

## ***New Notice Required For Background Checks Through Third Parties***

School districts certainly want to learn as much as they can about their job candidates before boards hire them, which explains the reliance on background checks. Background checks are designed to uncover relevant information about a job applicant's past that will better inform the district's hiring decisions. Many school districts utilize outside agencies to obtain background information on job candidates or current employees.

School districts using outside agencies must comply with the Fair Credit Reporting Act (FCRA). The FCRA is a federal law that imposes specific obligations on employers that order background checks from vendors (known as consumer reporting agencies). A school district triggers FCRA obligations when it requests a "consumer report" on an applicant or employee, a term which includes a broad category of reports such as driving records, criminal records, credit reports, and many other reports procured from a third-party. Such FCRA obligations are not triggered when a district conducts its own background check using the Wisconsin Circuit Court Access system (CCAP) or uses a governmental agency, like the Wisconsin Department of Justice (DOJ) criminal history report service. Districts should also be aware the CCAP or DOJ may be limited as they only contain state court information, they may not be up-to-date, and they may not be completely accurate.

In addition to the other requirements of the FCRA, at different stages of the process, districts are required to provide applicants or employees with a summary of their rights (Summary of Consumer Rights) under FCRA. This includes providing such information before a district takes an adverse employment action based on the results of a background check. While third party vendors typically provide copies of notices to employers for their use, it is the employer's responsibility to give these to applicants and employees at the appropriate times and make sure the notices are accurate and up to date. Failure to abide by the obligations under the FCRA can result in legal claims by those adversely affected. Districts therefore that use criminal record screening services must continue to be vigilant about compliance with all applicable laws.

The Federal Trade Commission (FTC) is one of two federal agencies with oversight of the FCRA; the other one is the Consumer Financial Protection Bureau (CFPB). On September 12, 2018, the CFPB issued an interim final rule updating the model Summary of Consumer Rights. Effective September 21, 2018, the new form replaces the old form. Use of the model form is not required. However, the information in the form must be provided to applicants or employees.

The change in the form is the result of the recent enactment of the Economic Growth, Regulatory Relief,

and Consumer Protection Act. The new law requires nationwide consumer reporting agencies to provide a “national security freeze” free of charge to consumers. The national security freeze restricts prospective lenders from obtaining access to an individual’s background report, which in turn makes it more difficult for identity thieves to misappropriate the individual’s personal information. The law also states that, whenever the FCRA requires a “consumer” to receive a Summary of Consumer Rights, a notice regarding the availability of a security freeze must be included. The new Summary of Consumer Rights form includes language related to security freezes, consistent with the new law.

School districts which use outside agencies to complete background checks on applicants must begin using the new form, make sure that any hiring managers are aware of the new form, and integrate the updated document into any hiring practices. The updated form is available from the CFPB [web site](#).

---

#### PRIMARY AUTHOR



### ***Richard F. Verstegen***

(608) 286-7233  
RVERSTEGEN@BOARDMANCLARK.COM

#### SCHOOL LAW ATTORNEYS

- |                    |                |                      |                |                           |                |
|--------------------|----------------|----------------------|----------------|---------------------------|----------------|
| ■ Michael J. Julka | (608) 286-7238 | ■ Eileen A. Brownlee | (608) 822-3251 | ■ M. Tess O’Brien-Heinzen | (608) 283-1798 |
| ■ James K. Ruhly   | (608) 283-1738 | ■ Douglas E. Witte   | (608) 283-7529 | ■ Brian P. Goodman        | (608) 283-1722 |
| ■ JoAnn M. Hart    | (608) 286-7162 | ■ Steven C. Zach     | (608) 283-1736 |                           |                |

*Disclaimer: Boardman & Clark LLP provides this material as information about legal issues. It does not offer legal advice with respect to particular situations and does not purport that this newsletter is a complete treatment of the legal issues surrounding any topic. Because your situation may differ from those described in this Newsletter, you should not rely solely on this information in making legal decisions. In addition, this material may quickly become outdated. Anyone referencing this material must update the information presented to ensure accuracy. The use of the materials does not establish an attorney-client relationship, and Boardman & Clark LLP recommends the use of legal counsel on specific matters.*