

DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH AND THEIR FAMILIES
DIVISION OF FAMILY SERVICES
OFFICE OF CHILD CARE LICENSING
CRIMINAL HISTORY UNIT

Statutory Authority: 11 Delaware Code, Section 8563 and 31 Delaware Code, Section 309 (11 **Del.C.**
§8563 and 31 **Del.C.** §309)
9 **DE Admin. Code** 302

FINAL

ORDER

302 Child Protection Registry Checks for Child Care, Health Care, and Public School Persons

NATURE OF PROCEEDINGS

The Department of Services for Children, Youth and Their Families ("DSCYF") initiated proceedings to adopt State of Delaware DELACARE Regulations - Child Protection Registry Checks for Health Care Facilities, Public Schools, Private Schools and Youth Camps to comply with changes in Delaware Code. On March 1, 2016 the proposed changes were published in the Delaware *Register of Regulations*. Written comments were accepted until March 31, 2016. Several regulations were revised based on the comments received. The results of the evaluation of the comments received are summarized in the accompanying "Summary of Evidence."

SUMMARY OF EVIDENCE

In accordance with Delaware law, the Office of Child Care Licensing (OCCL) published in the Delaware *Register of Regulations* DELACARE Regulations - Child Protection Registry Checks for Health Care Facilities, Public Schools, Private Schools and Youth Camps in March 2016. The period of public comment ended March 31, 2016. Comments were provided by the following:

- Daniese McMullin-Powell, Chairperson, State Council for Persons with Disabilities
- Robert Overmiller, The Governor's Advisory Council for Exceptional Citizens (GACEC)

Comments included here are those that pertain directly to the proposed regulations. Those that did not address the actual regulations have not been incorporated. In some cases, it was necessary to summarize comments. The agency appreciates and acknowledges the comments.

Daniese McMullin-Powell, Chairperson, State Council for Persons with Disabilities and Robert Overmiller, The Governor's Advisory Council for Exceptional Citizens (GACEC)

The regulation appears to omit provisions related to student teachers implementing 31 **Del.C.** §309(e)(1). That statute contemplates submission of registry information to the student teacher's college/university while the regulation only envisions submission of the information to an employer (which does not include a college/university).

Agency Response: The agency revised two definitions under regulation 3.0 "Employer" to include higher education institutions and "Person seeking employment" to include student teachers. These revisions make it clear that registry checks will be conducted on student teachers and the results will be provided to the higher education institution.

Second, §6.4 suggests that the employer is only "requested" to provide a copy of the results to an applicant for employment. The statute envisions DSCYF providing the summary to the individual.

Agency Response: The agency revised regulation 6.4 to include "and person seeking employment is notified of the results."

Third, in §3.0, the definition of "person seeking employment" and §4.0 are inconsistent. The former includes volunteers and contractors within the scope of "person seeking employment" while the latter establishes a separate subpart (§4.2) for such persons.

Agency Response: The agency deleted regulation 4.2 to eliminate the inconsistency.

FINDINGS OF FACT

The public was given the required notice of the Department's intention to adopt the proposed revised regulations and

was given ample opportunity to provide the Department with comments opposing the Department's adoption of the proposed revised regulations. The required Regulatory Flexibility Analysis and Impact Statement for the proposed revised regulations was submitted. Public comments were received and considered, as discussed in the summary of evidence. The Department finds that the proposed revised regulations, as set forth in the attached copy, should be adopted as being in the best interest of the vulnerable persons of the State of Delaware.

THEREFORE, IT IS SO ORDERED, this 14th day of April, 2016, that the proposed Department of Services for Children, Youth and Their Families DELACARE Regulations - Child Protection Registry Checks for Health Care Facilities, Public Schools, Private Schools and Youth Camps is adopted and shall become effective ten (10) days from the date of its publication in the Delaware *Register of Regulations*, in accordance with 29 Del.C. §10118(e) and (g).

Carla Benson-Green
Secretary, Department of Services for Children, Youth and Their Families

~~302 Child Protection Registry Checks for Child Care, Health Care, and Public School Persons~~

4.0 Legal Base

The legal base for these regulations is in 11 Del.C. §8563.

~~17-DE-Reg. 339 (09/04/13)~~

2.0 Purpose

The overall purpose of these regulations is the protection for the “vulnerable” population in child care, public schools and health care facilities. To this end, persons seeking employment in a licensed child care facility, public school or health care facility shall submit to a Child Protection Registry check. A search of the Child Protection Registry will be conducted to determine if the person is a perpetrator in any substantiated cases of child abuse or neglect.

~~17-DE-Reg. 339 (09/04/13)~~

3.0 Definitions

~~“Child Protection Registry” means a central registry of information about persons the Division of Family Services has found cause to believe, or a court has substantiated through court adjudication, have committed child abuse or neglect since August 1, 1994.~~

~~“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 Care Facility” means any child care facility which is required to be licensed by The Department of Services for Children, Youth and Their Families.~~

~~“Child Care Person” means any person seeking employment in a child care facility with regular direct access to children in care. This definition shall also include any person applying for a license to operate a child care facility.~~

~~“Conditional Child Care Person” means a child care person who has been offered a position or has agreed to volunteer in a child care facility. Under the provisions of the law, employment shall be conditional and contingent upon the receipt of the child protection registry check by the employer.~~

~~“Conditional Health Care Person” means a health care person who has been offered a position or has agreed to volunteer in a health care facility. Under the provisions of the law, employment shall be conditional and contingent upon the receipt of the child protection registry check by the employer.~~

~~“Conditional Public School Person” means a public school person who has been offered a position or has agreed to volunteer in a public school. Under the provisions of the law, employment shall be conditional and contingent upon the receipt of the child protection registry check by the employer.~~

~~“Criminal History Unit” means the Unit located in the Division of Family Services that is responsible for conducting the Child Protection Registry checks for child care, public school and health care persons.~~

~~“Department” means the Department of Services for Children, Youth and Their Families or any of the Divisions.~~

~~“Direct Access” means the opportunity to have personal contact with persons receiving care during the course of one’s assigned duties.~~

~~“Division of Family Services” means the Division that maintains the Child Protection Registry.~~

~~“Employer” means any child care facility, public school or health care facility as defined.~~

~~“Health Care Facility” means any custodial or residential facility where health, nutritional, or personal care is provided for persons including nursing homes, hospitals, home health care agencies and adult day care facilities.~~

~~“Health Care Person” means any person seeking employment in a health care facility.~~

~~“Person Seeking Employment” means any person applying for employment in a public school or public school district, any person applying for employment in a health care facility or child care facility, or a person applying for licensure to operate a child care facility. This definition also includes volunteers.~~

~~“Person Seeking Employment With a Public School” means any person seeking employment for compensation with a public school or with an agency that supplies contracted services to students of a public school or any other person who for any reason has regular direct access to children at any public school, as that term is defined in this section, including substitute teachers.~~

~~“Public School” means any public school and includes any board of education, school district, reorganized school district, special school district, or charter school, and any person acting as an agent thereof.~~

~~“Volunteer” means any person who has direct access to persons receiving care during the performance of unpaid duties.~~

~~17 DE Reg. 339 (09/01/13)~~

4.0 Persons Subject to the Law

~~4.1 Persons subject to the law shall be those persons who are hired or apply for the status described below on or after February 1, 2003.~~

~~4.1.1 Child care, public school and health care persons subject to the Child Protection Registry check shall be persons seeking employment in a child care, public school or health care facility who have direct access to persons receiving care.~~

~~17 DE Reg. 339 (09/01/13)~~

5.0 Employer Responsibilities

~~5.1 No employer who operates a child care facility, public school or health care facility shall hire any person without requesting a Child Protection Registry check for that person. The Child Protection Registry check shall relate to substantiated cases of child abuse or neglect reported after August 1, 1994.~~

~~5.2 The employer shall obtain a full release from each person subject to the law. The release must be completed and signed in order for the employer to obtain the information provided pursuant to the Child Protection Registry check. The release is a form developed by the Department.~~

~~5.3 Any person hired prior to the employer receiving the results of the Child Protection Registry check, must be informed in writing, and must acknowledge in writing that employment is conditional and contingent upon the receipt and evaluation of the Child Protection Registry check.~~

~~17 DE Reg. 339 (09/01/13)~~

6.0 Child Protection Registry Check Process

~~6.1 The child care, public school or health care person completes and signs a release form in order for a Child Protection Registry check to be conducted.~~

~~6.2 Upon verification of the signed release, the Criminal History Unit will conduct a Child Protection Registry check to determine if the person is named as a perpetrator in any substantiated cases of child abuse or neglect.~~

~~6.3 When the person is not listed in the Child Protection Registry as a perpetrator of child abuse or neglect, notification of the results will be provided to the appropriate employer.~~

~~6.4 When the person is listed in the Child Protection Registry as a perpetrator of child abuse or neglect, notification of the results will be provided to the employer along with details on how to obtain further information pertaining to the substantiated case(s) of child abuse or neglect.~~

~~17 DE Reg. 339 (09/01/13)~~

7.0 Review of Department Records

~~7.1 When a person is listed in the Child Protection Registry as a perpetrator, that person will be allowed the opportunity to review the record information maintained by the Division of Family Services.~~

~~7.2 The following procedures shall be established to permit the review of record information:~~

~~7.2.1 The person shall submit a request in writing to the Child Protection Registry Substantiation Hearing Coordinator provided as part of the results of the Child Protection Registry check.~~

7.2.2 Upon receipt of the request, an appointment shall be scheduled for the person to review the record information.

7.2.3 The review shall take place in the presence of a Division of Family Services staff member.

17 DE Reg. 339 (09/01/13)

8.0 Voluntary Child Protection Registry Checks

Any person or organization whose primary concern is that of child welfare and care, including any nonpublic school, and which is not otherwise required to do so under the provisions of this regulation may voluntarily submit to the provisions of this regulation at such person's or organization's expense pursuant to procedures established by the Department of Services for Children, Youth and Their Families. The provisions of 11 **Del.C.** §8562 do not apply to such persons or organizations.

17 DE Reg. 339 (09/01/13)

9.0 Confidentiality

The Department shall ensure that confidentiality regarding case file reviews and the dissemination of information is followed according to Department policy.

17 DE Reg. 339 (09/01/13)

10.0 Penalty

Any employer who hires a person seeking employment without requesting and receiving a Child Protection Registry check for such person shall be subject to a civil penalty of not less than \$1,000.00 nor more than \$5,000.00 for each violation.

302 Child Protection Registry Checks for Persons Working in Health Care Facilities, Public Schools, Private Schools, and Youth Camps

1.0 Legal Base

The legal base for these regulations is in 11 **Del.C.** §8563 and 31 **Del.C.** §309.

2.0 Purpose

The overall purpose of these regulations is to protect the "vulnerable" population in health care facilities[,], public schools, private schools, and youth camps. Therefore, persons seeking employment in a health care facility, public school, or youth camp shall submit to a child protection registry check. People seeking employment in a private school may voluntarily submit to a child protection registry check. A child protection registry search will be conducted to determine if the person is active on the registry as a perpetrator in any substantiated cases of child abuse or neglect.

3.0 Definitions

"Active on the child protection registry" means substantiated by the Division of Family Services for abuse or neglect at level II, III[,], or IV and reportable to employers.

"Child protection registry" means a central registry of information about [people persons] the Division of Family Services has found cause to believe or a court has substantiated through court adjudication as having committed child abuse or neglect since August 1, 1994. [The Each] substantiated incident shall be designated at one of three levels: II, III, IV.

"Child protection registry check" means a computer search of the child protection registry to determine if a person is active on the registry as a perpetrator in any substantiated case[s] of child abuse or neglect.

"Criminal History Unit" means the [Department] unit[,], located in the Division of Family Services that is responsible for completing child protection registry checks.

"Department" means the Department of Services for Children, Youth and Their Families.

"Direct access" means the opportunity to have personal contact with people receiving care or education during the course of one's assigned duties.

"Division of Family Services" means the division that maintains the child protection registry.

"Employer" means any health care facility, [higher education institution,] public school, private school, or youth camp as defined.

"Health care facility" means any custodial or residential facility where health, nutritional, or personal care is provided for people including nursing homes, hospitals, home health care facilities, and adult day care facilities.

["Higher education institution" means a Delaware college or university that has a teacher preparation program that places candidates into student teaching placements in a Delaware public school.]

"Person seeking employment" means any person applying for employment in a public school or public school district, or with an agency that supplies contracted services to students of a public school, or any other person who for any reason has regular direct access to children at any public school, or any person applying for employment in a health care facility or at a youth camp. This definition also includes volunteers[, student teachers,] and substitute teachers.

"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.

"Public school" means any public school and includes any board of education, school district, charter school, or any person acting as a representative of one.

"Volunteer" means any person who has direct access to people receiving care or education during the course of one's assigned unpaid duties.

"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, educational and/or religious instruction or guidance and 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 that is not subject to licensing pursuant to 31 Del.C. §344.

4.0 Persons Subject to the Law

[4.1] Persons seeking employment in a health care facility, public school, or youth camp who have direct access to people receiving care or education are subject to the child protection registry check.

[4.2] ~~Persons seeking to volunteer or work as a contractor in a public school or youth camp who have direct access to people receiving care or education are subject to the child protection registry check.~~

5.0 Employer Responsibilities

5.1 No employer who operates a health care facility, public school, or youth camp shall hire any person without requesting a child protection registry check for that person.

5.2 The employer shall obtain a completed and signed full release form from each person subject to the law in order to receive the child protection registry check results. The release form is issued by the Department.

5.3 Any person hired before the employer receives the results of the child protection registry check, must be informed in writing, and must acknowledge in writing that employment is conditional and depends upon the receipt and evaluation of the child protection registry check results.

6.0 Child Protection Registry Check Process

6.1 The person seeking employment completes and signs a release form in order for a child protection registry check to be conducted.

6.2 After ~~receiving the employer obtains~~ the signed release and payment ~~[is received]~~ from the applicant[, or employer,] the Criminal History Unit conducts a child protection registry check to find out if the person is active on the registry as a perpetrator in any substantiated cases of child abuse or neglect.

6.3 When the person is not listed in the child protection registry as a perpetrator of child abuse or neglect, the employer is notified of the results.

6.4 When the person is listed in the child protection registry as a perpetrator of child abuse or neglect, the employer ~~[and person seeking employment is are]~~ notified of the results ~~[with a request to provide a copy of the results to the person seeking employment].~~

7.0 Criteria for Ineligibility

No employer who operates a health care facility or youth camp and no public school may hire any person seeking employment if the person is ~~currently active~~ on the child protection registry at child protection Level III or IV as provided in 16 Del.C. §923.

8.0 Review of Department Records

- 8.1 When a person is listed as active on the child protection registry as a perpetrator, that person will be allowed the opportunity to review the record information maintained by the Division of Family Services.
- 8.2 The following procedures shall be established to permit the review of record information:
- 8.2.1 The person shall submit a request in writing to the child protection registry substantiation hearing coordinator provided as part of the results of the child protection registry check.
- 8.2.2 Upon receipt of the request, an appointment shall be scheduled for the person to review the record information.
- 8.2.3 The review shall take place in the presence of a Division of Family Services staff member.

9.0 Voluntary Child Protection Registry Checks

Any private school[, ~~or~~] youth camp operated by a private school[, or any person or organization whose primary concern is that of child welfare and care] may voluntarily submit to having a child protection registry check conducted at such person's or organization's expense according to the Department of Services for Children, Youth and Their Families' procedures.

10.0 Confidentiality

The Department shall ensure that confidentiality regarding case file reviews and ~~that~~ the dissemination of] information is only given out according to Department policy.

17 DE Reg. 339 (09/01/13)

19 DE Reg. 1025 (05/01/16) (Final)