

State of New Jersey
P.L. 2018, c. 5
Frequently Asked Questions
Effective June 1, 2018

Below is a list of common inquiries that address *P.L. 2018, c. 5*, concerning new employees in a school district, charter school, nonpublic school, or contracted service provider (collectively referred to as “hiring entity”) who hold positions involving regular contact with students. Under *P.L. 2018, c. 5*, the hiring entity is prohibited from hiring a new employee in position involving regular contact with students unless the hiring entity conducts a review of the employment history of the applicant by contacting current and former employers and requesting information regarding child abuse and sexual misconduct. Hiring entities, applicants, current, and former employers may utilize forms provided by the State of New Jersey, Department of Education in order to conduct this review.

1. What entities are required under *P.L. 2018, c. 5* to conduct employment history reviews for child abuse and sexual misconduct?

P.L. 2018, c. 5 applies to all school entities including school districts, charter schools, and nonpublic schools, as well as independent contractors of school entities (collectively referred to as “hiring entity”).

2. For which employees must a hiring entity conduct an employment history review regarding child abuse and sexual misconduct?

Per *N.J.S.A. 18A:6-7.7*, the review must be conducted for applicants who will be employed in positions having regular contact with students. Current employees are not required to undergo this review so long as they remain employed by the same hiring entity. However, current employees of contract service providers must participate in this review prior to the start of employment with a new school entity even if they remain employed by the same independent contractor.

3. Is every applicant subject to this review?

No, the review is only required when the hiring entity seeks to offer employment to an applicant *and* that applicant would fill a position requiring regular contact with students. The sexual misconduct/child abuse employment history review is not required for applicants that the hiring entity does not wish to employ.

4. In conducting this review, are hiring entities required to use the [Sexual Misconduct/Child Abuse Disclosure Release](#) form and the [Sexual Misconduct/Child Abuse Disclosure Information Request](#) form provided on the New Jersey Department of Education’s website?

No. Per *N.J.S.A. 18A:6-7.13*, hiring entities may, but are not required, to use the forms provided by the State. Hiring entities may develop and conduct their own employment history review for sexual misconduct/child abuse that is consistent with the statute. Hiring entities should consult their legal counsel in developing and conducting this review.

5. What information must be included in the sexual misconduct/child abuse employment history review?

Per *N.J.S.A. 18A:6-7.7*, the hiring entity must require the applicant to provide a list of the following, including contact information: (1) the applicant’s current employer; (2) all former employers that were school entities; and (3) all former employers where the applicant was employed in a position that involved regular contact with students. Applicants must provide employer information for the last 20 years of employment.

Additionally, the applicant must provide a written statement of whether the applicant has ever: (1) 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 that the allegations were false or the alleged incident of child abuse or sexual misconduct was not substantiated); (2) 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; (3) 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.

The hiring entity must then obtain responses to the above questions from each of the current and former employers listed by the applicant. The hiring entity may also request additional information, including an initial complaint and final report, if any, from current or former employers.

In collecting this information, hiring entities may utilize forms developed by the New Jersey Department of Education available [here](#).

6. What happens if a current or former employer certifies affirmatively to one of the questions in Section 2 of the Sexual Misconduct/Child Abuse Disclosure Release form?

If a current or former employer responds to any Section 2 disclosure in the affirmative, *N.J.S.A. 18A:6-7.10* states that the hiring entity shall request additional information regarding the disclosure prior to determining to continue with the applicant's job application process. The hiring entity may make these additional inquiries by requesting that the current and/or former employer complete the [Sexual Misconduct/Child Abuse 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. Upon providing documentation due to an affirmative response, every measure should be taken to ensure student privacy and confidentiality, consistent with state and federal laws and regulations regarding student privacy. All student identifiers should be redacted prior to release. The additional information should be provided to the hiring entity within 20 days, as required by the statute.

7. What happens if a current or former employer is no longer in operation or fails to respond to the hiring entity's request for disclosures regarding an applicant?

Hiring entities should use their discretion, consistent with statute, in the event that a current/former employer is no longer in operation or fails to respond to requests for disclosures and/or requests for additional information.

The failure of a current or former employer to provide the information requested within the 20-day timeframe required by *N.J.S.A. 18A:6-7.9* may be grounds for the automatic disqualification of an applicant from employment with the hiring entity. The hiring entity shall not be liable for any claims brought by an applicant who is not offered employment or whose employment is terminated: (1) because of any information received by the hiring entity from an employer pursuant to *N.J.S.A. 18A:6-7.7*; or (2) 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*.

8. Are applicants and employers required to disclose information related to allegations determined to be false?

No, the statute specifically excludes from its requirements information related to false allegations of child abuse/sexual misconduct. Therefore, applicants and employers are not required to disclose this information.

9. What are the acceptable ways of receiving the information required under *P.L. 2018, c. 5*?

Per *N.J.S.A. 18A:6-7.7*, the child abuse/sexual misconduct employment history review may be conducted through telephonic, electronic, or written communications. If the review is conducted by telephone, the results of the review shall be documented in writing by the prospective employer. The hiring entity may also use the forms developed by the New Jersey Department of Education to complete this review.

10. Must the employment history review for sexual misconduct/child abuse include out-of-state employers?

Yes. *N.J.S.A. 18A:6-7.7* does not limit the scope of the employment history that the applicant must disclose, except to limit the history to the past 20 years of employment and to employers that were schools or where the applicant was employed in a position that involved direct contact with children.

N.J.S.A. 18A:6-7.9 specifically addresses the review of employment history for out-of-state applicants and information obtained from out-of-state employers.

11. What happens if an applicant willfully provides false information or fails to disclose information required under *P.L. 2018, c. 5*?

Any applicant that willfully provides false information or fails to disclose, as required by *N.J.S.A. 18A:6-7.7*, may be subject to discipline up to, and including, termination or denial of employment. Willfully providing false information or willfully failing to disclose information may be a violation of *N.J.S.A. 2C:28-3*; and may subject the applicant 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*.

12. Are applicants that are hired before June 1, 2018, but commence employment after June 1, 2018, subject to the sexual misconduct/child abuse employment history review?

Yes. Per *N.J.S.A. 18A:6-7.9*, the hiring entity shall have the right to immediately terminate an individual's employment or rescind an offer of employment if: (1) the applicant is offered employment or commences employment with the hiring entity following the effective date of the act; and (2) information regarding the applicant's history of sexual misconduct/child abuse is subsequently discovered or obtained by the employer and the employer determines that the information disqualifies the applicant from employment with the hiring entity.

The termination of employment pursuant to this subsection shall not be subject to any grievance, appeals procedures, or tenure proceedings pursuant to any collectively bargained or negotiated agreement or any law, rule, or regulation.

13. Is the information and/or documentation received as part of the sexual misconduct/child abuse employment history review considered public information?

Pursuant to *N.J.S.A. 18A:6-7.11*, information received by a hiring entity under this Act shall not be deemed a public record under *P.L. 1963, c. 73* or the common law concerning access to public records.

14. Can an applicant begin employment with the hiring entity prior to completion of the sexual misconduct/child abuse employment history review?

Per *N.J.S.A. 18A:6-7.10*, the hiring entity may employ or contract with an applicant on a provisional basis for a period not to exceed 90 days pending the hiring entity or independent contractor's review of information received as part of the sexual misconduct/child abuse employment history review.

15. Is the hiring entity liable for claims brought by an applicant who is not offered employment or whose employment is terminated as a result of this employment history review?

No. Per *N.J.S.A. 18A:6-7.9*, a hiring entity shall not be liable for any claims brought by any applicant who is not offered employment or whose employment is terminated: (1) because of any information received pursuant to *N.J.S.A. 18A:6-7.7*; (2) 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*.

16. How does the implementation of this law impact employment contracts?

Per *N.J.S.A. 18A:6-7.12*, 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, employment contract, resignation or termination agreement, severance agreement, or any other contract or agreement to take any action that would: (1) suppress or destroy information relating to an investigation related to a report of suspected child abuse or sexual misconduct by a current or former employee; (2) affect the ability of the district, charter school, nonpublic school, or contracted service provider to report suspected child abuse or sexual misconduct to the appropriate authorities; or (3) require a 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 those allegations are found to be false or the incident of child abuse/sexual misconduct not substantiated after investigation).

Per *N.J.S.A. 18A:6-7.12(b)*, agreements entered into after June 1, 2018 that are found to be contrary to *P.L. 2018, c. 5* shall be void and unenforceable.