



**AICUP Comments on the Department of Human Services (DHS) Draft Guidelines
on Child Protection Clearance to Implement Act 33 and Act 153 of 2014
December 18, 2014**

Thank you for the opportunity to comment on the draft guidelines to implement Act 33 and Act 153 written by DHS. The Association of Independent Colleges and Universities of Pennsylvania (AICUP) Board (composed of 22 private college and university presidents) met on December 16th and reviewed the guidelines. The AICUP members are committed to the protection of children and students on the campuses of independent colleges and universities in the Commonwealth of Pennsylvania.

The Board renewed its willingness to work with the General Assembly, the Governor and the Department to faithfully implement this law, in so far as it can be understood and applied.

A number of questions arose about the guidelines and the Board has instructed AICUP to survey our membership to determine (a) ability to implement (b) cost and (c) additional implementation issues. Once this information is collected and reviewed, AICUP will share that information with DHS.

The central problem identified by the Board is the apparent inclusion of matriculating students aged 17 years who attend our universities or colleges and with whom private college staff and faculty may have “direct contact” and “routine interaction.” The law does not define either of these terms in relation to colleges and universities and therefore makes it difficult for college administrators to identify those employees who will need background checks. DHS must address this issue in detail as it is at the crux of many potential legal disputes and costly implementation problems. We recommend that you define “routine interaction” in a sensible way that removes the need to perform background checks on college employees whose contact with 17 year old freshmen students only occurs in public settings such as cafeterias, bookstores, classrooms and student centers.

The AICUP Board has asked that the DHS provide a seminar/webinar for our college/university attorneys and for our Human Services staff so there is a clear understanding of the parameters of the law, implementation dates, and other important criteria.

The AICUP Board also asked that a representative of the Department attend the AICUP Annual Meeting in March to discuss the progress of implementation at that time.

Comments:

1. AICUP has received a number of comments from staff and/or faculty at our universities questioning:
 - a. the constitutional protection of their right to privacy in these background checks;
 - b. the interaction of these requirements with FERPA, EEOC and other federal and state laws and regulations;
 - c. the value of this obligation to the goal of protecting “children” ;
 - d. the relative waste of resources and the potential increase in tuition to cover the added cost;
 - e. the impact on recruitment and retention of faculty;
 - f. the impact on the interaction with the public and private elementary and secondary schools (concurrent enrollment programs) and with community activities;
 - g. the impact of this requirement on contractual or tenure agreements.
2. DHS needs to be clearer and more realistic about the implementation dates of this requirement. Many colleges and universities are already doing background checks but these requirements extend the checks significantly.
3. DHS should put out the regulatory calendar as soon as possible including place, dates and times for hearings and the expected interaction between DHS and Pennsylvania Department of Education.
4. DHS should determine if it is impossible for all employees to be screened by December 31, 2015. While we understand that a new electronic system will be instituted to implement the clearance process, that system is not currently in place. Further, we have all learned that “new” systems will probably have bugs that must be worked out.
5. The Department’s compliance standard is unclear. How will a good faith effort be judged by the Department?
6. Employment background check vendors will most likely be used by many of our schools. Does the Department have any written standards by which the university or college may judge these vendors?
7. The guidance does not speak to how the schools should manage for international faculty candidates? Do we complete the same checks for them?
8. The guidance should be clearer on paid and unpaid student workers and their interaction with 17 year olds and the application of this guidance.
9. The provisional hire requirement is not clear and the guidelines do not really address what is meant by (m) (5) of Act 153 that “employer, administrator, supervisor or other person responsible for employment decisions requires that the applicant not be permitted to work alone with children and that the applicant work in the immediate vicinity of a

permanent employee.” How do you define “immediate vicinity of a permanent employee?”

AICUP appreciates the opportunity to comment and to work with DHS to fulfill the mandates in Act 33 and Act 153 of 2014.

Cc:

Honorable Tom Corbett, Governor of Pennsylvania
Honorable Joseph Scarnati, President Pro Tempore of the Pennsylvania Senate
Honorable Jake Corman, Majority Leader, Pennsylvania Senate
Honorable Mike Turzai, Speaker of the Pennsylvania House of Representatives
Honorable David Reed, Majority Leader of the Pennsylvania House of Representatives
Honorable Jay Costa, Democratic Floor Leader of the Pennsylvania Senate
Honorable Frank Dermody, Democratic Floor Leader of the Pennsylvania House of Representatives
Ms. Vicki Wilken Esq. Counsel, Pennsylvania Senate
Mr. Michael Deery Esq. Counsel, Pennsylvania Senate
Mr. Greg Grasa, Pennsylvania House of Representatives
Ms. Roseann Cadau, Pennsylvania House of Representatives, Children & Youth Committee

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