



Charter Schools Institute
The State University of New York

Guidelines for Conducting Employee Criminal Background Checks

*For Charter Schools Authorized by the
Board of Trustees of the
State University of New York*

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Charter Schools Institute
State University of New York
41 State Street, Suite 700
Albany, New York 12207
518/433-8277, 518/427-6510 (fax)
<http://www.newyorkcharters.org>

I. OVERVIEW

Charter school education corporations have an ongoing obligation to clear *all* employees *prior* to employment by means of a fingerprint-supported criminal background check through the New York State Education Department's (SED's) Office of School Personnel Review and Accountability (OSPRA) including janitors, security personnel and cafeteria workers who are present when children are in the school building.¹ Paid service contractors, bus drivers, cafeteria workers, substitutes and consultants may also need to be cleared to be present in a school building when students are present even though not technically employees of the education corporation. Such employees and other persons may not be present in a school when children are present unless they have full, conditional or proper emergency conditional clearance as described in these Guidelines.

II. RESOURCES AND INFORMATION

Resources

SED provides detailed information regarding the criminal background check process including the fingerprinting/digital LIVESCAN hand scanning process online at: <http://www.highered.nysed.gov/tcert/home.html>. The Institute strongly encourages school administrators to review this information, and information on the SED website regarding the TEACH system clearance application/tracking process (available at: <http://www.highered.nysed.gov/tcert/teach/features.html>) in detail prior to engaging in the hiring of school personnel. Please contact OSPRA directly with specific questions about individual employees or OSPRA procedures or status. Note that it is possible to obtain the fingerprints of prospective employees out-of-state so long as the fingerprints are rolled on SED fingerprint cards and sent to SED in New York State. Also please note that SED has automated the fingerprinting process and requires the use of the web-based TEACH system to access and submit certain OSPRA information. To request TEACH access follow the instructions at: <http://www.highered.nysed.gov/tcert/teach/resources.html>.

Policy Requirements

Education corporations should make compliance part of the hiring process and procedures. For example, all prospective employees should sign the following statement as part of the hiring process:

- “To the best of my knowledge, I do not have a pending criminal charge or criminal conviction in any jurisdiction.”

¹ See N.Y. Education Law § 2854(3)(a-2) (McKinney's Supp. 2013), which requires fingerprinting of all employees pursuant to Education Law § 3035 (McKinney's Supp. 2013).

In addition, section 4.5 of the current SUNY Charter Agreement requires education corporations to establish and maintain procedures for conducting employee background checks.² The Institute now “requires all criminal history reports to be reviewed by two or more employees designated by the Education Corporation Board.” The specifics of that provision would typically appear in the education corporation’s required personnel policies or separate procedures for conducting background checks.

In certain situations, contractors, district or charter school employees, bus drivers, food service or other service providers, who are not and will not become education corporation employees, provide services to the education corporation. If those persons have been cleared through another charter or district school, or employer that has conducted a background check pursuant to the Education Law or NY Vehicle and Traffic Law, the SUNY education corporation must:

- 1) confirm their updated clearance status prior to providing services to the SUNY education corporation’s school(s); AND
- 2) keep a copy of such clearance status on file at the school; AND
- 3) on a periodic basis either receive an updated clearance to put on file, or have on file a record showing that the SUNY education corporation contacted the clearing entity and that such entity confirmed the person’s clearance status including the name and title of the entity contact who supplied the clearance information.

Specific Procedures

Charter school administrators should strive to ensure that all school personnel have been cleared for employment through the appropriate fingerprinting process or update of a prior clearance through the use of a TEACH system request (formerly an OSPRA Form 102 request) (or for employees previously cleared by the New York City Department of Education, a TEACH system request and a second *OSPRA Form 104*³/TEACH request). The Institute, however, accepts either conditional or, in limited circumstances, emergency conditional appointments, for employees or contractors when Education Law § 2854(3)(a-2)(iii) is properly followed.

Note: SED does not consider clearances from the New York State certification process and from other public schools including other charter schools “valid” under the NY Charter Schools Act of 1998 (as amended) (Act) due to the passage of time unless OSPRA verifies the validity of the

² 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 the 8 N.Y.C.R.R. §§ 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.

³ The OSPRA Form 104 is available at <http://www.highered.nysed.gov/tcert/pdf/ospra104.pdf>.

clearance and re-issues the clearance in the name of the charter school education corporation that is the current employer. This process also serves to fulfill the first part of another provision of the Act, which requires charter schools to inform SED (OSPRA) of all new employees within five (5) days of hire.⁴ An education corporation fulfills the other part of that provision by informing OSPRA within five (5) days of the employee's termination through use of the TEACH system (formerly through the OSPRA Form 105). *The requirement to inform SED of employees' separation from service is often overlooked.* Also, the Institute recommends that you inform SED of the separation status of any employee for whom you submitted a clearance form, even if you never actually employed that person.

If a charter school finds it necessary to appoint to one or more employees on a conditional⁵ or an emergency conditional basis, the education corporation *must first*: 1) have the employee fingerprinted and submit the prints/LIVESCAN to OSPRA; or, 2) have proof that the employee has previously been cleared by SED for employment. Then, the education corporation must submit the proper requests via the TEACH system and/or OSPRA form(s)) *and* obtain a *signed* statement from the employee in question attesting that the employee has no criminal record in any jurisdiction. The required language is bulleted under *Policy Requirements*, above. The education corporation's board of trustees must then approve a resolution to appoint the employee(s) in question on a conditional or an emergency conditional basis. This action must be completed *by the board of trustees*, prior to the employee's first day of employment in a school with children present. Please note that emergency appointments are only valid for 20 business days, and must be renewed on a timely basis until the employee receives appropriate clearance or denial from OSPRA.

If the education corporation's board of trustees has not done so already, it must also approve a written supervision policy for all such the employee(s) prior to making a conditional or emergency conditional appointment. A supervision policy generally restricts an employee's/contractor's direct access to students. A sample supervision policy is included at the end of these Guidelines.

If an education corporation board does not meet regularly enough to appoint employees on an emergency conditional basis, or to review and renew those appointments, it may delegate its authority to individual board members, committees, employees, or other persons. To do so the board must pass a properly worded resolution that does the following:

- delegates the board chair's authority to recommend one or more employees for an emergency conditional clearance;
- delegates the education corporation board's authority to approve an emergency conditional appointment; and
- delegates the education corporation board's authority to renew the appointment for the specified employees every 20 business days as needed and after proper review.

⁴ Education Law § 2854(3)(a-3) (McKinney's Supp. 2013).

⁵ Note that the Institute understands that SED grants conditional clearance only when the education corporation submits prints/LIVESCANs to SED and there is a delay or problem in processing, and SED can confirm state criminal history information.

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

III. PRIOR ACTION STAFFING REQUIREMENTS

The completion of fingerprint supported criminal background checks is a component of the Prior Actions all new schools must complete prior to opening as follows. At the time of the pre-opening visit, the Institute will review your staff list and the following.

Staffing	
Item	Deliverable
<p>Fingerprint supported criminal background checks have been completed and all employees have SED - OSPRA clearance⁶ for employment, AND all employees have been identified to SED as working for the new charter school;</p> <p>OR</p> <p>Fingerprints for each employee have been submitted to SED and all conditions of Emergency Conditional Appointment have been met.</p>	<p>Copies of Fingerprint Clearance forms from OSPRA/TEACH printouts for each employee identifying the new charter school as the employee’s current employer;</p> <p>OR</p> <p>Copies of fingerprint cards/LIVESCAN receipts and OSPRA forms/TEACH printouts showing submission to SED, <i>and</i> proof of Emergency Conditional Appointment for each employee, including:</p> <p>a signed statement regarding criminal record;</p> <p>AND</p> <p>an approved resolution from the education corporation’s Board of Trustees (moved by the Board Chair) to extend such clearance to the employee(s); AND</p> <p>a Board of Trustees’ approved <i>supervision policy</i> for such employee(s).</p>

<p>PRIOR ACTION TO-DO LIST: FINGERPRINT-SUPPORTED BACKGROUND CHECKS FOR SCHOOL PERSONNEL</p> <p><i>Begin: During Recruitment and Hiring Processes</i></p> <p><i>Due Date: At time of Prior Action Visit with Institute staff</i></p> <ul style="list-style-type: none"> <input type="checkbox"/> Read the SED’s guidance, “Fingerprinting Process from Start to Finish” available at http://www.highered.nysed.gov/tsei/ospra/fpprocess.html <input type="checkbox"/> Proceed with obtaining fingerprint supported background checks for <i>all</i> school employees. <input type="checkbox"/> Proceed with emergency conditional appointments for all employees who do not have SED (OSPRA) clearance. <input type="checkbox"/> Maintain a copy of each employee’s clearance or clearance application information for employment on file.
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⁶ The clearance may be permanent or conditional.



<p>Required Deliverable(s) at Time of Prior Action Visit:</p>	<p>Copies of background check clearance from OSPRA for each school employee identifying the new charter school as the employee’s current employer, OR Copies of fingerprint cards/LIVESCAN receipts and TEACH entries/OSPRA forms submitted to OSPRA AND Proof of emergency conditional appointment for each employee that has not yet received appropriate clearance from OSPRA including:</p> <ul style="list-style-type: none">a) a signed statement from the employee in question attesting that the employee has no criminal record or pending charges; andb) an approved resolution from the education corporation’s board of trustees to appoint such employee(s) on an emergency conditional basis; andc) a board of trustees’ approved supervision policy for the employee(s); andd) proof of updates for each emergency conditional appointment every 20 business days.
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Sample Supervision Policy

For school staff/contractors appointed on a conditional or emergency conditional basis

The Board of Trustees of [the education corporation] recognizes that 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 his/her 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.