



GUIDE TO FINGERPRINTING POLICIES AND PROCEDURES

FOR CHARTER SCHOOLS AUTHORIZED BY
THE STATE UNIVERSITY OF NEW YORK BOARD OF TRUSTEES

INTRODUCTION

Charter school education corporations have an ongoing obligation to clear all employees, including independent contractors, prior to employment by means of a fingerprint-supported criminal background check. The New York State Education Department ("NYSED"), through its Office of School Personnel Review and Accountability ("OSPRA"), manages this process, but education corporations must develop and implement policies for ensuring compliance. The Institute strongly encourages charter schools to review the information on [NYSED's website on fingerprinting](#) prior to engaging in the hiring of school personnel and to contact NYSED's Fingerprint Helpdesk at ospa@nysed.gov with specific questions about OSPRA procedures or statuses.

This guidance details the policy requirements for conducting fingerprint-supported criminal background checks and provides related resources for education corporations. If you have any questions regarding the information provided in this guidance, please contact the SUNY Charter Schools Institute's Legal Department at charter.legal@suny.edu.

DISCLAIMER

Nothing implied or stated in this guidance should be construed to be legal advice. The SUNY Charter Schools Institute (the "Institute") is not a law firm and this guidance should not be interpreted as creating an attorney-client or legal advisor relationship. For questions regarding your specific situation, please consult a qualified attorney. This guidance contains general information and may not reflect current statutes, case law, or other legal developments. The Institute does not guarantee the guidance's content is correct, complete, or up-to-date.

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APPLICABILITY

The New York State Charter Schools Act of 1998 (the "Act") states a charter school education corporation's board of trustees is required to conduct fingerprint-supported criminal background checks for all prospective employees, including independent contractors, through NYSED's OSPRA office.¹

Further, Charter Agreement Section 4.5, available under "Charter Agreement" on the [Institute's Legal Compliance website](#), requires:

4.5 Background Checks; Fingerprinting. The Education Corporation shall establish, maintain, and implement procedures for conducting background checks (including a fingerprint check for a criminal record) of, and appointing on a conditional and/or emergency conditional basis (if applicable), all Education Corporation employees and prospective employees (whether part or full time) who work or would work in any school, as well as any individual who has regular access to the students enrolled in any school (including, but not limited to, employees and agents of any company or organization which is a party to a contract to provide services to the Education Corporation's school(s)) to the extent required by Education Law § 2854(3)(a-2) and the applicable requirements of 8 N.Y.C.R.R. part 87. Such procedures shall contain a specific provision that requires all criminal history reports to be reviewed by two or more employees designated by the Education Corporation Board in its personnel policies or otherwise. The Education Corporation may, but is not required to, conduct any and all other background checks permitted by law.

FINGERPRINT POLICY

Preopening

The Charter Agreement requires education corporations to establish and maintain procedures for conducting fingerprint-supported background checks of prospective employees. During the Preopening process of the school, the education corporation is required to submit a compliant Fingerprint Policy and Fingerprint Clearance Records for all school employees. A compliant Fingerprint Policy must include and align with the provisions of this guidance document. For more information on the Preopening process and detailed requirements and procedures, see the Preopening Guidance under "Preopening" on the [Institute's Legal Compliance website](#).

Definition of "Prospective Employee"

The Fingerprint Policy must identify who is considered a "prospective employee." Under NYS regulations, a prospective employee is anyone whose: 1) term of employment is greater than five days; 2) employment involves direct contact with students under the age of 21; and, 3) status is not otherwise exempt.² A prospective employee includes not only direct hires, but also employees of contracted service providers and public assistance employment programs.

1. Education Law § 2854(3)(a-2).

2. 8 NYCRR § 87.2(k). Exempt statuses are: school bus drivers and attendants who are cleared for employment under the Vehicle and Traffic Law after fingerprinting and a criminal history record check and whose fingerprints remain on file with DCJS; individuals who have provided services for the school in the previous year; or, individuals who are not expected to provide services for the school for more than five days in the school year.

The following positions **are** typically considered prospective employees:

- Paraprofessionals;
- Janitors;
- Security personnel;
- Cafeteria workers;
- Hall monitors; and,
- Contract service providers who enter schools.

The following positions **are NOT** typically considered prospective employees:

- Volunteers;
- Janitorial staff who have no direct contact with students; and,
- Guest lecturers and performers who will not be in any particular school more than five days and have in-person supervision by an employee of the school.

For more information on who must be fingerprinted, see the [guidance charts on NYSED's website](#).

Reviewing and Maintaining Fingerprint Clearance Records

The Institute requires all fingerprint-supported criminal history reports to be reviewed by two or more employees designated by the education corporation's board of trustees. The procedures for conducting employee background checks, and the designation of the two or more employees who will review criminal history reports, should appear in an education corporation's personnel policies or separate procedures for conducting background checks.

Schools are required to maintain proof of clearance from NYSED in the file of each employee.

REQUIRED STEPS FOR PROSPECTIVE EMPLOYEES

1. Submit Request to NYSED or Confirm Clearance Status

Prior to the start of employment, all "prospective employees," as defined above, must submit new fingerprints through NYSED's Teacher Certification System ("TEACH") unless they fall under one of the two categories below.

- They were fingerprinted after July 1, 2001 and submitted their fingerprints to NYSED pursuant to the Safe Schools Against Violence in Education ("SAVE") Legislation for employment in a school district, charter school, or Boards of Cooperative Educational Services ("BOCES"). In this case, the school must submit a clearance request for the individual through NYSED's TEACH. This ensures the appropriate school(s) are contacted if an individual is charged with criminal activity which affects their ability to work with children. This also satisfies the education corporation's required notice to NYSED of all new employees.³
- They are a bus driver, aide, or attendant who was cleared for employment pursuant to the Vehicle and Traffic Law, as long as they do not serve other roles in the school which have direct contact with students. In this case, the education corporation must:

3. Education Law § 2854(3)(a-3). Upon the start and end of each employee's term of employment, the Act requires the education corporation's board of trustees to send NYSED the name of and position held by such employee.

1. Confirm the person's updated clearance status prior to their services to the school(s);
2. Keep a copy of such clearance status on file at the school(s) where the person will be present; and,
3. Periodically receive and file an updated clearance or file a record showing the education corporation contacted the clearing entity and such entity confirmed the person's clearance status, including the name and title of the entity contact who supplied the clearance information. A recommended time frame is every two years.

Individuals who were fingerprinted for other types of employment, such as a daycare worker, security guard, police officer, etc., will most likely need to be fingerprinted again. For more information, please see [NYSED's website on fingerprinting](#).

2. Obtain Clearance, or Pursue Emergency Conditional Appointment or Conditional Clearance

The education corporation must wait for NYSED's full clearance of the individual before they may have contact with students. However, there are two situations in which the individual may have supervised contact with students prior to full clearance.

Emergency conditional appointment is available to schools who have adopted a written supervision policy and are unable to wait for a clearance from NYSED due to an unforeseen vacancy. Examples of unforeseen vacancies are: those occurring less than 10 days before the start of a school session; when no other qualified individual is available; or, when it is necessary to maintain services which the school is legally required to provide to protect the health, education, or safety of students or staff.

Conditional clearance is issued by NYSED when the state-level clearance process is complete, but there is a delay in the federal processing of the fingerprints. Once NYSED issues a conditional clearance, the education corporation's board of trustees must follow the requirements listed below to complete the conditional appointment.

In order to appoint a prospective employee on an emergency conditional or conditional basis, the education corporation **must first**:

1. *For emergency conditional appointments*: ensure the prospective employee sent their fingerprints to NYSED for processing; or, *For conditional clearance*: ensure the prospective employee has prior NYSED clearance and the proper clearance request for the school(s) was submitted through TEACH;
2. Obtain and maintain a signed statement from the prospective employee stating: "To the best of my knowledge, I do not have a pending criminal charge or criminal conviction in any jurisdiction."; and,
3. Have a written supervision policy for employees appointed on an emergency conditional or conditional basis which has been approved by the education corporation's board of trustees. A sample supervision policy is available in **Appendix A** of this document.⁴

Once the above is complete, the education corporation's board of trustees must then approve a resolution to appoint the employee on an emergency conditional or conditional basis. This must be done prior to the employee's first day of employment in a school with children present.

4. See Education Law § 2854(3)(a-2).

An emergency conditional appointment is only valid for **20 days**, and must be renewed by the board of trustees on a timely basis until the employee receives appropriate approval or denial from NYSED. A conditional appointment is only valid for **45 days**, with the option for one additional 45-day extension approved by the board of trustees.

If the board of trustees does not meet regularly enough to review and renew these appointments, it may delegate its authority to individual board members, committees, employees, or other persons. To do so, the board must adopt a properly worded resolution which does the following:

1. Delegates the board chair's authority to recommend one or more employees for a conditional or emergency conditional appointment;
2. Delegates the entire board's authority to approve conditional or emergency conditional appointments; and,
3. Delegates the board's authority to review and renew the appointment for the specified employees for an additional 45 days for conditional appointments or every additional 20 days for emergency conditional employees.

In such cases, it is a best governance practice for the board of trustees to receive specific updates on such employees at each subsequent board meeting until the employee is cleared or other employment action is taken.

3. Maintain Clearance Records

Schools are required to maintain proof of clearance in the file of each employee. This means that at any given time, each school must have access to a current NYSED clearance report for every individual who qualifies as a "prospective employee" as defined above. For bus drivers, aides, and attendants who were cleared pursuant to the Vehicle and Traffic Law, this means having a copy of such clearance records on file at the school(s) where the person is present.

4. Remove Employee from TEACH at the End of Employment

Pursuant to the Act, the education corporation must notify NYSED at the end of an employee's term of employment.⁵ Updating the employee's employment status in TEACH satisfies this requirement and allows the state to track where individuals work in the event the school(s) need to be contacted regarding updated criminal activity.

5. Education Law § 2854(3)(a-3). Upon the start and end of each employee's term of employment, the Act requires the education corporation's board of trustees to send NYSED the name of and position held by such employee.

APPENDIX A

SAMPLE SUPERVISION POLICY

[Education Corporation's] Supervision Policy for school employees/contractors appointed on a conditional or emergency conditional basis

The Board of Trustees of [the education corporation] recognizes there may be instances in which it is necessary, upon recommendation of the [school principal or other designee], for the Board to make a conditional appointment or an emergency conditional appointment of a prospective employee or contractor. To provide for the safety of students who have contact with an employee/contractor holding a conditional appointment or an emergency conditional appointment, the Board adopts the following policy:

- No education corporation employee or contractor who holds a conditional or emergency conditional appointment shall be in contact with students other than to provide direct instruction or other services for which the employee was hired, except as deemed appropriate by the [school principal or other designee].
- No education corporation employee who holds a conditional or emergency conditional appointment shall teach a class or provide services to students with their classroom or office door closed unless granted express prior permission to do otherwise from the [school principal or other designee]. Such permission may be appropriate, for example, during music class, band practice, or testing procedures.
- No education corporation employee or contractor who holds a conditional or emergency conditional appointment shall be left alone with an individual student unless granted express prior permission to do otherwise from the [school principal or other designee].
- The [school principal or other designee] shall provide heightened administrative supervision of such employees while on education corporation property during the period of their conditional or emergency conditional appointment including, for example, unannounced visits to classrooms, walking the hallways, and/or any other activities the [school principal or other designee] determines to be appropriate.
- In addition, the [school principal or other designee] will ensure that all conditional and emergency conditional appointed employees/contractors become aware of and receive training regarding the prohibition against child abuse in an educational setting and of their responsibility for reporting any such abuse at the commencement of their conditional or emergency conditional appointment.
- Failure to comply with this policy may result in appropriate disciplinary action.



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