

## Frequently Asked Questions Updated May 2017

### Expanded Criminal History (ECH) Checks, Expanded Child Protection Index (ECPI) Checks, Reference Checks and Confidentiality Agreements

- 1. Are school employers are required to adopt and administer a policy requiring expanded criminal history checks (ECH) and expanded child protection index checks (ECPI) for new employees?** School corporations, charter schools, and non-public schools employing one (1) or more employees are included in this requirement as of July 1, 2016.
- 2. When did the requirement to conduct ECPI checks become effective?** The ECPI requirement became effective July 1, 2016.
- 3. When must the ECH and ECPI checks be conducted?** As of July 1, 2017 the timelines for obtaining ECH and ECPI checks will change. Each applicant for employment who is likely to have direct, ongoing contact with children within the scope of the individual's employment must obtain an ECH check before or not later than thirty (30) days after the start date of the person's employment and an ECPI check before or not later than sixty (60) days after the start date of the person's employment. These timelines have changed from prior legislation that allowed both ECH and ECPI checks to be done not later than three (3) months after the start date of employment.
- 4. Does the ECH and ECPI requirement apply only to new hires or to current employees, also?** Beginning July 1, 2017, school corporations, charter schools and nonpublic schools must have in place a policy that requires both expanded criminal history and expanded child protection index checks for new hires that applies new timelines (see #3 above). Additionally, the policy must require updated ECH checks for current employees every five (5) years and may require updated ECPI checks for current employees every five (5) years.
- 5. What are the elements of an "Expanded Child Protection Index Check"?** The definition of an expanded child protection index check is defined at IC 20-26-2-1.3, which is included below:

Sec. 1.3. "Expanded child protection index check" means:

- (1) an inquiry with the department of child services as to whether an individual has been the subject of a substantiated report of child abuse or neglect and is listed in the child protection index established under IC 31-33-26-2;
- (2) an inquiry with the child welfare agency of each state in which the individual has resided since the individual became eighteen (18) years of age as to whether there are any substantiated reports that the individual has committed child abuse or neglect; and
- (3) for a certificated employee, an inquiry with the department of education or other entity that may issue a license to teach of each state in which the individual has resided since the individual

became eighteen (18) years of age as to whether the individual has ever had a teaching license suspended or revoked.

6. **What are the elements of “Expanded Criminal History Check?”** The definition of “expanded criminal history check” was amended and expanded by the 2015 General Assembly, effective July 1, 2015. The definition is found at IC 20-26-2-1.5, which is included below:

Sec.1.5. "Expanded criminal history check" means a criminal history background check of an individual that includes:

- (1) a background check by a consumer reporting agency regulated under 15 U.S.C. 1681 et seq. that does not include a written, oral, or other communication of information concerning the individual's credit score, creditworthiness, credit standing, or credit capacity, but does include a:
  - (A) verification of the applicant's identity;
  - (B) search of all names associated with the applicant;
  - (C) search of the records maintained by all counties in Indiana in which the individual who is the subject of the background check resided;
  - (D) search of the records maintained by all counties or similar governmental units in another state, if the individual who is the subject of the background check resided in another state;
  - (E) search of United States district court records from the districts in which the applicant resided;
  - (F) check of sex offender registries in every state or the national sex offender registry maintained by the United States Department of Justice; and
  - (G) multistate criminal data base search; or
- (2) a:
  - (A) national criminal history background check (as defined in IC 10-13-3-12); and
  - (B) check of:
    - (i) sex offender registries in all fifty (50) states; or
    - (ii) the national sex offender registry maintained by the United States Department of Justice.

The check described in (1) (a) above is a service provided by a private company. The check described in (2)(a)(A) above is obtained through the Indiana State Police by using Identogo (<http://www.identogo.com/Home.aspx>) or submitting a paper fingerprint card obtained at a local police department. (2)(a)(B) can be completed by school administrators online at <http://www.fbi.gov/hq/cid/cac/registry.htm>

7. **Why is an ECPI check necessary if a school is already conducting an expanded criminal history check?** The ECPI check is not an inquiry of whether the individual has been convicted of any criminal activity. The ECPI check reveals whether the Department of Child Services has found an allegation of child abuse or neglect to be substantiated, meaning a preponderance of the evidence indicates that the child abuse

or neglect has occurred. A substantiated finding will be reported if the subject of the check was found to be the perpetrator of the child abuse or neglect. See IC 31-9-2-123, definition of “substantiated.”

8. **Are school employers required to use IdentoGO?** No. There are several vendors that provide ECH services. Because the State of Indiana has an existing contractual relationship with IdentoGO, school employers may utilize IdentoGO as well.
9. **Does the ECH have to include fingerprinting?** No. There are several vendors that provide expanded criminal history checks that are not based on fingerprints. If a school employer wants to use IdentoGo, that service is based on searches of the Indiana State Police Automated Fingerprint Identification System (AFIS) and the FBI’s Integrated Automated Fingerprint Identification System (IAFIS). For information about IAFIS go to <http://www.fbi.gov/hq/cjisd/iafis.htm>
10. **Does the ECH check using IdentoGO fingerprinting service and the Indiana State Police AFIS and IAFIS searches fulfill the requirements of IC 20-26-2-1.5?** The IdentoGO searches will likely pick up sex offender convictions in other states, but it does not specifically search the national sex offender registry or the sex offender registries of all 50 states. If you use IdentoGO you should also check the Indiana Sex/Violent Offender Registries at <http://www.icrimewatch.net/indiana.php> and the National Sex Offender Registry at <http://www.nsopw.gov/> in order to fully comply with IC 20-26-2-1.5. Access to these websites is free.
11. **How do I know if the services of my ECH vendor include the ECPI check required since July 1, 2016?** If you are using a private ECH vendor to conduct ECH checks you should contact your vendor to confirm that it includes the required ECPI check as of July 1, 2016. If you are currently using a fingerprint based ECH through Indiana State Police AFIS and IAFIS, you may need to assign your Human Resources office to contact other states for the ECPI checks or engage a vendor to conduct the ECPI checks. Please make sure your vendor understands that the ECPI check in Indiana **must** be completed by the Indiana Department of Child Services (“DCS”). DCS has developed a specific form for the purpose of requesting an ECPI check under IC 20-26-2-1.3, which must be sent to the DCS Central Office Background Check Unit at the address provided on the form. The form is located on the [DCS website](#) and can be submitted to the COBCU by any person, but must be signed by the subject of the check. The form can be sent electronically by fax or scanned PDF to [doe.cpchecks@dcs.in.gov](mailto:doe.cpchecks@dcs.in.gov). ECPI checks for states other than Indiana must be completed by the school or a vendor. California has compiled a list of the state contacts for child protective services checks, a recent version is available [here](#) (dated 4/19/16). The most up-to-date list can be found on their [website](#). The Indiana ECPI check will take approximately 10 business days.
12. **Must the governing body adopt a policy requiring ECH and ECPI checks for current employees? Can the school employer “phase in” the updated ECH checks for current employees?** As of July 1, 2017, a school employer’s policy must require updated ECH checks for current employees every five (5) years; the policy may require updated ECPI checks for current employees every five (5) years. The school employer may “phase in” the updated ECH and ECPI checks, if updated ECPI checks are required, by

annually conducting updated checks for at least one-fifth (1/5) of the number of employees who are employed by the school employer on July 1, 2017.

13. **Do the ECH and ECPI expanded criminal history checks apply to all employees or just teachers?** The ECH and ECPI checks are required for all employees who are likely to have direct, ongoing contact with children within the scope of the individual's employment.
14. **In addition to new hires made by the school employer, do the ECH and the ECPI check requirements apply to other entities?** Changes to IC 20-26-5-10(b) require that a school corporation, a charter school and a nonpublic school that employs more than one (1) employee, shall administer a policy to conduct an expanded criminal history check and an expanded child protection index check for individuals who:
  - a) apply for employment with the school corporation, charter school or nonpublic school; or apply for employment with an entity with which the school corporation contracts for services; or
  - b) seek to enter into a contract to provide services to the school corporation or are employed by an entity that seeks to enter into a contract to provide services to the school corporation,if the individuals are likely to have direct, ongoing contact with children within the scope of their employment.
15. **What should a school employer do if an ECH check discloses an arrest and/or conviction?** The school administration should follow the local district or school's policy concerning what kinds of incidents and/or convictions disqualify an applicant from employment. However, the school employer's policy must prohibit the school corporation, charter school or nonpublic school from hiring a person (not limited to licensed educators) who has been convicted of an offense under IC 20-28-5-8(c) (felonies that require permanent license revocation), unless the conviction has been reversed, vacated or set aside on appeal. In addition, administrators are encouraged to contact the Department of Education's Office of Legal Affairs if you believe that an incident reported on an expanded criminal history check is or could be grounds for revocation or suspension of a license, or is evidence of immorality, misconduct in office, incompetency, or willful neglect of duty so the DOE may undertake further investigation.
16. **What should a school employer do if an ECPI check discloses that the individual has been the subject of a substantiated report of child abuse or neglect?** The school administration should follow the district or school's local policy concerning what constitutes disqualification for employment. IC 20-26-5-11(d) provides that a school employer or entity may use information obtained through an ECPI check concerning an individual being the subject of a substantiated report of child abuse or neglect as grounds not to employ or contract with the individual.
17. **If there is a cost to the ECH or ECPI who is responsible?** The law states the applicant is responsible for all costs associated with obtaining the expanded criminal history check and the expanded child protection index check unless the school corporation, charter school or nonpublic school agrees to pay the costs. Additionally, an applicant or employee may not be required by a school corporation, charter

school, or nonpublic school to obtain an expanded criminal history check more than one (1) time during a five (5) year period.” IC 20-26-5-10(c).

A school employer may agree to pay the costs associated with obtaining updated expanded criminal history checks for current employees every five (5) years.

If the school employer’s policy requires employees to obtain an updated ECPI check every five (5) years, the employee may not be required to pay the costs of obtaining the updated ECPI check.

18. **An applicant or employee may not be required to obtain an ECH or ECPI check more than one (1) time during a five (5) year period, but can the school employer obtain a limited criminal history and/or an ECH check and an ECPI check during the intervening 4 years?** Yes. A school corporation, charter school or nonpublic school may obtain an ECH or an ECPI at any time if the school employer has reason to believe that the applicant or employee is the subject of a substantiated report of child abuse or neglect or has been charged with or convicted of a crime listed in IC 20-26-5-11(b), as long as the ECH and/or ECPI checks can be completed without effort or cost by the applicant or employee, unless five (5) years have passed since the individual’s previous ECH or ECPI check.

There is no prohibition against the school employer obtaining, or requiring an applicant or employee to obtain, a limited criminal history at any time.

19. **Does conducting the ECH and the ECPI checks take the place of checking references prior to employment?** No. The ECH and ECPI checks should only be two elements of your pre-employment process. New legislative language effective July 1, 2017 requires each school corporation, charter school and nonpublic school that employs one (1) or more employees to adopt a policy requiring the school employer to contact employment references and, if applicable, the most recent employer provided by the prospective employee, before the school corporation, charter school, or nonpublic school may hire the prospective employee. See IC 20-26-5-10.5.
20. **Does the ECH and ECPI check requirement apply to substitute teachers, teachers on temporary contracts, food service workers, office staff, janitorial and maintenance staff, etc.?** The requirement applies to all new hires “who are likely to have direct, ongoing contact with children within the scope of their employment,” regardless of whether the individuals are certified or noncertified staff.
21. **Is a teacher still required to submit an LCH to obtain an initial license or to renew or professionalize a license?** No, not since July 1, 2009.
22. **How does the ECH and ECPI check requirement apply to volunteers and lay coaches?** You should continue to follow your local governing body policy relative to background checks for volunteers, volunteer coaches and other unpaid community “helpers” in your schools or at school sponsored activities. If the governing body wishes to apply the expanded criminal history check and expanded child protection index check requirements to those individuals as well, the governing body has the authority to change its local policy accordingly.

23. **How does the requirement for ECH and ECPI checks for new hires impact teacher candidates from colleges and universities who are placed in schools for student teaching, observations, and other clinical experiences?** There is no state requirement related to criminal history checks or expanded child protection index checks prior to clinical experience placements for teacher preparation pre-service candidates. Those requirements are determined by partnership agreements between P-12 schools and institutions of higher education.
24. **What if an applicant has already been hired and the ECH check is returned with a “dirty” or “not qualified” result or the ECPI check returns a substantiated report of child abuse or neglect?** The Department of Education strongly encourages you to have an ECH and ECPI check in hand prior to recommending an applicant for employment. However, an applicant can also be hired pending or conditioned on successful fulfillment of all pre-employment conditions, which would include a “clean” ECPI check and a “clean” or “qualified” ECH result. If, after starting employment, the ECH check disqualifies the applicant/new employee then the employment relationship can be terminated without further process as long as such is consistent with local policies. IC 20-26-5-11(d) provides that a school employer or entity may use information obtained through an ECPI check concerning an individual being the subject of a substantiated report of child abuse or neglect as grounds not to employ or contract with the individual.
25. **If a school employee is convicted of a crime or is subject to a substantiated report of child abuse or neglect while employed, is there a duty to self-report?** Yes. IC 20-26-5-11(c) requires an individual employed by a school corporation, charter school or an entity with which the school corporation contracts for services and that has employees who are likely to have direct, ongoing contact with children within the scope of the employees’ employment to report to the governing body of the school corporation or school if the individual is convicted of one of the listed crimes during the course of the individual’s employment. Additionally, IC 20-26-5-11(e) requires that an individual employed by a school corporation, charter school or entity (as previously described) shall notify the governing body of the school corporation or school if, during the course of the individual’s employment, the individual is subject to a substantiated report of child abuse or neglect.
26. **If my school corporation, charter school, or nonpublic school that employs one (1) or more employees is aware of a substantiated report of child abuse or neglect for a current or former employee, can I disclose that information in an employment reference to a prospective school employer?** Yes. Regardless of any confidentiality agreement entered into by a school corporation, charter school or nonpublic school that employs one (1) or more employees and an employee of the school, a school that receives a request for an employment reference from another school for a current or former employee shall disclose to the requesting school any incident known by the school in which the employee committed an act resulting in a substantiated report of abuse or neglect under IC 31-6 (before repeal) or IC 31-33. Please consult your school attorney.
27. **What information cannot be disclosed in an employment reference?** Any information regarding a report on a current or former employee that was unsubstantiated by the Indiana Department of Child

Service may not be disclosed. Additionally, the school shall not disclose any information that identifies a student or is confidential student information under the federal Family Education Rights and Privacy Act (FERPA).

28. **Are confidentiality agreements strictly confidential?** Entering into confidentiality agreements with a current or former employee may be considered a public record and is therefore subject to disclosure. Additionally, Indiana Code 20-26-5-11.5 states that any confidentiality agreement entered into by a school and an employee of the school, a school that receives a request for an employment reference, from another school, for a current or former employee, shall disclose to the requesting school any incident known by the school in which the employee committed an act resulting in a substantiated report of abuse or neglect. A school may not disclose information that identifies a student or is confidential student information under FERPA. Finally, a confidentiality agreement entered into or amended after June 30, 2016, by a school and an employee is not enforceable against the school if the employee committed an act resulting in a substantiated report of abuse or neglect. Please consult your school attorney if you have any other questions about the enforceability of confidentiality agreements between schools and employees.
29. **What can an employee do if they have questions about the results of their ECPI check?** If the ECPI check completed by the Department Child Services Central Office Background Check Unit reveals any instance of substantiated child abuse or neglect, the form will also include the contact information for the local DCS office that completed the assessment. The subject of the check may contact the local office to receive instructions on obtaining further information regarding that assessment and to find out whether they are eligible for an administrative review of the substantiation. Locations of each Department of Child Services offices can be found on the agency website.