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NOTIFICATIONS TO SCHOOL ENTITIES OF ARRESTS, INDICTMENTS AND CHARGES

Background

The Public School Code requires school entities seeking to hire applicants into positions having direct contact with children to inquire whether the Pennsylvania Department of Education (PDE) has received notification of pending criminal charges (*i.e.*, publicly filed arrests, indictments or charges) against the applicants. 24 P.S. § 1-111.1(b)(4). PDE has begun to assist school entities in meeting this requirement by indicating the existence of pending criminal charges in the Teacher Information Management System (TIMS). Since its inception, TIMS has always contained information about educator certification status and public professional discipline. Now, pending criminal charges against educators will be added to the TIMS database.

How the Notification System Works

PDE receives notifications from a statewide electronic database called the Pennsylvania Justice Network (JNET) whenever a certificated educator is subject to a significant law enforcement event (*e.g.*, arrest, warrant, charge, disposition of charge, parole violation, *etc.*). Therefore, PDE will learn whenever an educator is arrested for, indicted for, or charged with a crime by the Commonwealth of Pennsylvania. This information can also be obtained by anyone who accesses the Pennsylvania Judiciary Web Portal, a free database of publicly available criminal information.

New Indicators

Upon receiving a notification of an educator's arrest, indictment or charge, PDE will now place a "pending criminal charges" indicator in the educator's TIMS file. PDE will also send an email message to the certifying officer and the chief school administrator of the educator's employing school entity stating that the indicator is pending their review in TIMS. Both the certifying officer and chief school administrator are to log into TIMS to review the details of the pending criminal charge and acknowledge their review of the indicator.

Prospective school employers, as well as other hiring entities that have access to TIMS, will be able to view any existing indicators when reviewing an applicant's certification information in the TIMS database.

These notifications are available only for certificated educators and not for other school personnel.

Continuous Reporting Responsibilities

The existence of these new notifications and indicators does not replace the requirement that applicants for school employment submit current Pennsylvania State Police Reports, FBI Reports, and DHS Child Abuse Clearances; that employees provide updated reports and clearances every five

years; and that employees notify their employer of any arrests, indictments, or criminal charges for those crimes listed in Section 111(e) or (f.1) of the Public School Code within 72 hours. 24 P.S. § 1-111.1(j)(4). The new notification system likewise does not relieve school employers from any of their reporting obligations.

Implications for PSEA Members

PDE's new notification procedure will result in current employers learning about educators' criminal arrests, indictments, and charges when they otherwise may not have learned of them. JNET captures criminal arrests, indictments, and charges that do not legally require self-reporting by school employees within 72 hours pursuant to Section 1-111.1(j)(4) of the Public School Code. For example, while the law does not require educators to report arrests, indictments, or charges for most second-degree misdemeanors, such information will now show up in TIMS and be reported to employing school entities.

While the criminal history information accessible by current employers in TIMS is more comprehensive than required by law, there are no privacy rights that pertain to arrests, indictments, and criminal charges. Such information may be published in local newspapers and is available on court dockets including the Pennsylvania Judiciary Web Portal, a free online database. School employers have always had access to these resources and can search any person's criminal history information. Some school employers already have policies broadly requiring the reporting of any arrest, indictment, or criminal charges, even if the law would not mandate reporting. Also, educators may determine to self-report absent any legal or policy requirements due to the public nature of the information or as a matter of personal judgement.

At this time, it is not clear how frequently the TIMS database will be updated or what information will appear regarding the disposition of an arrest, indictment, or criminal charges. For example, it is possible that after the indicator is placed in the database, the member might be exonerated because charges are withdrawn or the member is found not guilty of the accusations, or the member could complete an Accelerated Rehabilitation Disposition (ARD) program resulting in the dismissal and expungement of charges. In such cases, the TIMS indicator should be removed. PSEA intends to address these points with PDE and will assist members if database information is not kept up to date.

In conclusion, PSEA advises that any member who is arrested, indicted, or criminally charged should immediately contact their PSEA UniServ Representative and PSEA Region Attorney regardless of the nature of the accusations or whether they arise in the course of employment. The member will need to work with his or her criminal defense attorney to resolve the criminal proceedings, which are of primary concern. PSEA can assist with any employment or certification issues, as well with any questions or issues related to the TIMS database.

For More Information

PSEA members who have general questions about this Advisory may contact Brad Hull (bhull@psea.org) in PSEA's Education Services Department. Members with specific concerns about notification of a pending criminal charge should contact their UniServ Representative.