

SUBJECT: FINGERPRINTING OF PROSPECTIVE BOCES EMPLOYEES

Unless otherwise authorized in accordance with law and regulation, the BOCES shall not employ or utilize a prospective school employee, as defined below, unless such prospective school employee has been granted a "full" clearance for employment by the State Education Department (SED). The BOCES shall require a prospective school employee who is not in the SED criminal history file to be fingerprinted for purposes of a criminal history record check by authorized BOCES personnel. For purposes of this provision of law, the term "criminal history record" shall mean a record of all convictions of crimes and any pending criminal charges maintained on an individual by the Division of Criminal Justice Services (DCJS) and the Federal Bureau of Investigation (FBI).

Prior to initiating the fingerprinting process, the BOCES shall furnish the applicant with written notice on a form prepared by the Commissioner of Education addressing the fingerprinting requirements and the applicant's right to obtain, review and seek correction of his/her criminal history information. Additionally, where the prospective school employee is not already in the SED criminal history file, the BOCES shall obtain the signed, informed consent of the applicant to perform the criminal history check. Every set of fingerprints taken shall be promptly submitted to the Commissioner of Education for purposes of clearance for employment.

Where the prospective school employee is already in the SED criminal history file, the BOCES shall request the clearance for employment on forms or an equivalent manner prescribed by SED. Furthermore, the BOCES shall notify SED, in a manner prescribed by the Department, of a prospective school employee who has commenced employment with or began providing services for the BOCES, the date of the commencement of such employment or service, and the position held by such individual. Similarly, the BOCES shall notify SED, in a manner prescribed by the Department, of a fingerprinted employee who has been separated from employment with the BOCES or ceased providing services for the BOCES, and the date of such separation from employment or cessation of services. All criminal history records processed by DCJS and the FBI and sent to the Commissioner of Education are confidential. The records may not be published or in any way disclosed to persons other than the Commissioner unless otherwise authorized by law.

By resolution on July 12, 2001, the Board authorized individual applicant fees for a criminal history record check.

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Who Must Be Fingerprinted

Except as provided below, all "prospective school employees" of the BOCES must be fingerprinted. For purposes of this policy and the applicable provisions in law and Commissioner's Regulations, "prospective school employee" shall mean any individual who will reasonably be expected by the BOCES to provide services which involve direct contact, meaning in person, face-to-face communication or interaction, with students under the age of twenty-one (21) and who is either:

- a) Seeking a compensated position with the BOCES and is not currently employed by the BOCES or a student enrolled in the instructional program of a grade level in the BOCES; or
- b) An employee of a provider of contracted services to the BOCES who is to be placed within the BOCES; or
- c) A worker who is to be placed within the BOCES under a public assistance employment program pursuant to Title 9-B of Article 5 of the Social Services Law, directly or through contract.

Individuals Who Are Specifically Excluded

Individuals excluded from a criminal history record check/fingerprinting pursuant to this provision of law and regulation are those individuals who:

- a) Have provided services to the BOCES in the previous school year either in a compensated position, or as an employee of a provider of contracted services to the BOCES, or as a worker placed within the BOCES under a public assistance employment program pursuant to Title 9-B of Article 5 of the Social Services Law directly or through contract; or
- b) Will reasonably be expected by the BOCES to provide services for the BOCES on no more than five (5) days in the school year in which services are to be performed, provided that the BOCES provides in-person supervision of such individual by one or more employees of the BOCES while that individual is providing such services. Individuals providing such time-limited and supervised services may include but shall not be limited to artists, guest lecturers and speakers, and sports officials.

Any prospective employee who previously has been fingerprinted in order to obtain certification, and whose fingerprints remain on file with the Division of Criminal Justice Services (DCJS), will not be required to be fingerprinted again for purposes of a criminal history record check.

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Removal from the SED Criminal History File

Where individuals have been separated from employment at the BOCES and have not become employed in this BOCES or another school district, BOCES or charter school within twelve (12) months of such separation, SED shall notify DCJS of such separation for the purpose of destroying the fingerprints of that individual. Further, upon request of such individual, SED shall notify DCJS prior to the expiration of such twelve-month period for the purpose of destroying his/her fingerprints. Such individuals shall be removed from the SED criminal history file.

Conditional Appointments/Emergency Conditional Appointments

Conditional Appointments

Upon the recommendation of the District Superintendent, the Board of Education may conditionally appoint a prospective employee. A request for conditional clearance shall be forwarded to the Commissioner of Education along with the prospective employee's fingerprints as mandated pursuant to law. Such conditional appointment shall not commence until notification by the Commissioner that the prospective employee has been conditionally cleared for employment, and such conditional employment shall terminate when the BOCES is notified of the determination by the Commissioner to grant or deny full clearance; however, if full clearance is granted, the appointment shall continue and the conditional status shall be removed.

Prior to commencement of such conditional appointment, the BOCES must obtain a signed statement for conditional employment from the prospective employee indicating whether, to the best of his/her knowledge, the prospective employee has a pending criminal charge or criminal conviction in any jurisdiction outside the state.

Emergency Conditional Appointments

Upon the recommendation of the District Superintendent, the Board may make an emergency conditional appointment when an unforeseen emergency vacancy has occurred. When such an appointment is made, the process for conditional appointment as enumerated above must also be initiated.

Emergency conditional appointment may commence prior to notification from the Commissioner of Education on conditional clearance but shall terminate twenty (20) business days from the date such appointment commences or when the BOCES is notified by the Commissioner that conditional clearance is either granted or denied, whichever occurs earlier; however, if conditional clearance is granted, the appointment shall continue as a conditional appointment.

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Prior to the commencement of such appointment, the BOCES must obtain a signed statement for emergency conditional appointment from the prospective employee indicating whether, to the best of his/her knowledge, the prospective employee has a pending criminal charge or criminal conviction in any jurisdiction.

An unforeseen emergency vacancy shall be defined as:

- a) A vacancy that occurred less than ten (10) business days before the start of any school session including summer school, or during any school session including summer school, without sufficient notice to allow for clearance or conditional clearance (however, this (10) business day time frame provision shall not apply if the Board of Education finds that the BOCES has been unable to fill the vacancy despite good faith efforts to fill the vacancy in a manner that would have allowed sufficient time for full clearance or conditional clearance); and
- b) When no other qualified person is available to fill the vacancy temporarily; and
- c) When the emergency conditional appointment is necessary to maintain services which the BOCES is legally required to provide or services necessary to protect the health, education or safety of students or staff.

Safety of Students

The BOCES will develop internal building and/or program procedures to help ensure the safety of students who have contact with an employee holding conditional appointment or emergency conditional appointment. Such procedures will address the safety of students in the classroom, students attending off-campus activities under the supervision of the BOCES, and students participating in extracurricular and/or co-curricular activities.

Safety procedures to be addressed include, but are not limited to, the following: supervision of the employee holding conditional appointment/emergency conditional appointment as determined appropriate by the applicable building/program administrator; and periodic visitations by the building/program administrator to the classroom, program and/or activity assigned to the employee holding conditional appointment/emergency conditional appointment.

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"Sunset" Provision for Conditional Appointments/Emergency Conditional Appointments

The provisions in law which permit the conditional appointment and/or emergency conditional appointment of employees pending full clearance from SED shall terminate, in accordance with legislation, on July 1, 2003; and shall be rescinded as Board policy and procedure as of that date (unless subsequent revisions to applicable law provide otherwise).

OMRDD Supported Employment Program

All employees hired after April 1, 2005, who work in the OMRDD (Office of Mental Retardation and Developmental Disabilities) Supported Employment program are required to submit to criminal history background record information check and adhere to OMRDD regulations: 12 NYCRR Section 633.5.

Education Law Sections 305(30), 1950, 3004-b,
3004-c, and 3035
Correction Law Article 23-A
Executive Law Section 296(16)
Social Services Law Article 5, Title 9-B
8 New York Code of Rules and Regulations (
NYCRR)

Section 80-1.11 and Part 87

12 NYCRR Section 633.5

Adopted: 3/2006