

Operational Services

Administrative Procedure - Sexual Misconduct-Related Employment History Review (EHR) of Contractor Employees

Use this procedure to implement the sexual misconduct-related employment history review (EHR) required by 105 ILCS 5/22-94 when an employee of a contractor will have direct contact with children or students. A copy of this procedure may be provided to a contractor to inform or remind the contractor of its legal obligations.

Glossary of Terms

Contractor - A firm holding a contract with any school, including, but not limited to, food service workers, school bus drivers, and other transportation employees who have direct contact with children or students. 105 ILCS 5/22-94(b), added by P.A. 102-702, eff. 7-1-23.

Direct contact with children or students - The possibility of care, supervision, guidance, or control of children or students or routine interaction with children or students. 105 ILCS 5/22-94(b), added by P.A. 102-702, eff. 7-1-23.

School - A public or nonpublic elementary or secondary school. 105 ILCS 5/22-94(b), added by P.A. 102-702, eff. 7-1-23.

Sexual misconduct - Any act, including but not limited to, any verbal, nonverbal, written, or electronic communication or physical activity, by an employee with direct contact with a student, that is directed toward or with a student to establish a romantic or sexual relationship with the student. Examples include but are not limited to: 1) a sexual or romantic invitation, 2) dating or soliciting a date, 3) engaging in sexualized or romantic dialog, 4) making sexually suggestive comments that are directed toward or with a student, 5) self-disclosure or physical exposure of a sexual, romantic, or erotic nature, 6) a sexual, indecent, romantic, or erotic contact with the student. 105 ILCS 5/22-94(b), added by P.A. 102-702, eff. 7-1-23; 105 ILCS 5/22-85.5(c), added by P.A. 102-676.

EHR of Contractor Employees

Actor	Action
Contractor	<p>At the time of initial hiring of an employee or prior to the assignment of an employee to perform work involving direct contact with children or students, conducts an EHR of the employee, in accordance with 105 ILCS 5/22-94, added by P.A. 102-702, eff. 7-1-23, specifically:</p> <p>Provides the employee with: (a) a Sexual Misconduct Disclosure form, using the Ill. State Board of Education's (ISBE) Sexual Misconduct Disclosure Template for Applicant at www.isbe.net/Documents/Temp1-ISBE-Sexual-Misconduct-Disclosure-Form-Applicant.pdf and (b) copies of the Authorization for Release of Sexual Misconduct-Related Information and Current/Former Employer Response form, using ISBE's</p>

	<p>Authorization for Release of Sexual Misconduct-Related Information and Current/Former Employer Response Template at www.isbe.net/Documents/Temp2-Auth-Release-Sexual-Misconduct-Related-Info.pdf for the applicant to complete for each current employer and for each former employer where the applicant worked in direct contact with children or students. The Contractor cannot hire an applicant for a position involving direct contact with children or students who does not provide the information required by the forms (105 ILCS 5/22-94(f), added by P.A. 102-702, eff. 7-1-23).</p> <p>Reviews the applicant's completed Sexual Misconduct Disclosure form and Authorization for Release of Sexual Misconduct-Related Information and Current/Former Employer Response form(s).</p> <p>Provides to all employers identified by the applicant in Section 3 of the Authorization for Release of Sexual Misconduct-Related Information and Current/Former Employer Response form a copy of the Authorization for Release of Sexual Misconduct-Related Information and Current/Former Employer Response form (105 ILCS 5/22-94(c)(4), added by P.A. 102-702, eff. 7-1-23). The employer(s) must return the completed form(s) to the Contractor within 20 calendar days (105 ILCS 5/22-94(e), added by P.A. 102-702, eff. 7-1-23) after receipt.</p> <p>Informs the District of any instance known to the Contractor in which the employee: (a) has been the subject of a sexual misconduct allegation unless a subsequent investigation resulted in a finding that the allegation was false, unfounded, or unsubstantiated; (b) has ever been discharged, been asked to resign from, resigned from, or otherwise been separated from any employment, been removed from a substitute list, been disciplined by an employer, or had an employment contract not renewed due to an adjudication or finding of sexual misconduct or while an allegation of sexual misconduct was pending or under investigation, unless the investigation was false, unfounded, or unsubstantiated; or (c) has ever had a license or certificate suspended, surrendered, or revoked due to an adjudication or finding of sexual misconduct or while an allegation of sexual misconduct was pending or under investigation, unless the investigation resulted in a finding that the allegation was false, unfounded, or unsubstantiated. 105 ILCS 5/22-94(j)(3)(A-C), added by P.A. 102-702, eff. 7-1-23.</p>
Superintendent, Business Manager, or designee	<p>Confirms that the Contractor has performed or will perform an EHR for each of its employees who will perform work involving direct contact with children or students. The EHR remains valid as long as the employee remains employed by Contractor, even if the employee is assigned to perform work for another school. 105 ILCS 5/22-94(j)(1), added by P.A. 102-702, eff. 7-1-23.</p>

To ensure the EHR is performed, may require the following sample language or similar language be included in each contract with the Contractor:

Either at the time of initial hiring or prior to assigning any employee to perform work in the District involving direct contact with children or students, the Contractor will perform an Employment History Review (EHR) for the employee, in accordance with the requirements of 105 ILCS 5/22-94, as it may be amended from time to time. Notwithstanding the foregoing, if Contractor is furnishing substitute staffing services, Contractor shall perform the EHR upon initial hiring of the substitute employee.

In performing the EHR, the Contractor agrees it will provide the employee with: (1) a Sexual Misconduct Disclosure form, using the Ill. State Board of Education's (ISBE) Sexual Misconduct Disclosure Template for Applicant at

www.isbe.net/Documents/Temp1-ISBE-Sexual-Misconduct-Disclosure-Form-Applicant.pdf and (2) copies of the Authorization for Release of Sexual Misconduct-Related Information and Current/Former Employer Response form, using ISBE's Authorization for Release of Sexual Misconduct-Related Information and Current/Former Employer Response Template at

www.isbe.net/Documents/Temp2-Auth-Release-Sexual-Misconduct-Related-Info.pdf for the employee to complete for each current employer and for each former employer where the employee worked in direct contact with children or students.

The Contractor shall provide to all employers identified by the employee in Section 3 of the Authorization for Release of Sexual Misconduct-Related Information and Current/Former Employer Response form a copy of the Authorization for Release of Sexual Misconduct-Related Information and Current/Former Employer Response form (105 ILCS 5/22-94(c)(4), added by P.A. 102-702, eff. 7-1-23). The Contractor will instruct the identified employer(s) to return the completed form(s) to the Contractor within 20 calendar days after receipt. The Contractor shall immediately inform the District of any instances of sexual misconduct involving the employee as set forth in 105 ILCS 5/22-94(j)(3). The Contractor shall maintain all records of EHRs and upon the District's request shall provide the District with access to and copies of records pertaining to the EHRs of Contractor employees. The Contractor shall not send to any school building or other District property: (1) any employee for whom an EHR has not been performed, (2) any employee who provides false information or willingly fails to disclose information required by the EHR, or (3) any employee to whom the District objects after the Contractor informs it of an instance of sexual misconduct involving the employee as set forth in 105 ILCS 5/22-94(j)(3). 105 ILCS 5/22-94(e) provides that a "contractor who provides information or records about a current or former employee or applicant under this Section [105 ILCS 5/22-94] is immune from

	<p><i>criminal and civil liability for the disclosure of the information or records, unless the information or records provided were knowingly false.”</i></p> <p><i>For the duration of this Agreement, and in accordance with 105 ILCS 5/22-94(g), the Contractor agrees it will not enter into any collective bargaining agreement, employment contract, agreement for resignation or termination, severance agreement, or any other contract or agreement that: (1) has the effect of suppressing information concerning a pending investigation or a completed investigation in which an allegation was substantiated related to a report of suspected sexual misconduct by a current or former employee, (2) affects the ability of the Contractor to report suspected sexual misconduct to the appropriate authorities, or (3) requires the Contractor to expunge information about allegations or findings of suspected sexual misconduct from any documents maintained by the Contractor, unless, after an investigation, an allegation is found to be false, unfounded, or unsubstantiated.</i></p> <p>Whenever a Contractor sends an employee who will have direct contact with children or students to the District for the first time, requests that the Contractor provide the District with copies of the records pertaining to the EHR of any employee involved in an instance of sexual misconduct as set forth in 105 ILCS 5/22-94(j)(3).</p>
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Following the EHR of Contractor Employees

Actor	Action
Contractor	<p>Maintains records documenting EHRs as required by law and upon the District’s request, provides the District access to records pertaining to the employment history reviews of employees. 105 ILCS 5/22-94(j)(2), added by P.A. 102-702, eff. 7-1-23.</p> <p>Prohibits the assignment of an employee to a position at the District involving direct contact with children or students if: (1) the employee does not provide the information required by 105 ILCS 5/22-94(c) or provides false information or willfully fails to disclose information required by the EHR (2) the Contractor determines the employee is unfit for the position, or (3) the District objects to the assignment after the Contractor informs it of an instance of sexual misconduct as listed in the section above. 105 ILCS 5/22-94(f) and j(4), added by P.A. 102-702, eff. 7-1-23.</p> <p>Disciplines, up to and including termination or denial of employment, any employee who provides false information or willfully fails to disclose information required by the EHR. 105 ILCS 5/22-94(d), added by P.A. 102-702, eff. 7-1-23.</p>

	<p>As appropriate, reports responses received from an applicant's employer(s) to ISBE, a state licensing agency, a law enforcement agency, a child protective services agency, another school or contractor, or a prospective employer. Note: A contractor or district that reports information or records about a current or former employee or applicant under 105 ILCS 5/22-94 is immune from criminal and civil liability for the disclosure of the information or records unless the information or records provided were knowingly false. 105 ILCS 5/22-94(e), added by P.A. 102-702, eff. 7-1-23.</p>
Superintendent, Business Manager, or designee	<p>Reviews all EHR records provided by the Contractor to evaluate the employee's fitness to be assigned to work in the District.</p> <p>As appropriate, reports responses received from an applicant's employers to ISBE, a state licensing agency, a law enforcement agency, a child protective services agency, another school or contractor, or a prospective employer.</p> <p>If a Contractor employee is alleged to have engaged in sexual misconduct with an enrolled student, ensures notice to the student and parent(s)/guardian(s) of the student is provided and the allegations are investigated in accordance with administrative procedure 5:90-AP2, Parent/Guardian Notification of Sexual Misconduct, see the Notification of Alleged Sexual Misconduct subhead.</p> <p>If any of the Contractor's employees will have direct, daily contact with one or more students, conducts a complete criminal history records check of the Contractor employees under 105 ILCS 5/10-21.9(f) by following 4:60-AP3, Criminal History Records Check of Contractor Employees.</p>