



Vermont  
Superintendents  
Association

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To: School Board Chairs and Superintendents  
From: Nicole Mace, Vermont School Boards Association  
Jeffrey Francis, Vermont Superintendents Association  
Laura Soares, Vermont School Boards Insurance Trust  
Re: Fingerprint-Supported Criminal Record Checks for Private Pre-K Providers  
Date: August 19, 2016

This memo is intended to provide additional guidance to school district officials in light of the August 19th memo from the the Secretary of Administration on Act 166 and Background Checks for Pre-K Providers.

When the legislature adopted Act 166, ensuring universal access to prekindergarten for Vermont's 3 and 4 year olds, our Associations supported the law because we believe strongly in the benefits of high quality early education, especially for our most vulnerable children.

With the passage of Act 166, the state expanded the definition of public education to include prekindergarten, which can be provided in a public or private setting.<sup>1</sup> Accordingly, in July of 2015, the Agency of Education issued a memo to superintendents and principals clarifying that the background check provisions of 16 VSA §255 “apply to **any person** who may have unsupervised contact with Pre-K students in a public or private program” that receives funding pursuant to Act 166.

The obligation to administer Act 166 is jointly shared by the Agencies of Human Services and Education. We are now aware that since January of 2016, the Agency of Education (AOE) and the Agency of Human Services (AHS) have been working to determine the best methods to both inform school districts of the record check requirements and ensure they are fulfilled.

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<sup>1</sup> Title 16 now defines “elementary education” as a “program of public school education adapted to the needs of students in prekindergarten, kindergarten, and the first six grades” (16 VSA 11(3)).

In July of 2016, superintendents and principals received a memo from AHS and the AOE indicating that the Child Development Division (CDD) of AHS would provide or support fingerprinting services for employees at preapproved private Pre-K providers, and would provide superintendents with assurances that preapproved private providers have had their fingerprints completed and cleared.<sup>2</sup>

The AHS/AOE memo also states, “Because a large number of Act 166 providers are seeking approval and fingerprinting for the first time in this full-implementation phase of universal Pre-K, **it is possible many providers will experience long delays in receiving results** from DCF/CDD” regarding the outcomes of the VCIC criminal record checks.

Many school officials have been proceeding under the assumption that CDD is responsible for ensuring the background checks have been conducted and cleared. Many are relying on the fact that if a provider is “preapproved” by CDD, that preapproval may serve as an assurance that all criminal record check requirements have been completed. **That is not the case.**

By law, superintendents are required to request criminal record and abuse registry checks for any person directly under contract or any employee of a contractor under contract who may have unsupervised contact with school children.<sup>3</sup> The law defines “unsupervised” as “not in the presence of a responsible adult **in the employ of or under the direction of** the...school district.”<sup>4</sup>

The August 19<sup>th</sup> memo from the Administration suggests that superintendents may require assurances or other guarantees from private Pre-K providers that any staff who have not been cleared will not have unsupervised access to children, thus making them eligible to receive Act 166 Pre-K funds. **But given the definition of “unsupervised,” in 16 V.S.A. §252(4), we question whether assurances from private providers can satisfy the district’s obligation to ensure that there is a responsible adult present supervising any employee who has not yet been cleared.**

**In the event you have contracts with preapproved private providers and cannot assure that all employees have been cleared, we strongly urge you to**

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<sup>2</sup> We see no provision in the law that would allow CDD to serve as an intermediary between superintendents and VCIC. 16 VSA 255(a)(4) states that VCIC requests for contractors’ employee checks **shall** be made through a superintendent.

<sup>3</sup> 16 V.S.A. §255(a)(2) & (3)

<sup>4</sup> 16 V.S.A. §252(4)

**contact your attorney to determine how to proceed. You may need to delay payments to private providers until all of their employees have been cleared through fingerprint supported background checks.**

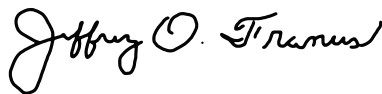
If your supervisory union/district is a member of VSBIT's Multi-Line program, please do not hesitate to contact Don Morrill ([don@vsbit.org](mailto:don@vsbit.org)) for guidance on this important matter.

Please let us know if you have any questions about the above information.

Sincerely,



Nicole Mace



Jeffrey Francis



Laura Soares

Cc: Justin Johnson, Secretary of Administration  
Rebecca Holcombe, Secretary of Education  
Hal Cohen, Secretary of Human Services  
Ken Schatz, Commissioner, Department of Children and Families