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## MEMORANDUM

To: Admin Council, Personnel Department  
From: Mark Pettitt   
Subject: Fingerprinting  
Date: February 18, 2011

### Fingerprinting:

In accordance with New York State Law and BOCES Board Policy (policy number 5143), the BOCES is required to fingerprint and do criminal back ground checks on prospective employees. The attached charts from the New York State Department of Education outline who must be fingerprinted and those employees who are excluded from this requirement. The BOCES will continue to fingerprint employees as indicated on these charts.

As noted on the attached charts, certain positions are exempt from the requirement for back ground checks. In order to provide the greatest protection for our students, the BOCES will interpret the exclusions narrowly. In order to provide clarification as to which positions and titles will be subject to fingerprinting, the BOCES will adhere to the following guidelines:

1. **Clerical, custodial, administrative, and other support personnel** – For purposes of this requirement, it is assumed that all clerical, custodial, administrative, and other non-instructional support personnel have the potential for student contact during their work day. As such, all prospective employees in these functions will be fingerprinted.
2. **RIC Employees** – Any staff assigned to the RIC, who as part of their function are expected to be assigned duties in BOCES instructional buildings (including the Henry Administration Building), or component school buildings on five or more occasions within a year will be subject to fingerprinting and criminal back ground checks.
3. **Adult continuing Education Instructors** – Adult Continuing Education Instructors who have no contact with students under the age of 21 are specifically exempt from the requirement for fingerprinting and back ground checks. Where it is expected that such personnel will work five or more days per year during regular hours of student attendance within a BOCES facility where students under the age of 21 are in attendance, such personnel will be subject to fingerprinting and criminal back ground checks.

If you have any questions as to whether a prospective employee is subject to a criminal back ground check and needs to be fingerprinted, please contact my office.

Thank you

## Who Must Be Fingerprinted Charts

### Applicants for Certification and Employment Situations

Please note: These charts are intended for general guidance only and are not meant to replace a comprehensive review of the requirements of Part 87 of the Regulations of the Commissioner of Education and the Safe Schools Against Violence in Education (SAVE) legislation (Chapter 180 of the Laws of 2001).

### Applicants for Certification Chart

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 Chart

Type of Situation	<p>Fingerprinting is required for the situations described below if:</p> <ul style="list-style-type: none"> <li>the term of employment is greater than five days,</li> <li>the employment involves direct contact with students under the age of 21, as determined by the employer, and</li> <li>the employee is not otherwise exempt.</li> </ul> <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