



Office of School Personnel Review and Accountability (OSPRA)
5 North Education Building
Albany, NY 12234

www.highered.nysed.gov/tcert/ospra
e-mail: OSPRA@mail.nysed.gov
Tel. 518-473-2998
Fax 518-473-0271

To: District Superintendents
School Superintendents
Directors of Charter Schools
Non-Public Schools Fingerprint Contacts
Private Schools Fingerprint Contacts

From: Deborah A. Marriott

Subject: Fingerprinting Sports Officials

Date: September 23, 2011

The purpose of this memorandum is to clarify and provide guidance on the topic of fingerprint supported criminal history background checks for sports officials, as mandated by the Schools Against Violence in Education ("SAVE") law, which was enacted in 2000 (Ch. 180, Laws 2000).

At the outset, it is important to note that it is the covered school's obligation to comply with the requirements of SAVE. Each individual covered school must analyze each employment situation to determine how to ensure that that employment situation complies with the fingerprinting requirement of SAVE. In other words, each covered school must ensure that the prospective employee, in this case - the sports official, is **fingerprinted or meets a fingerprinting exception** contained in the Commissioner's regulations at 8 NYCRR §87.2(k). It is the covered school's responsibility to ascertain how to best meet these requirements and to implement an individualized plan that will ensure compliance. For instance, a covered school could choose to apply a fingerprinting exception, when applicable, to each employee or it could determine, in their discretion, that it cannot meet the exception's conditions for a particular group of employees and adopt a policy that requires that group to be fingerprinted prior to employment.

Specifically, with respect to sports officials, covered schools have advised that they are encountering the following recurring issues and are seeking an interpretation of the application of two exceptions provided for in the Commissioner's regulations. The issues for consideration are:

1. The complexity and cost involved in evaluating whether an official should be grandfathered for any given contest/year in a particular school district;

2. The complexity and cost involved in tracking the number of visits to verify that the 5-visit limitation has not been exceeded for non-grandfathered officials who have not been fingerprinted and cleared;
3. The real possibility that for any given contest, the official who arrives to work may exceed the 5-visit limitation due to the fact that there are many last minute substitutions of officials; and
4. The requirement to provide direct in-person supervision of each non-grandfathered official while that official is on school grounds.

The exceptions to the fingerprinting requirements contained in the regulations are very limited in scope and cannot be "piggybacked" on each other. The exceptions are as follows:

"Grandfather" - allows an employee who worked in a school district in the school year prior to July 1, 2001 to be exempt from fingerprinting as long as he or she maintains at least one employment contact with the school district in each subsequent school year after July 1, 2001. A break of a school year means the exception no longer applies to the employee. Employees are grandfathered only within a district. The failure to work in a district during any subsequent school year would mean that the employee must be fingerprinted to work in that school district again. In other words, the employee needed to have one employment contact in the 2000-2001 and at least one employment contact every school year since then. Sports officials, who are grandfathered for one sport at a covered school in a given school year, are automatically grandfathered for all sports at the covered school in the same school year (8 NYCRR §87.2[k][3][ii]).

"5-Day Rule" - allows an employee who is expected to have no more than five days of contact with a covered school (not a school building and not per sport), to be exempt from fingerprinting as long as that employee has **in-person supervision** by a covered school employee who has complied with SAVE. This exception allows for a total number of contact days with a covered school for a school year (July 1 - June 30). It cannot exceed five. If an official works more than one sport, the total number of contacts days is calculated toward the 5-day rule, not the total number per sport. In other words, a sports official cannot work 5 days for one sport, and then 5 days for another sport (8 NYCRR §87.2[k][3][iii]).

Finally, covered schools, may not exempt an employee by using the "5-day rule" in the first year and then claim that they are "grandfathered" in the second year. The only employees that can claim to be "grandfathered" must have had an uninterrupted series of employment contacts since the 2000-2001 school year.

- 1. Does a covered school have the right to have stricter standards than the law, by requiring a background check on any official prior to allowing that official to work a contest in that school, even if the official may actually be “exempt” from having to be fingerprinted under the law?**

Generally no. It is, however, the duty of the covered school to ensure that the requirements of SAVE are satisfied. As was indicated above, a covered school can determine that it cannot meet the conditions of the exceptions contained in the Commissioner’s regulations for a particular group of employees and adopt a policy that requires that group to be fingerprinted prior to employment. With respect to sports officials, a covered school could determine that it is too cumbersome to ascertain whether the "grandfather" provision applies to each of the several hundred sports officials it uses in any given school year (prior to him or her providing services on-site) and, therefore, require that he or she be fingerprinted prior to employment.

- 2. Must a school provide in-person supervision for sports officials so that the sports official can use the 5-day exemption (provided the sports official does not exceed the 5 day rule)?**

No, a covered school can determine that it cannot provide in-person supervision for all sports officials when they are officiating sports contests and, therefore, the 5-day rule does not apply. If a covered school chooses to apply the 5-day rule to a sports official, *it is the covered school’s responsibility* to ensure that the sports official: 1) has the in-person supervision required by the regulation; and 2) does not exceed the 5-day limitation. Employing an individual without in-person supervision or in excess of the 5-day rule, without completion of the fingerprint background check, does not comply with the Commissioner’s regulation.

- 3. Can a covered school refuse to hire an official who does not have clearance under SAVE legislation, even though the official was not actually required to be cleared under the law?**

Yes, if the official does not meet a covered school’s policy that reasonably complies with SAVE, the covered school is under no obligation to hire them. Sports officials may choose not to comply with a covered school policy that requires fingerprinting, however, covered schools are under no obligation to hire anyone who refuses to comply with the school policy concerning fingerprinting.