CHILD ABUSE
LEGISLATION:
A Piece of the Puzzle
Relating to Volunteers

During 2013 and 2014, the Pennsylvania General Assembly enacted 21 different acts relating to child abuse. The provisions relating to volunteers are among the more challenging parts of the new legislation, and schools should adopt a new volunteer policy to reflect the new law. This law watch addresses some of the new requirements and appropriate policy provisions.

Volunteers Are Mandated Reporters. Under the new law, volunteers are “mandated reporters” required immediately to report suspected child abuse to the Pennsylvania Department of Human Services via the DHS toll-free telephone number or by electronic means provided by DHS.

When Do Background Check Requirements Start? Although the law is not entirely clear, DHS has interpreted the volunteer background check requirements to start July 1, 2015.

Volunteer Background Check Requirements. Very importantly, schools and certain other employers are required to obtain multiple background check reports from volunteers prior to the start of volunteer service.

Who is a volunteer subject to these requirements? Unfortunately, but not surprisingly, the law is far from clear.

The law defines volunteer as an adult individual serving in an unpaid position who is responsible for the welfare of one or more children or has direct contact with children.

In turn, responsible for the welfare of one or more children is defined as providing permanent or temporary care, supervision, training, or control of a child in lieu of parental care, including direct or regular contact with a child or children through any program, activity or service sponsored by a school. Similarly, direct contact with children is defined as care, supervision, guidance, or control of one or more children or routine interaction with one or more children.

Because of the lack of clarity, many employers continue to struggle with application of the definitions in real life circumstances.

The Pennsylvania Department of Education and the Pennsylvania Department of Human Services have made clear their views that the definition of volunteer does not encompass an individual who is a mere visitor, and that in order to determine if an individual having contact with children is subject to the background check mandate, employers must examine the facts and circumstances of the individual’s presence in school or other setting.

To help schools and other employers make decisions on which individuals are required to have background check, KALAL provides the following guidance on possible rules to determine if the mandate applies.

As examples, a volunteer includes but is not necessarily limited to: (i) an individual who serves as a volunteer sport coach or otherwise assists and has contact with children in connection with production or conduct of a play, concert, or other curricular, co-curricular, or extracurricular activity; (ii) an individual who serves as a daily, weekly, or other periodic scheduled classroom assistant; (iii) an individual who serves as a school sponsored event chaperone; or (iv) an individual who in
connection with a school sponsored activity has contact, unsupervised by a school employee, with a child with respect to whom the individual is not the parent, close relative, or guardian of the child. A volunteer is someone who is more than a visitor, and normally involves an individual working directly with, having responsibility for, and having repeated interaction with one or more students. An individual who allows a student to visit the individual’s place of business for job shadowing is not considered a volunteer.

A visitor is an individual whose actions do not rise to the level of a volunteer. As examples, a visitor includes but is not necessarily limited to: (i) a parent, close relative, or guardian who visits a classroom, auditorium, other school common area, or private meeting area to make a delivery to, meet with, or share a celebration time with, a student who is the individual’s child or other close relative or for whom the individual is the guardian; (ii) an individual who attends a sports event or other extracurricular activity; or (iii) an individual who is a career day or other similar speaker or participant visiting to share information with students under supervision of a school employee.

Of course, focus on child safety should always be the paramount concern, but implementation of the new law also requires use of common sense by not applying background check requirements too stringently in circumstances where there is no real threat to child safety and where applying the requirements would discourage desired adult participation in school activities.

Without doubt, implementation of the massive new child abuse legislation is a work in process, and will evolve over time. However, schools might want to consider the above rules as a way of starting down this path.

Interns and Jobsite Training. KKAL believes that generally background checks are not required for private sector employees at jobsites where students have internships or job training.

However, the final decision on this issue requires review of all relevant facts and circumstances, and there has been some difference of opinion on this issue. PDE and DHS have not to date issued written opinions on this issue. In the absence of any official interpretations, schools should rely on guidance from their legal counsel. Stay tuned for possible future developments on this issue.

Required Background Check Documents. Although schools and other employers might decide to require additional information, the minimum background checks and related steps required by law for those subject to the mandate include:

- Volunteer Application – providing basic information about the individual.
- PA State Police Criminal History Report – dated no more than one year prior to the volunteer application date.
- PA Department of Human Services Child Abuse Report
- Federal Criminal History Report
- PDE-6004 Arrest/Conviction Report and Certification Form – dated as of the volunteer application date. This is a written statement that the individual has never been arrested or convicted of certain crimes.

Three-Year Update Requirement. In addition to the requirement to provide background check reports prior to the start of volunteer service, the new law requires volunteers to provide updated background check reports every 3 years so that background check reports on file are never older than 3 years.

Volunteer Training. Neither the School Code nor the child abuse laws mandate training for volunteers. However, employers should consider a requirement of training for volunteers on child abuse recognition and reporting, and possibly on additional topics – commensurate with the type of volunteer position.
We hope you find this issue of KKAL’s Education Law Watch helpful and informative. Please understand that the Law Watch is designed to provide information about current developments and required actions. It does not constitute legal advice, and school districts should consult a lawyer knowledgeable in this area of the law prior to taking specific actions on the issues addressed.

If you have any questions regarding any education law matter, including the issues discussed in this newsletter, please do not hesitate to contact us at (717) 392-1100, or email us at the following addresses.

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<td>Education Law Group</td>
<td></td>
</tr>
<tr>
<td>(717) 392-1100</td>
<td></td>
</tr>
<tr>
<td>Clarence C. Kegel, Jr.</td>
<td><a href="mailto:kegel@kkallaw.com">kegel@kkallaw.com</a></td>
</tr>
<tr>
<td>Howard L. Kelin</td>
<td><a href="mailto:kelin@kkallaw.com">kelin@kkallaw.com</a></td>
</tr>
<tr>
<td>Jeffrey D. Litts</td>
<td><a href="mailto:lipts@kkallaw.com">lipts@kkallaw.com</a></td>
</tr>
<tr>
<td>Rhonda F. Lord</td>
<td><a href="mailto:lord@kkallaw.com">lord@kkallaw.com</a></td>
</tr>
<tr>
<td>Jason T. Confair</td>
<td><a href="mailto:confair@kkallaw.com">confair@kkallaw.com</a></td>
</tr>
<tr>
<td>Stephen S. Russell</td>
<td><a href="mailto:russell@kkallaw.com">russell@kkallaw.com</a></td>
</tr>
<tr>
<td>Kay Mercein Mann</td>
<td><a href="mailto:mann@kkallaw.com">mann@kkallaw.com</a></td>
</tr>
<tr>
<td>Christine Nentwig</td>
<td><a href="mailto:nentwig@kkallaw.com">nentwig@kkallaw.com</a></td>
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Kegel Kelln Almy & Lord LLP is a regional law firm with offices in Lancaster, Pennsylvania. KKAL is solicitor and general counsel to 20 school districts and joint school systems – and bend counsel, finance counsel, or special joint counsel to many others in Central and Eastern Pennsylvania. In addition, KKAL frequently serves Pennsylvania school districts for unusual and challenging problems, projects, or litigation.