid; and
- b) the volunteer has been a resident of Pennsylvania continuously for the past 10 years; and,
- c) the volunteer swears/affirms that they are not disqualified from service pursuant to Sec. 6344(c) of the act or has not been convicted of an offense similar in nature to those crimes listed in Sec. 6344(c) in any state or country in the world. The crimes identified in 6344(c) include:
  - Chapter 25 (relating to criminal homicide).
  - Section 2702 (relating to aggravated assault).
  - 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).

1. Although this article refers only to school entities, the law applies to all agencies, programs, troops, clubs or other organizations in which children under the age of 18 participate.

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- 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).
- The attempt, solicitation or conspiracy to commit any of the above listed offenses.

If a volunteer lives in another state and chooses to volunteer in a Pennsylvania school district, the school district can allow them to engage in volunteer service for up to 30 days if that individual is compliant with any clearance standards in the state in which they reside.

Once all of the required clearances are obtained, the volunteer may continue to provide service in any other area, department or facility within that same school district. Certifications held by a volunteer are portable to other agencies in which an individual might offer to volunteer so long as prior to starting a new volunteer placement the individual swears or affirms in writing that they have not been disqualified or convicted under Section 6344(c). Volunteers are also required to notify the school district in which they are offering services if they are arrested or convicted of any of the crimes listed above within 72 hours of the arrest or conviction. Additionally, if the person responsible for supervision of the volunteer has a reasonable belief that a volunteer has been arrested for one of the crimes listed above, the supervisor shall immediately require all three clearances be redone at the school district's cost.

In order to ensure compliance with this new act, the law includes a provision that any employer or person responsible for selection of volunteers who intentionally fails to require compliance with this act commits a misdemeanor of the third degree. Any volunteer who willfully fails to disclose an arrest or conviction within 72 hours of the arrest or conviction commits a misdemeanor of the third degree and can be denied further volunteer opportunities.

No doubt many administrators, who already struggle to garner sufficient numbers of volunteers to help assist on any number of school based activities, will be hampered by the new clearance requirements. Additionally, there is likely to be a negative impact on volunteerism for low-income and senior citizens who find the process too expensive and/or cumbersome to continue volunteering. Therefore, in order to avoid violating the law and still maintain a viable number of volunteers, it will be necessary for entities to establish systematic procedures for ensuring that a sufficient number of volunteers have received the appropriate and necessary clearances. For example, an entity may want to inform all potential parents at the outset of the school year about the needed clearances and fees and the need to take prompt action. Currently, due to the flood of individuals trying to comply with the new law, there are backlogs for processing clearances, which even before the law changed took several weeks to complete. Early advance planning will be key to alleviating at least some of the difficulty involved working through the clearance process.

Clients who have questions regarding issues discussed in this article, or any education law matter, should feel free to call us at 215-345-9111.

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