

TECHNICAL ASSISTANCE ADVISORY UPDATE

State law requires a criminal records check for “selected applicants” prior to a conditional offer of employment and an update on RSA 189:13-a, School Employee Background Investigations. On July 28, 1997, the State Board of Education adopted Technical Assistance Advisory? School employee Background Investigation Including Criminal History Records check. The Advisory was prepared jointly by the Departments of Education and Safety. It has come to our attention that not all school districts are complying with this law. If you are not in compliance and would like assistance in meeting the requirements of RSA189:13-1, contact Susan Belanger, Department of Safety, 603-271-2507 or Pat Busselle, Department of Education, 603-271-3879.

Legislation passed in the 1998 session, Chapter 256, Relative to child Day Care Providers and Clarifying the Procedures for Background Criminal checks for School employees and Volunteers, requires additions to the Advisory. The specific revisions are as follows:

- School administrative units/school districts are not liable in any lawsuit for negligence or deficiencies, if the school administrative unit/school district satisfies the requirements of RSA 189:13-a, I.
- If, after two (2) attempts, a set of fingerprints is invalid, a school administrative unit/school district may, in lieu of fingerprints, accept clearances from every city, town, or county where an applicant has lived during the past 5 years.
- Upon receipt of a completed criminal history records check of state police and Federal Bureau of Investigation files, the state police will examine the list of crimes constituting grounds for non-approval of employment, or non-acceptance of volunteer services in that school administrative unit/school district and will report presence or absence of any such crime to the school administrative unit/school district.
- Under no circumstances shall the criminal records be released to the school administrative unit//school district.
- By decision of the appropriate governing body, a school administrative unit/school district, may deny a selected applicant a final offer of employment if such person has been convicted of any felony in addition to those listed in RSA 189:13-a,V.
- The governing body may adopt a policy stating that any person, who has been convicted of any felony, or any of a list of felonies, shall not be hired.

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- The school administrative unit/school district shall not be required to complete a background investigation or a criminal history records check on volunteers. However, the governing body may adopt a policy designating certain categories of volunteers as “designated volunteers” who may be required to undergo a background investigation and a criminal history records check.

The effective date of Chapter 256, Relative to Child Day Care Providers and Clarifying the Procedures for Background Criminal Checks for School Employees and Volunteers is August 25, 1998. The Department of Safety has advised us that criminal records checks initiated on or after that date will take considerably longer to process. School administrative units/school districts should expect a delay of 3-9 months. The Criminal Records Bureau will review State Police and Federal Bureau of Investigation records received on or after August 25, 1998 in accordance with the new law.

If, after two attempts, a school administrative unit/school district is unable to obtain a set of fingerprints, the school administrative unit/school district may meet the provisions of RSA 189:13-a,II, by obtaining records for an individual through the Criminal Records Bureau in other states. The Departments of Safety and Education are working at obtaining an official record release form from the other states. Once received the Department of Education will keep the release on file and make them available to school administrative units/school districts.

To assist school districts in preparing a policy regarding the denial of a final offer of employment for selected applicants convicted of all or specific felonies, the Department of Safety has provided the Department of Education with a list of felonies identified in the New Hampshire Revised Statutes Annotated. See attached *Criminal Statutes with Felony Penalties* prepared by Jeff Kellett, Office of State Criminal Records. (The Department of Education has forwarded the list to the Office of Attorney General for review.) If your school district adopts a policy regarding felony convictions please review the policy with legal counsel. Forward the policy to Susan Belanger, Division of State Police, Office of Criminal Records, James H. Hayes Building, 10 Hazen Drive, Concord, NH 03305-0002. The Bureau will use your list in reviewing the completed criminal records checks.

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To assist school administrative units/school districts complying with RSA 189:13-a, the Department is including with this memorandum:

Technical Assistance Advisory: School Employee Background Investigation Including Criminal History Records Check;

Memoranda on Criminal Records Check for Student Teachers and Interns, August 14, 1997,

Criminal Records Check Requirement for Intern Educators, August 14, 1997,

Approved Nonpublic special education school or program, September 30, 1997, and

Clarification of Criminal Records Check for Employers Providing Students with Work based Learning or Co-OP Opportunities, May 7, 1998.