



# PRIVATE SCHOOL CHOICE PROGRAMS & SPECIAL NEEDS SCHOLARSHIP PROGRAM

## INFORMATIONAL BULLETIN

Bulletin 02-03

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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 background check must be completed prior to employing any individual who meets the specified criteria and every five (5) years thereafter.

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).

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.

Each school’s independent auditor will determine if schools participating in the programs have met the applicable background check requirements.

### 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,

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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](#).

## **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.

## **Determining Which Individuals Require a Background Check**

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 meets *both* of the following:

1. The individual is an employee based on the definition under Wis. Stat. § 108.02 (12). The Wisconsin Department of Workforce Development (DWD) has [worker classification resources](#) available online that schools may use to determine who is a school employee.
2. The individual’s employment is directly or indirectly related to the school’s educational programming. This includes any individual who spends time on school ground, interacts with students, or has a job that relates to the financial, administrative, or academic sectors of the school.

## **Conducting 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 the school 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 2018-19 school year. 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](#).

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. The school's independent auditor will verify that the background checks have been completed as part of the school's audits.

## **Frequently Asked Questions**

### **Q1. Is a school required to conduct the criminal background checks at its legal-entity level?**

A. Yes. Background checks must be done for all employees of the school's legal entity who are directly or indirectly related to the school's educational programming.

### **Q2. 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?**

A. The school should determine if these employees are directly or indirectly related to the school's educational programming. If the employees are related to educational programming, the school will need to conduct a background check for these individuals. See question 5 for further information.

### **Q3. Who is considered an employee?**

A. A school is required to conduct background checks for all individuals who are defined as employees under [Wis. Stat. § 108.02 \(12\)](#). In this statute, an employee is defined 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 DWD has [worker classification resources](#) available online to help schools determine who is an employee.

### **Q4. If a school is exempt from paying unemployment compensation, does the school still need to complete background checks?**

A. 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.

**Q5. Which employees are considered directly or indirectly related to educational programming?**

A. All employees who spend time on school grounds or interact with students are considered related to the school's educational programming. This may include substitute teachers, janitors, coaches, pastors, and secretaries.

Employees whose jobs relate to the financial, administrative, or academic sectors of the school, regardless of whether or not they spend time on school grounds or interact with students, are also considered related to educational programming. This may include bookkeepers and academic coordinators.

**Q6. Do schools need to conduct background checks for public school employees or contractors who provide services in the private school?**

A. 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.

**Q7. Do background checks need to be completed for volunteers?**

A. 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.

**Q8. Does a school need to conduct background checks for individuals who work with students on school grounds but are not hired by the school and are paid directly by students' parents?**

A. Schools should determine if an individual should be classified as employee based on [Wis. Stat. § 108.02 \(12\)](#). 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. See question 3 for further information.

If an individual is not classified as an employee based on Wis. Stat. § 108.02 (12), the school is not statutorily required to conduct a background check to meet the background check requirement for the programs.

**Q9. Does a school need to conduct a background check for an employee who is related to educational programming if the employee is a minor?**

A. Yes. A school will need to conduct a background check for this employee.

**Q10. If a church and school share a physical address, is the church considered on school grounds?**

A. Yes. If a church and school share a physical address, the entire location is considered to be school grounds. Any employees who work at the location would be required to have a background check.

**Q11. How should schools approach the background check requirement if they outsource services to vendors, including vendors who provide transportation and food services?**

A. 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. See question 3 for further information.

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.

**Q12. At what point during the application process does a background check need to be conducted for a potential school employee?**

A. A school needs to conduct a background check for an individual prior to his or her employment. A school may determine when during the application process the background check is conducted.

**Q13. Do schools need to use the specific sources listed on the DPI Background Check Information Sources website?**

A. According to Wisconsin law, 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.

**Q14. 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?”**

A. "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.