



PRIVATE SCHOOL CHOICE PROGRAMS & SPECIAL NEEDS SCHOLARSHIP PROGRAM

INFORMATIONAL BULLETIN

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Criminal Background Checks

Schools participating in the Private School Choice Programs or Special Needs Scholarship Program (collectively “programs”) must conduct a criminal background check for any individual at the school’s legal entity who is defined as an employee under Wis. Stat. § 108.02 (12) and is directly or indirectly related to the school’s educational programming. The information in this bulletin is based on Wis. Stat. §§ 115.7915, 118.60, and 119.23 and Wis. Admin. Code PI 35, 48 and 49.

In addition to the criminal background checks described in this bulletin, the school must complete background checks for any drivers of alternative vehicles. This requirement applies whether the school owns an alternative vehicle or contracts for a pupil transportation vehicle from a party other than a Wisconsin school district. Additional information on this requirement is available on the [Choice Fiscal and Internal Control Practices webpage](#) under Resources.

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Determining Which Individuals Require a Background Check

Overview

Background checks must be conducted for all individuals defined as employees under [Wis. Stat. § 108.02 \(12\)](#) who are directly or indirectly related to the school's educational programming. Individuals who perform services for a school may be considered employees regardless of whether the individuals are paid directly by the school.

In order to determine which individuals require a background check, the school should begin by generating a list of all individuals who perform services for their legal entity. The school must conduct a background check for any individual on the list who is an employee of the legal entity **and** directly or indirectly related to the school's educational programming.

Employee of Legal Entity

The determination of whether an individual is an employee of the legal entity starts with a definition of the legal entity. Organizations are considered the same legal entity if:

1. The organizations have the same federal tax id number and use it for all activities including payroll.
2. The organizations are not separately set up with the Department of Financial Institutions.

The next step is to determine if an individual is an employee of the legal entity. Wis. Stat. § 108.02 (12) defines an employee as an individual who performs services for pay for an employing unit "whether or not the individual is paid directly by the employing unit." An individual may only be classified as an independent contractor, instead of an employee, if the individual meets certain criteria specified in the statute. The Wisconsin Department of Workforce Development (DWD) has [worker classification resources](#) available online that schools may use to determine who is an employee of the legal entity.

The DWD worker classification resource has a two part test for determining who is considered to be an employee. The first part is determining whether or not the school has direction and control over the employee. If the school is directing the work of the employee and requiring that it be done in a certain way, the individual is generally considered to be an employee of the school. Generally, any time an administrator, teacher (including substitute teachers), or teacher aide is being contracted from another entity, the individual will be an employee since the school is typically directing the required work for the individual.

If the school is not directing and controlling the employee, then the school must determine whether or not the individual has an independent business. The DWD worker classification resources website includes information on how this determination is made. Training 6-12 on the [On Demand Training webpage](#) describes how a school can make this determination in further detail and has knowledge checks at the end with example individuals and an explanation of how a school may determine if it is required to have a background check for each individual.

Related to Educational Programming

An individual's employment is considered directly or indirectly related to the school's educational programming if *any* of the following criteria apply to the individual:

1. Any compensation for the individual is included as an eligible education expense in a financial audit submitted under Wis. Stat. §§ 115.7915, 118.60, or 119.23,
2. The individual interacts with students, or
3. The individual has a job that relates to the financial, administrative, or academic sectors of the school.

Teachers, teacher aides, school administrators, substitute teachers, food service employees, school secretaries, coaches, bookkeepers, academic coordinators, and before/after care employees are some examples of individuals who typically are directly or indirectly related to educational programming. Additionally, schools should consider whether other individuals meet any one of the above criteria such as janitors, pastors, transportation employees, and church secretaries.

Requirements to Pass the Background Check

Overview

Pursuant to Wis. Stat. §§ 115.7915(6)(d), 118.60(7)(h) and 119.23(7)(h), private schools participating in the programs cannot employ:

1. Any individual who is not eligible for a teaching license as the result of an offense; and
2. Any individual who might reasonably be believed to pose a threat to the safety of others, which includes individuals who have engaged in immoral conduct, as defined under Wis. Stat. § 115.31(1)(c).

Teaching License Eligibility

An individual is ineligible for a teaching license if the individual has been convicted of any Class A, B, C, D, E, F, G, or H felony under Wis. Stat. chs. [940](#) or [948](#), except §§ 940.08 and 940.205, within six (6) years of the individual applying for a license to teach. Wis. Stat. § 118.19(4). For a list and complete definitions of the prohibited offenses, please see Wis. Stat. chs. [940](#) or [948](#). If the individual was convicted of these felonies more than 6 years ago, the school needs to evaluate if the felony would be considered immoral conduct since that is an additional requirement that must be met by the background check.

Immoral Conduct

Wisconsin law defines immoral conduct as “conduct or behavior that is contrary to commonly accepted moral or ethical standards and that endangers the health, safety, welfare or education of any pupil.” Wis. Stat. § 115.31(1)(c). Immoral conduct includes the intentional use of an

educational agency's equipment to download, view, solicit, seek, display or distribute pornographic material. When determining whether other conduct is immoral conduct, the school must first determine if the conduct is contrary to commonly accepted moral or ethical standards. If it is contrary to commonly accepted moral or ethical standards, the school must then determine if it endangers the health, safety, welfare, or education of any pupil.

Schools should have a policy or other written document indicating what they consider to be immoral conduct. This should then be used to determine whether conduct identified in the background check is immoral conduct.

Conducting the Background Check

Overview

A criminal background check may be conducted by determining that the individual has a current, DPI issued license or by the school completing a check to determine whether the individual meets the requirements described in the [Requirements to Pass Background Check](#) section.

DPI Issued License Background Check Option

The background check requirement can be met by determining that an individual has a current, DPI issued license. To complete the background check using this option the school must complete all of the following for the individual:

- Obtain and retain a copy of the DPI issued license. Please note that for purposes of this requirement, the license may be any type of license issued by the DPI (it does not specifically need to be a teacher or administrator license).
- Annually determine that the individual has a current license in advance of the employee working for the school term by reviewing the DPI license website at <https://elo.wieducatorlicensing.org/datamart/publicSearchMenu.do>. The school term is the time commencing with the first school day and ending with the last school day, other than summer school. If the individual no longer has a license, the school must complete a background check as described in the [Non DPI Issued License Background Check Option](#) section prior to the individual working at the school for that school term.

Non DPI Issued License Background Check Option

If the DPI issued license option is not used for the background check, a criminal background check must be conducted by the participating private school prior to employing an individual and every five (5) years thereafter. If a school new to the SNSP and Choice program has not previously completed background checks on existing employees, the school must complete a background check on each employee before he or she works at the school for the first school year the school participates in the program. Each background check must be conducted individually.

Resources that may be used to conduct background checks can be found on the [Department of Public Instruction's \(DPI\) Background Check Information Sources website](#). As part of the licensure application process for educators, the DPI uses a Conduct and Competency Form, which can be found on the DPI's website and may be used as a resource. The form requires applicants to respond to questions, including a question about any past immoral conduct.

A school performing an initial background check required for an employee who has worked or lived outside of Wisconsin must ensure the background check will identify any issues outside of Wisconsin that would disqualify the employee under the requirements of the programs. After this initial background check, if the employee has not resided outside the State of Wisconsin within the intervening time between background checks, then utilizing the Wisconsin background check resources should be sufficient (unless they permanently reside outside of the state).

The background check process must include a review of prior criminal behavior as well as any behavior that may be considered "immoral conduct" or that might reasonably be believed to pose a threat to the safety of others, regardless of whether it was illegal. If the background check reveals potential areas of concern, the school should review the relevant information to determine whether the behavior prohibits the employee from being employed at the school.

Record Retention

The records and documents obtained from performing criminal background checks must be retained and accessible to the school and available to the school's independent auditor. This is required for all individuals who require a background check, including individuals who are subcontracted from a 3rd party agency and determined to be employees of the school. Since the background check itself must be retained by the school, a letter from a subcontractor indicating teachers or other individuals meet the background check requirement is not sufficient. The background check may have the social security number and the individual's address redacted.

Schools are required to retain and provide the full background check to the independent auditor. The school's independent auditor will verify that the background checks have been completed as part of the school's audits.

Frequently Asked Questions

- 1. Does a school need to conduct background checks for church or other employees who do not work in the school but are employees of the same legal entity as the school?**

The school should determine if these employees are directly or indirectly related to the school's educational programming as described in the [Related to Educational Programming](#) section. If the employees are related to educational programming, the school will need to conduct a background check for these individuals.

2. If a school is exempt from paying unemployment compensation, does the school still need to complete background checks?

Yes. Only DWD's *definition* of who is an employee for unemployment compensation purposes is used to determine if individuals at the school must complete background checks. Schools are required to use this definition and complete background checks even if the school is exempt from paying unemployment compensation.

3. Do schools need to conduct background checks for public school employees or contractors who provide services in the private school?

No. Private schools do not need to conduct background checks for workers classified as independent contractors based on Wis. Stat. § 108.02(12) or for public school employees. See the [Employee of Legal Entity](#) section for information on how to determine whether an individual is an independent contractor.

4. How should schools approach the background check requirement if they outsource services to vendors, including vendors who provide transportation and food services?

Schools should determine if individuals should be classified as employees based on Wis. Stat. § 108.02(12). Please note that individuals who are performing services for a school may be considered employees whether or not the individuals are paid directly by the school.

If a school determines background checks are required for workers from an outside vendor and the vendor already conducts background checks that meet the programs' requirements, the school may work with the vendor to obtain copies of the background checks for auditing purposes.

5. Does the school need to complete a background check for teachers from a staffing agency?

Typically a school will be required to complete a background check for substitute teachers because schools generally require that the substitute teacher provide certain curriculum and follow the private school board's policies and procedures. Since the school is directing and controlling what the teacher does at the school and is requiring that the individual follow the board's policies and procedures, the teacher will generally be considered to be an employee of the school. For teachers from a staffing agency, schools may be able to obtain the DPI issued license in order to meet the background check.

6. If a school determines that the individuals at a staffing agency are employees of the school, does the school need to complete the background check for all of the employees at the staffing agency (such as the administrative personnel)?

If the school and staffing organization are separate legal entities, the school would only be required to complete background checks for those individuals who are employees of the school and who are directly or indirectly related to educational programming. For example, if a school contracts with a temporary agency for substitute teachers, the school would generally not be required to complete a background check for the administrative personnel at the staffing agency or any substitute teachers who do not work at the school since they would generally not be under the direction and control of the school.

7. Are referees required to have a background check?

If athletic officials are solely responsible to officiate athletic events governed by rules set by an independent athletic body (WIAA or something equivalent), they are independent contractors. To be more specific, if the school is contracting with an independent athletic body for referees, has no say over who the referees are, and the referees follow the guidelines of that independent organization, those referees would not be employees. However, if the official has other duties or the officiating is governed directly by school policy, then they are an employee, and a background check is needed.

8. Do background checks need to be completed for volunteers?

The law does not require schools to complete background checks for volunteers, though schools are highly encouraged to perform a background check on any individual that has contact with students.

9. Does a school need to conduct background checks for individuals who work with students but are not hired by the school and are paid directly by students' parents?

If the individual is considered an employee of the school based on Wis. Stat. § 108.02(12) and directly or indirectly related to educational programming, the school would need to complete a background check for the individual. Please note that an individual who is performing services for a school may be considered an employee whether or not the individual is paid directly by the school. Schools should refer to the [Determining Which Individuals Require a Background Check](#) section for information on determining whether a background check is required for the individual.

10. Does a school need to conduct a background check for an employee who is related to educational programming if the employee is a minor? How can a school complete a background check for a minor?

State law requires schools complete a background check on all employees, including minor school employees, that satisfies the requirements in this bulletin. The check should sufficiently satisfy the standard that there is nothing which indicates that the

employee could not attain teacher licensure, including being engaged in “immoral conduct.” Employers can determine this through an FBI background check, the Wisconsin courts records access system, or other valid background check options that obtain the record of a minor. The DPI does not dictate the means through which compliance is demonstrated under the law, but instead provides the standard that must be met. There is no required mechanism that must be used to indicate a lack of an applicable felony conviction for a minor school employee. For a minor who has lived outside of Wisconsin, it would be advisable to investigate the records of the state of residence for that minor.

11. At what point during the application process does a background check need to be conducted for a potential school employee?

For a new employee at the school, a school needs to conduct a background check prior to his or her employment start date. A school may determine when during the application process the background check is conducted, so long as the person has completed the background check prior to the start of their employment tied to educational programming at the school.

After the first background check is completed, a succeeding background check must be performed at least once every five years from the date of the employee’s prior background check (and so on as long as employment continues) if the non DPI issued license option is used. If the DPI issued license option is used, the school must annually complete the procedures described in the [DPI Issued License Background Check Option](#) section to ensure the employee still has a current DPI issued license.

12. Do schools need to use the specific sources listed on the DPI Background Check Information Sources website?

According to Wis. Stat. §§ 115.7915(6)(d), 118.60 (7)(h) and 119.23 (7)(h), private schools participating in the programs cannot employ:

1. Any individual who is not eligible for a teaching license as the result of an offense; and
2. Any individual who might reasonably be believed to pose a threat to the safety of others, which includes individuals who have engaged in immoral conduct, as defined under Wis. Stat. § 115.31(1)(c).

The background check process the school chooses must be sufficient to determine that both of these requirements are met for background checks. If the background check that the school currently uses meets these requirements, that background check is sufficient. If not, the school must modify its background check process to meet the requirements.

13. How should schools determine if there has been “immoral conduct”? Does a separate check, aside from a criminal background check, need to be conducted to determine this? What are the expectations for investigating if there has been “immoral conduct?”

"Immoral conduct" means conduct or behavior that is contrary to commonly accepted moral or ethical standards and that endangers the health, safety, welfare or education of any pupil. "Immoral conduct" includes the intentional use of an educational agency's equipment to download, view, solicit, seek, display, or distribute pornographic material.

Schools should use a background check process that allows them to determine if an employee or applicant has engaged in immoral conduct. The DPI does not require or endorse any specific check or method for making this determination.

Resources that may be used to conduct background checks can be found on the [DPI's Background Check Information Sources website](#). As part of the licensure application process for educators, the DPI uses a [Conduct and Competency Form](#), which can be found on the DPI's website and may be used as a resource. The form requires applicants to respond to questions, including a question about any past immoral conduct.

14. Can a school satisfy the background check requirement by obtaining the background check from the individual's previous employer?

A school must complete a background check that meets the requirements under state law. If the school is not using the DPI issued license option, a background check from another school will satisfy the requirements, as long as the new employer obtains and retains all necessary documentation from the prior background check and reviews the documentation to ensure the employee meets the programs' requirements. The new employer must also perform a background check within five years from the date of the original background check, rather than five years from the initial date of employment with the new employer. If the new school is using the DPI issued license option, it should complete the requirements described in the [DPI Issued License Background Check Option](#) section prior to the individual's employment start date.

15. Do the background checks need to include a search for felonies or immoral conduct that occurred outside of Wisconsin?

A school performing an initial background check required for the programs for an employee that has worked or lived outside of Wisconsin must ensure the background check will identify any issues outside of Wisconsin that would disqualify the employee under requirements of the programs. After this initial background check, if the employee has not resided outside the State of Wisconsin within the intervening time between background checks, then utilizing the Wisconsin background check resources should be sufficient (unless they permanently reside outside of the state).

16. What types of DPI issued licenses meet the background check requirement?

Any type of DPI issued license meets the requirement for criminal background check purposes. The DPI issued license must be current to meet the requirement. However, please note that if the DPI issued license is being used to meet the Choice program administrator or teacher credential requirement, only certain types of licenses meet that requirement. See the [Staff Credentials Bulletin](#) for additional information.

17. Is a background check completed for state licensed childcare facilities sufficient to meet the Choice/SNSP background check requirement?

The school has two options to complete the Choice/SNSP background check, the DPI issued license option or the non DPI issued license option. If the school uses the non DPI issued license option and is able to obtain the background check information from the background check that was previously completed, the school could use that information to complete its background check. The school would need to review the background check provided by the organization to determine whether the individual had prior criminal behavior that would result in the individual not passing the background check or behavior that may be considered “immoral conduct” or that might reasonably be believed to pose a threat to the safety of others, regardless of whether it was illegal. If the school is not able to obtain the background check from the organization that allows for it to complete this review, it must complete its own background check.