

**DEPARTMENT OF EDUCATION
OFFICE OF THE SECRETARY**

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))

PROPOSED

PUBLIC NOTICE

Education Impact Analysis Pursuant to 14 Del.C. Section 122(d)

747 Criminal Background Check for Private School and Youth Camp Related Employment

A. Type of Regulatory Action Required

New Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education intends to create 14 **DE Admin. Code** 747 Criminal Background Check for Private School and Youth Camp Related Employment. This regulation is being created due to changes in Titles 11, 16, and 31 of the Delaware Code related to Background Checks for Private Schools.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before March 7, 2016 to Tina Shockley, Education Associate, Department of Education, Regulatory Review, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation may be viewed online at the Register of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml, or obtained at the Department of Education, Finance Office, located at the address listed above.

C. Impact Criteria

1. Will the new regulation help improve student achievement as measured against state achievement standards? The new regulation is intended to improve student achievement by helping to ensure that Private School Employees, Volunteers and Contractors have sufficient Criminal Background Checks.

2. Will the new regulation help ensure that all students receive an equitable education? The new regulation is intended to help ensure all students receive an equitable education.

3. Will the new regulation help to ensure that all students' health and safety are adequately protected? The new regulation is intended to help ensure that all students' health and safety are adequately protected.

4. Will the new regulation help to ensure that all students' legal rights are respected? The new regulation is intended to help ensure that all students' legal rights are respected.

5. Will the new regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The new regulation does not change the decision making at the local board and school level.

6. Will the new regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The new regulation does not place any unnecessary reporting or administrative requirements on decision makers.

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision making authority and accountability for addressing the subject to be regulated does not change because of the new regulation.

8. Will the new regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The new regulation is consistent with and not an impediment to the implementation of other state educational policies.

9. Is there a less burdensome method for addressing the purpose of the regulation? There is not a less burdensome method for addressing the purpose of the regulation.

10. What is the cost to the State and to the local school boards of compliance with the regulation? There is no expected cost to implementing this new regulation.

747 Criminal Background Check for Private School and Youth Camp Related Employment

1.0 Purpose

This regulation shall apply to all individuals seeking Private School related employment in a Delaware Private School. A Criminal Background Check shall be completed for Employees, Contractors, or Volunteers of a Child Serving Entity. It shall consist of a fingerprinted Delaware and national background check completed by the State Bureau of Identification (SBI) and the Federal Bureau of Investigation (FBI). Additionally, a Child Protection Registry Check shall be completed by

the Department of Services for Children, Youth and Their Families (DSCYF).

2.0 Definitions

For purposes of this regulation, the following definitions apply:

“Child Protection Registry Check” means a computer search of the Child Protection Registry to determine if a person is a perpetrator in any substantiated cases of child abuse or neglect.

“Child Serving Entity” means a Private School or Youth Camp.

“Contractor” means a person, not an Employee, providing services within a Private School and who has Direct Access to children.

“Covered Personnel” means an “Employee”, “Contractor”, “Volunteer” or all those persons who have Direct Access to children in or through an extra duty position (also called Extra Pay for Extra Responsibility Position) in Private Schools whether the person receives compensation or not.

“Criminal Background Check” means a fingerprinted Delaware and national background check completed by the SBI and the FBI. Additionally, a Child Protection Registry Check shall be completed by DSCYF.

“Direct Access” means, pursuant to this regulation, the opportunity to have personal contact with students receiving care of education during the course of one’s assigned duties.

“Employee” mean, pursuant to this regulation, any person seeking employment for compensation with a Child Serving Entity, or any person who for any reason has Direct Access to children at a Child Serving Entity.

“Private School” means a school having any or all of grades kindergarten through twelve, operating under a board of trustees and maintaining a faculty and plant which are properly supervised.

“Volunteer” means a person providing volunteer services within a Child Serving Entity and who has Direct Access to children.

“Youth Camp” means a Child Serving Entity having custody or control of one or more school-age children, unattended by parent or guardian, for the purpose of providing a program of recreational, athletic, education and religious instruction or guidance. The camp operates for up to 12 weeks for three or more hours per day, during the months of May through September or some portion thereof, or during holiday breaks in the course of a school year; and is operated in a space or location other than one subject to licensing pursuant to 31 Del.C. §344.

3.0 Criminal Background Checks for Private School Prospective Employees, Volunteers, and Contractors

3.1 A Criminal Background Check shall be completed for Employees, Contractors, or Volunteers of a Private School, including Youth Camps directly operated by a Private School, in accordance with the procedures in 14 DE Admin. Code 745 and 31 Del.C. §309(c)(1) and (2).

3.2 Notwithstanding 3.1 above, Private Schools, including Youth Camps directly operated by a Private School, may choose to perform a name-based Delaware Criminal Background Check for prospective Employees, Volunteers, and Contractors through the Delaware Justice Information System and an out-of-state criminal record check using private, third party providers of such checks, provided that any out-of-state criminal record check shall include a social security trace search and county-based criminal record search in the counties in which the individual has resided within the past ten (10) years.

4.0 Exemption

Any Private School, including Youth Camps directly operated by a Private School, may choose not to perform the Criminal Background Check and Child Protection Registry checks described in 31 Del.C. §309(c)(1) and (c)(2), provided that the Private School or youth camp that is directly operated by the private school, informs parents or guardians of the youth in attendance that the school or youth camp is not meeting minimum background check safety requirements for its staff members. The school or camp must obtain and retain for at least 1 year a signed acknowledgement of same from the parents or guardians.

5.0 Determination of Suitability

The determination of suitability for employment shall be made by the Private School pursuant to the factors listed in 31 Del.C. §309(d), procedures in 31 Del.C. §309(e)(1) and any other criteria the Private School may establish.

6.0 Confidentiality

6.1 All information and records pertaining to Criminal Background Checks, pursuant to 31 Del.C. §309, and these regulations, shall be maintained in a confidential manner including, but not limited to, the following:

- 6.1.1 Access to Criminal Background Check records, and letters of reference accompanying out of state Criminal Background Checks, and determination of suitability shall be limited to the Private School head of school or chief personnel officer and one person designated to assist in the processing of Criminal Background Checks, who will receive training in confidentiality, be required to sign an agreement to keep such information confidential and employ proper precautions to ensure that interoffice communications remain confidential.
- 6.1.2 All such records shall be kept in locked, fireproof cabinets;
- 6.1.3 No information from such records shall be released without the signed approval of and the appropriate signed release of the candidate or person placed in a Covered Personnel position.

7.0 Penalties

The Private School head of school or chief personnel officer shall report to the appropriate police authorities evidence of any person who knowingly provides false, incomplete, or inaccurate criminal history information or who otherwise knowingly violates the provisions of 31 Del.C. §311.

19 DE Reg. 710 (02/01/16) (Prop.)