



MSDE Guidance for Md. Code, Educ. §6-113.2 (House Bill 486 – Child Sexual Abuse and Sexual Misconduct Prevention)

The Maryland State Department of Education (MSDE) offers this guidance to assist public and nonpublic schools and contracting agencies with implementing the provisions of Md. Code, Educ. §6-113.2. The guidance does not include all of the statute’s requirements, nor does it constitute legal advice. Schools and contracting agencies should consult with their legal counsel in addressing the requirements of the statute.

GENERAL INFORMATION

1. What employers are covered by the law?

A local board of education, nonpublic school, or contracting agency (defined as an entity that contracts with a county board or nonpublic school to provide a service to a school or the students of a school).

2. When does the law take effect?

July 1, 2019. Anyone who is an “applicant” for a position on or after July 1, 2019 is covered by the law. Employers do not need to follow the law’s provisions for individuals who applied to positions prior to July 1, 2019. **See question #38 for specific guidance for contracting agencies.**

3. What does the law require of employers and applicants for employment?

The law requires a county board, nonpublic school, or contracting agency to require an applicant for a position involving direct contact with minors to submit:

- 1) The contact information of the current employer, all former school employers, and all former employers of the applicant in which the applicant was employed in a position involving direct contact with minors;
- 2) A written consent form authorizing a current or former employer to release all records relating to child sexual abuse or sexual misconduct involving the applicant; and
- 3) A written statement of whether the applicant has:
 - a) been the subject of a child sexual abuse or sexual misconduct investigation by any employer, arbitrator, county board, state licensing agency, law enforcement agency, or child protective services agency (unless certain exceptions, detailed in the law, are met)

b) been disciplined, discharged, nonrenewed, or asked to resign from an employer, or has ever resigned or otherwise separated from employment while allegations of child sexual abuse or sexual misconduct were pending or were under investigation, or due to an adjudication or findings of child sexual abuse or sexual misconduct;

c) ever had a license or certificate suspended, surrendered, or revoked while allegations of child sexual abuse or sexual misconduct were pending or under investigation or due to an adjudication or findings of child sexual abuse or sexual misconduct.

4. What does the law require of prospective employers?

The law requires that a county board, nonpublic school, or contracting agency shall:

1) Review an applicant's employment history by contacting the current employer, all former school employers, and all former employers in which the applicant had direct contact with minors to request dates of employment and answers to the questions posed to applicants in question #3 (above).

2) Request a report from the MSDE regarding whether the applicant holds an active and valid certificate and has ever been the subject of professional discipline related to child sexual abuse or sexual misconduct.

5. What does the law require of current and former employers?

Within 20 days of receiving a request from a prospective employer, a current or former employer shall send the information required in question #3 (above) using a form approved by the MSDE. A current or former employer may also be required to produce additional information on an applicant (see #8 below).

6. Does the Criminal History Background Check required by Family Law Article cover this requirement?

No. This is a separate requirement from the Criminal History Background Check (fingerprinting) requirements found in the Maryland Code, Family Law Article. You must continue to meet the criminal history record check requirements, as well as the requirements of this law. Items #3 and #4 on the MSDE Guidance document explain what an employer and applicant need to do beginning July 1, 2019 to meet the requirements of this new law.

7. What does direct contact with minors mean?

Because every job position will be different, MSDE cannot provide blanket guidance about what constitutes direct contact with minors as part of someone's employment. There may be situations where one employee of a company has direct contact with minors, while another employee does not. In situations where it is unclear, we recommend obtaining as much information as possible from the employee about their job duties and responsibilities and consulting with your legal counsel to determine whether a previous or current employer should be included as part of the background review.

8. Where can I find the employment history review form approved for use by the MSDE?

A copy of the form is attached to this guidance or can be found online at www.marylandpublicschools.org.

9. When must a prospective employer request the background information?

The law requires that a prospective employer review the applicant's employment history before hiring an applicant. See #17 for guidance on hiring an employee if a current or former employer has not responded to the request for information.

10. Does a current or former employer ever have to provide more information than what is required on the form?

Yes. If a prospective employer decides to further consider an applicant for employment after learning that a current or former employer has provided an affirmative response to one of the questions listed in #3, the prospective employer shall request additional information, including all records related to child sexual abuse or sexual misconduct. The current or former employer must provide this additional information within 60 days to both the prospective employer and the applicant.

11. Can an employer request more information from an applicant than is required under the law?

Yes. The law does not restrict a school or contracting agency from conducting further investigations of prospective employees or requesting applicants to provide additional background information.

12. Do the background information review requirements apply to current employees?

The requirements apply only to applicants for positions. Employers are not required to request background information on current employees. The law is silent on whether current employees who apply for new positions with the same employer where they would have direct contact with minors (thus becoming 'applicants' for a position) must complete the background information review. The MSDE encourages employers to apply the background information review requirements to all applicants for positions.

13. If an employer has already completed a background information review on an employee, must the employer request that same information if the employee becomes an applicant for a new position?

No. If a background information review has already been completed for all previous employers, there is no need to conduct a new one.

14. Must all former employers be contacted for background information?

The bill does not have a time limit on how far back in an employee's history one must go to retrieve background information. The MSDE recommends contacting all current employers, former school system employers, and former employers supplied by the applicant where an applicant had direct contact with minors.

15. What if a former employer is no longer in business?

A prospective employer should document all attempts to reach the former employer. If the former employer is out of business and no records are available, the prospective employer should document this information in the employee's personnel file.

16. If an applicant worked in a Maryland Local School System, do I contact the principal of the school?

No. In Maryland, a local school system is the employer. Therefore, you should contact the Human Resources Department of the local school system in the county in which the individual is or was employed.

17. Do we need to seek a background history form from previous or current employers located in other states or other countries?

Yes. The law requires a prospective employer review the applicant's employment history before hiring an applicant. The law is not limited to past or current employers located in Maryland. The MSDE recommends obtaining as much information as possible from the employee about the location and contact information for the out-of-state or out-of-country employer and consulting with your legal counsel in the process. Please remember that a prospective employer should document all attempts to reach the former or current employers, regardless of where they are located (see question #23). A current or former employer shall not be held liable for failing to respond if the laws of the State or Country in which the employer is located prohibit the release of that information or disclosure is prohibited by a contract entered into on or before June 30, 2019.

18. Information does not have to be reported if a law enforcement agency found that the allegations were "unfounded." What does that mean?

Because law enforcement does not necessarily announce that allegations are "unfounded," prospective employers can consider the closing of an investigation to be the equivalent to "unfounded" charges.

19. Information does not have to be reported if a child protective services agency "ruled out" the allegations. What if the agency screens them out without an investigation?

This may be considered the equivalent of "ruled out" for purposes of the law.

20. How does a prospective employer receive information about an employee's "eligibility for employment or certification status" from the MSDE?

The law requires the MSDE to indicate whether an applicant "holds a valid and active certification appropriate for the position and is otherwise eligible for employment." The MSDE has information on whether an individual is certified in Maryland and in what areas, and whether there has ever been disciplinary action on a certificate, such as a suspension or revocation. It is ultimately up to the individual employer to determine whether to hire an employee based on the certification information provided by the MSDE.

For local school systems, the MSDE will make this information available through the Education Information System (EIS). Access can be granted, under certain conditions, to trained local school system staff. Nonpublic schools and contracting agencies may contact the MSDE directly to obtain this

information for applicants. If an applicant has never held a certificate, the MSDE will indicate that information in its response. A form requesting this information is available on the MSDE website at www.marylandpublicschools.org.

21. Does the request for information about the applicant's "certification status" only apply to applicants in certificated positions?

No. The law does not limit these inquiries to people who are serving in certificated positions. If the position involves direct contact with minors, the employer would need to request the information from MSDE even if the person is not going to be in a certificated role. It is possible for a person applying to a non-certificated position to have previously served in a certificated role and had action taken against their certificate related to child sexual abuse or sexual misconduct. Please seek guidance from your legal counsel regarding who specifically on your staff would be included as "involving direct contact with minors."

22. Do we send the Request for Information on the Applicants Certification Status form before we make the offer of after?

Before. The law requires that a prospective employer review the applicant's employment history before hiring an applicant. Question #25 indicates that a prospective employer may begin training an applicant/prospective employee prior to the answers on the background information review. However, an applicant/prospective employee may not be hired until the prospective employer has either received answers to the questions from all current/former employers covered by the law or completed the process described in question #23.

23. What must a prospective employer do if a current or former employer does not return the background information form? Can a prospective employer still hire the applicant?

The law does not prohibit hiring an employee solely because a current or former employer has failed to report the background information requested. The prospective employer must, however, document each attempt to contact the current or former employer. MSDE recommends using multiple methods, if available, including regular mail, e-mail, phone, or fax, in an attempt to reach the employer. If, after three documented attempts, the current or former employer still has not responded, the prospective employer may hire the employee, but should note what information is missing from the employee's background. The prospective employer must also report the violation of the law to the MSDE for further action (see #32 and #33 for further information).

24. Does the applicant information on page 2 of the background information form need to be completed before asking the current or former employer to complete their part?

Yes, page 2 is to be completed by the applicant. The applicant's signature authorizes the employer named on the form to release the requested information, and any other information permitted by law, to the entity listed on the form.

25. May a prospective employer begin training an applicant/prospective employee prior to receiving the answers to the background information review?

Yes, but an applicant/prospective employee may not be hired until the prospective employer has either received answers to the questions from all current/former employers covered by the law or completed the process described in #17.

26. Are the employment history reviews required under this law considered to be public records?

No. "Information and records about an applicant received by a county board, nonpublic school, or contracting agency" under Md. Code, Educ. §6-113.2 are not a public record for purposes of the Maryland Public Information Act (PIA).

27. Can a former employer be held liable for disclosing information as part of an employment history review?

No. A person acting in good faith may not be held liable for disclosing any information or records related to child sexual abuse or sexual misconduct about a current or former employee unless the person acts with actual malice or intentionally or recklessly disclosed false information. This immunity is in addition to any other immunities provided by law.

28. How should a current or previous employer complete the employment history review document?

The employment history review document should be filled out factually. If an individual did not work for you then you should indicate that on the form. Similarly, if your organization only maintains ten years of records or no longer has records concerning the specific employee, then you should provide that information on the form.

29. Can a prospective employer use digital signatures or digital forms to comply with the law?

Yes. Any system should be a secure and reliable form of receiving the background review information.

30. Can a prospective employer charge an applicant for processing the background review forms?

The law is silent in this regard and the MSDE has no position. It is up to individual employers to decide whether to charge a fee with the application.

31. Can a prospective employer require an applicant to forward the forms to current and former employers?

While a prospective employer may have an applicant forward the background information review forms to current or former employers, the responses to the form should go directly to the prospective employer. Prospective employers should not accept completed forms from an applicant on behalf of current or former employers.

32. Can the Employment History Review process be outsourced by a prospective employer?

The law is silent in this regard and the MSDE does not have a position. Please remember that the law requires a prospective employer to review the applicant's employment history before hiring an applicant. Furthermore, employers must maintain a copy of the forms and all supporting documentation in the applicant's personnel file and are required to provide that documentation upon the request of the MSDE. Any contracting agencies that perform employment history background reviews on behalf of a prospective employer should be aware of the law's requirements.

33. Where do I send the Request of Information on an Applicants Certification Status, MD. CODE, EDUC. §6-113.2 Employer Report, and the MD. CODE, EDUC. §6-113.2 Applicant report forms?

Please send all forms to the following email: 61132submissions.msde@maryland.gov.

NONPUBLIC SCHOOLS

34. What types of nonpublic schools must comply with the law?

The law applies to all types of nonpublic schools in Maryland. The law does not distinguish between nonpublic schools that are MSDE-approved and those that are not.

35. Does the law apply to Early Childhood Centers, Licensed Child Care, or Nursery Schools?

It depends. As questions #1 and #2 on the guidance document indicate, the law requires a county board, nonpublic school, or contracting agency (defined as an entity that contracts with a county board or nonpublic school to provide a service to a school or the students of a school) to require an applicant for a position involving direct contact with minors to submit specified documentation. If the program holds approval from the Office of Child Care to operate a nursery school or your program is registered as a church-exempt school with the MSDE, then this law would apply to your entity because you are an approved nonpublic school.

CONTRACTING AGENCIES AND SUBSTITUTES

36. Does the law apply to substitutes?

Yes. The law requires an employment history review of applicants for substitute positions involving direct contact with minors before the initial hiring of the substitute employee or placement on an approved substitute employee list. The completion of an employment history review in one county does not relieve another county of also conducting an employment history review of a substitute. A contracting agency may perform the employment history review for a substitute employee and its review may be used by all prospective employers of a substitute.

37. Does the law apply to coaches?

Coaches are not named specifically named in the law, but if they are working for a public or non-public school or a contracting agency where they will have direct contact with minors (as is likely), they would be covered by the law. Prospective employers may consider coaches to be similar to substitutes and apply the substitute provisions to those individuals.

38. When does a contracting agency have to conduct an employment history review?

A contracting agency shall conduct an employment history review at the time of initial hiring of, or contracting with, the employee/contractor or before the employee/contractor is assigned to work for a school entity in a position involving direct contact with minors. **This means that an employee who was hired by a contractor prior to July 1, 2019 must still undergo an employment history review if they are assigned to a school entity on or after July 1, 2019.**

39. How long is an employment history review conducted by a contracting agency valid?

As long as the employee/contractor continues to be employed by, or is contracting with, the hiring contracting agency.

40. Must a contracting agency keep records in connection with the employment history review?

Yes, a contracting agency must maintain a record of each employee's (or contractor's) employment history review and, on request of the school entity to which an employee/contractor is assigned, provide access to the contracting agency's records of that employee/contractor.

41. Must a contracting agency inform a school entity of affirmative responses to questions posed in the employment history review?

Yes. Before assigning any employee/contractor to work in a school entity in a position involving direct contact with minors, a contracting agency shall provide notice to the school entity of any affirmative responses.

42. Can a school object to a contracting agency placing a specific employee at the school?

Yes. The contracting agency must provide information about whether the employee/contractor has any history of child sexual abuse or sexual misconduct as discovered in the employment history review. Based on that information, a school may object to the assignment of a particular employee/contractor in a position involving direct contact with minors.

43. Does this law apply to volunteers, interns, and guest speakers (paid or unpaid)?

The law is silent in this regard. However, the law applies to an applicant for a position on or after July 1, 2019. The MSDE recommends discussing with your counsel the duties and role of each specific position to determine whether an intern, volunteer, or other individual would fall within the background check requirements of the law, particularly for those in roles involving direct contact with minors.

44. Does HB 486 apply to summer camps?

It depends. As questions #1 and #2 on the guidance document indicate, the law requires a county board, nonpublic school, or contracting agency (defined as an entity that contracts with a county board or nonpublic school to provide a service to a school or the students of a school) to require an applicant for a position involving direct contact with minors to submit specified documentation. Important factors for consideration are: (1) who operates the summer camp and (2) who is the summer camp serving. Please seek guidance from your legal counsel to determine if the specific legal entity responsible for operating the camp is responsible for complying with this law.

FAILURE TO COMPLY WITH THE LAW

45. What happens to an applicant who provides false information related to child sexual abuse or sexual misconduct?

The individual may face professional discipline in the form of termination or denial of employment and may also face suspension, revocation, or denial of a professional license issued by the MSDE. The MSDE is in the process of developing regulations related to this provision.

46. What happens to a current or former employer who does not provide the information and records required under the law?

The current or former employer may face civil penalties or professional discipline for willful violations of the law's requirements. The MSDE is in the process of developing regulations to address this provision. A current or former employer shall not be held liable for failing to respond if the laws of the State in which the employer is located prohibit the release of that information or disclosure is prohibited by a contract entered into on or before June 30, 2019. The MSDE plans to initially send warning letters to current and former employers who are not complying with the law to make them aware of the law's requirements.

47. What should a prospective employer do if it learns that an applicant has provided false information or encounters a current or former employer that refuses to respond to the background information form?

The violation of the law should be reported to the MSDE along with all relevant documents or other information.

48. What if an employer becomes aware that an employee provided false information after the employee has been hired or learns of pre-employment allegations of child abuse or sexual misconduct after hire?

The employer may make any employment offer contingent on the results of the background information review and/or take whatever employment action it deems necessary. In addition, false information provided by an applicant or employee should be reported to the MSDE.