



SENIOR DEPUTY COMMISSIONER OF EDUCATION – P-16
Office of Elementary, Middle, Secondary and Continuing Education
Office of Higher Education

February 2, 2009

To: District Superintendents
School Superintendents
Directors of Charter Schools, Private Schools and Non-Public Schools
Deans and Directors of Institutions Offering Teacher Preparation Programs
Professional Organizations
New York State United Teachers
Other Partners

From: Johanna Duncan-Poitier

Subject: Important Updates: Fingerprinting and Criminal Background Check Program

I am writing to provide you with an update on several new initiatives and enhanced services that we have put in place to streamline the fingerprint background check process and the process for issuing Clearances for Employment, consistent with the Safe Schools Against Violence in Education (SAVE) legislation that was enacted in 2000. We also wanted to share information with you on the impact we anticipate that the State's tightening fiscal environment will have on the services we provide and how these new service enhancements that have been put into place will help you to continue to carryout your important responsibilities related to fingerprinting and ensuring the safety of your students.

NEW AND ENHANCED SERVICES

New Online Certification and Fingerprinting Information and Services

To provide schools and BOCES across the State with instantaneous access to important information about certification and fingerprinting¹, we have put in place a Web-based application and database system, known as TEACH.² Through TEACH, we are able to provide:

- instant processing of fingerprint applications;
- online payment options, including credit card and coupons;

¹ For comprehensive information about the services available through TEACH, please visit www.highered.nysed.gov/tcert/teach

² If you would like to request access to TEACH, please email TEACHHELP@mail.nysed.gov.

- the issuance of instant Clearances for Employment;
- fingerprint application processing status updates;
- school clearance for employment status updates;
- updated list of employees with conditional clearance only;
- full or conditional clearance issuance dates; and
- limited subsequent arrest information.

Also, the Office of School Personnel Review and Accountability (OSPRA) is now providing comprehensive information and assistance to schools, applicants for certification, employers, teacher education programs and other interested parties on the Web at www.highered.nysed.gov/tcert/ospra. You will find relevant laws and regulations, frequently asked questions (FAQs), and special information for individuals who were previously fingerprinted by the New York City Department of Education (NYC DOE). The Web site has also been updated with new “Who Must be Fingerprinted” charts and new instructions on the fingerprinting process.

We are encouraging all our customers to make maximum use of these new online services to receive the best possible service, particularly given the impact of the State’s fiscal environment on our staffing resources and capacity.

Digital Fingerprinting Services Now Available (LIVESCAN)

In addition to the new online services, we have also put in place a digital fingerprinting option (known as LIVESCAN) in approximately 35 school districts, charter schools, BOCES and school associations. The new online services coupled with the availability of digital fingerprinting allows both the applicant and the employer to submit a fingerprinting application, pay for a fingerprinting application, submit digital fingerprints and have fingerprint results very quickly. The entire process from start to finish is completely electronic and **takes approximately 24-72 hours**.

Again, in light of the impact of the State’s tightened fiscal environment, I would urge all schools to consider obtaining access to LIVESCAN. It has been very well received by schools who have already implemented it. Digitizing fingerprinting services can be accomplished through a variety of arrangements, including, for example, purchasing your own system; contacting your BOCES; or forming cooperative arrangements with a group of school employers. We estimate the initial expense to purchase your own system to be approximately \$14,550 – \$17,500. I would urge you to take the time to visit a LIVESCAN location near you to see firsthand the advantages that a digital fingerprinting system offers. Staff in the Office of School Personnel Review and Accountability (OSPRA) can also provide you with additional information.

IMPACT OF TIGHTENING FISCAL ENVIRONMENT AND HOW THE NEW SERVICES WILL HELP YOU TO CONTINUE TO CARRYOUT YOUR IMPORTANT WORK

We hope that the new technology systems that have been put in place will provide you with instant access to information you need and will support you to carryout your important work to ensure student safety. With the new services now in place and in response to the tightening fiscal environment, we will be putting in place a number of new cost cutting measures that will impact the

fingerprint background check process. We are sharing these measures with you now to ask you for your assistance with the changes and to provide you with time to integrate these new measures into your work processes.

We are asking that all schools use the TEACH system to manage your fingerprint clearance information. TEACH provides the latest up-to-the-minute information and schools can readily file online clearance and termination requests using TEACH.

To reduce postage and printing costs, we will no longer be printing and mailing the following items:

- Clearances to school employers. We are now asking **schools to print copies of any clearances through TEACH.** We will, however, continue to mail a copy of the clearance to an individual applicant.
- **Fingerprint applications.** We are asking each school to help your non-pedagogical employees by filing an online fingerprint application on their behalf or assisting them with the TEACH self-registration process. Certificate holders or applicants should be creating their own TEACH account and filing fingerprint applications online in the same manner that they file a certificate application.
- **Subsequent arrest notices to schools.** We are now working on a modification to TEACH to allow schools to manage subsequent arrest information for their employees electronically. It is anticipated that this change will be implemented sometime in 2009; we will keep you informed of developments.

In addition, the Office of School Personnel Review and Accountability (OSPRA) will no longer be able to accept postage prepaid envelopes for fingerprinting applications. These envelopes were last distributed in 2003 and should no longer be in circulation. We are asking all employers and colleges to **destroy** any postage prepaid fingerprinting envelopes. Please work with any contract service providers you may have, as well, to ensure that they also destroy these envelopes. Any applications submitted in postage prepaid envelopes after February 15, 2009 will be returned by the post office to the sender if there is a return address. If there is no return address, the post office will destroy the envelope and its contents.

We look forward to working with you to streamline paper processes and to maximize the new on-line services that are now available, so that we can ultimately reduce costs and maximize our existing staff capacity to serve you better.

ATTACHED INFORMATION REGARDING SCHOOLS' RESPONSIBILITIES UNDER SAVE AND OSPRA CONTACT INFORMATION

To support the important work that you do to ensure student safety, we also wanted to take this opportunity to again share with you information on schools districts' responsibilities for carrying out Safe Schools Against Violence in Education (SAVE). Please see the attached guidelines, which include an at-a-glance reference chart with information on who is required to be fingerprinted and where fingerprinting is required.

Thank you for your continued support and assistance with our work to ensure the safety of our State's students, as well as of our efforts to put in place new on-line service enhancements and streamline paper processes. If you have any questions or need assistance with transitioning to the new on-line processes, please do not hesitate to contact us. Staff in the Office of School Personnel Review and Accountability (OSPRA) are available via E-mail at OSPRA@mail.nysed.gov or by telephone at (518) 473-2998 to answer questions or provide assistance in using the various fingerprinting services available on TEACH.

Attachments

Attachment

SCHOOL DISTRICT EMPLOYER RESPONSIBILITIES UNDER SAVE

Who Must be Fingerprinted

School employers are required to fingerprint all prospective employees, consistent with Education Law §§ 305(30) & 305(33). Prospective employee is defined in the Commissioner's Regulations at 8 NYCRR §87.2(k) generally as, any individual who is seeking a compensated position with a covered school or as an employee of a contract service provider who is placed within the school and who will reasonably be expected by such covered school to provide services which involve direct face-to-face contact with students under the age of 21. There are certain exceptions and exclusions defined in the regulation. The law also covers employees of supplemental education service providers irrespective of the location where services are provided. Attached to this memo is a copy of the updated "Who must be Fingerprinted" charts.

Emergency Appointments and Conditional Clearances

In 2001, SAVE was amended to provide school employers with options to fill positions under certain exigent circumstances while waiting for the full criminal history results from fingerprint background checks. For a full explanation of rules surrounding such appointments, see the OSPRA guidance memo issued on August 14, 2001, available at www.highered.nysed.gov/tcert/ospra/memo-aug142001.htm.

The amendment provided for the issuance of a "Conditional Clearance for Employment" based solely on the New York State criminal history results. This was to enable school employers to fill positions while waiting for the FBI results which, at the time SAVE was enacted, were often delayed for extended periods of time. Due to the implementation of various technological advances, the need for both emergency appointments and conditional clearances has been dramatically reduced. This amendment originally had a two-year duration, but has been extended several times. It is currently set to expire on July 1, 2009.

While NYSED is currently evaluating whether there is a continuing need for conditional clearances, in light of new technology, it is important to note that "Conditional Clearances" are simply an interim clearance based solely on New York State criminal history results and can not serve as a substitute for a Full Clearance. In fact, the issuance of the Conditional Clearance is most often related to a delay in fingerprint processing by the FBI, usually a result of rejection of the fingerprints for quality reasons. Typically, this means that the individual applicant must get a new set of fingerprints to OSPRA for processing. **It is incumbent on the employing school to monitor its employees who are working under a conditional clearance on TEACH and ensure that any issue resulting in the delay in the receipt of a full clearance is addressed promptly.**

Who Must be Fingerprinted Pursuant to Education Law §305 Applicants for Certification

Applicants for Certificates, Licenses or Permits	As of July 1, 2007, all applicants must undergo a fingerprint supported criminal history background check
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Employment/Other Situations Where Fingerprinting is Required

Type of Situation	<p>Fingerprinting is required for the situations described below if:</p> <ul style="list-style-type: none"> • the term of employment is greater than five days, • the employment involves direct contact with students under the age of 21, as determined by the employer, and • the employee is not otherwise exempt. <p>Please refer to 8 NYCRR §87.2(k) for a definition of “prospective school employee.”</p>
Applicant for employment in public school, charter school or BOCES	Yes
Applicant for employment in a private or non-public school	If the private or non-public school elects to fingerprint new employees, then it must adhere to the situations covered by this chart for all new employees. If the private or non-public school elects to not fingerprint new employees, then this chart is not applicable.
Student employee (i.e., lifeguard or tutor) not enrolled in grade level program of same covered school	Yes
Clerical staff in covered school who have direct contact with students	Yes
Janitorial staff who have direct contact with students	Yes
Coaches	Yes
Substitute Teachers	Yes
Paid Student Teachers or Student Interns	Yes - paid student teachers are treated like employees and, therefore, are subject to fingerprinting

Hall Monitors	Yes
Cafeteria employees	Yes
Adult Continuing Education Instructors who have direct contact with students	Yes
Home and Hospital Instructors	Yes
Sports Officials	Yes
Guest Lecturers or Performing Artists in a covered school more than 5 times	Yes
Bus Aides	Yes - unless they have been cleared pursuant to section 1229-d of the Vehicle and Traffic Law
Secretary at bus garage who occasionally fills in as a bus aide	Yes
Bus Drivers who also serve another role in covered school and have direct contact with students (i.e., janitor)	Yes
Individuals who have been fingerprinted for another purpose (i.e., teachers from another state, former police officers, former daycare workers*)	Yes* (If they were fingerprinted by NYCDOE after July 1, 1990, they may be able to have their fingerprint background information sent to SED – Please refer to the OSPRA 104 form for details)
Worker placed in the covered school under a public assistance employment program pursuant to Title 9-B of Article V of the Social Services Law	Yes
Employees of contract service providers who are placed within the school	Yes
Employees of Supplemental Education Services providers (SES Providers) pursuant to NCLB	Yes

Employment/Other Situations Where Fingerprinting is Not Allowed Under the Current Legislation

Type of Situation	The situations described below are not covered by the SAVE legislation, therefore the Education Department is not authorized to process fingerprinting applications for these types of individuals.
Applicant for employment in a private or non-public school	If the private or non-public school elects not to fingerprint new employees, they can not fingerprint any employees.
Volunteer	No
Non-Certified Special Education School Employees (certified employees are subject to fingerprinting for certification purposes)	No
Student employee (i.e., lifeguard or tutor) enrolled in grade level program of same covered school	No
Student employee who has no direct contact with students (i.e., summer maintenance helper)	No
Unpaid Student Teachers or Student Interns	No - unpaid student teachers are treated like volunteers and, therefore, are not subject to fingerprinting
Clerical staff in covered school who have NO direct contact with students	No
Janitorial staff who have NO direct contact with students	No
Adult Continuing Education Instructors who have no direct contact with students	No
Guest Lecturers or Performing Artists who will not be in any particular covered school 5 times or less and they have in-person supervision by a employee of the covered school	No
Bus Drivers who have been cleared for employment pursuant to sections 509-cc, 509-d and/or 1229-d of the Vehicle and Traffic Law	No
Construction workers (i.e., painters, plumbers, architects) who have NO direct contact with students	No