CLIENT ALERT: Massachusetts School District Personnel and Early Child Care Providers Subject to Broader, More Stringent, Fingerprint-Based CORI Checks

On January 10, 2013, Governor Deval Patrick signed into law a bill significantly increasing the employee CORI search requirements for school districts and the Department of Early Education and Care. This bill will create a more significant vetting process for most education employees in the state starting in the 2013-2014 school year.

Early Child Care

For all new hires in the 2013-2014 school year, the Department of Early Education and Care must conduct fingerprint-based checks of national and state criminal history databases for all applicants for "a family child care, small group and school age, large group and school age, residential and placement license or family child care assistant certificate. In addition, the fingerprint based checks shall be conducted for all applicants for employment, who have the potential for unsupervised contact with children, in any department licensed or funded program and for all household members or persons regularly on the premises, aged 15 and older, of applicants for family child care licensure." These fingerprint-based checks are also required for "all in-home non-relative department funded caregivers, and for all applicants to be adoptive or foster parents." The individuals fingerprinted are to pay a yet undetermined fee not to originally exceed $35. The Department of Early Education and Care may reimburse all or part of the fee in instances of "financial hardship." All employees who are not new hires must have their records checked within three years of the date of implementation.

Public School Districts and Private Schools

The bill requires all school districts and certain private schools to obtain national as well as state criminal offender record information for any current employee, prospective employee, volunteer of the school district or subcontractor or laborer authorized to perform work on school grounds if any of those individuals have direct unmonitored contact with children. Districts must obtain these records "periodically, but not less than every three years." These new requirements must be implemented for new hires in the 2013-2014 school year. All other employees must have their records checked within three years of the date of implementation. Unlike educator evaluation, there is no indication that the new system of background search may be implemented any later than day one of the 2013-2014 school year.

The bill also requires that the "school committee, superintendent, principal or other administrator" obtain a state and national fingerprint-based background check for current and prospective employees of the school department who may have direct and unmonitored contact with children as

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well as for any individual who regularly provides school related transportation to children and any subcontractor or laborer commissioned by the school committee or school to perform work on school grounds who may have direct and unmonitored contact with children. School committees may only conduct searches on individuals for whom they have direct hiring authority (i.e. Superintendents, etc.). Although there is some uncertainty in the language of the Bill, it appears to require that the district collect the fingerprints and then submit them to the identification section of the State Police for a state criminal history check and also to forward those fingerprints to the Federal Bureau of Investigation for a national criminal history check.

The "applicant" for a fingerprint based background check shall pay a fee to offset the costs of operating and administering the new fingerprint based system. That fee will be decided jointly by the Secretary of Administration and Finance and the Secretary of Public Safety and the Commissioner of the Department of Elementary and Secondary Education ("DESE"). It will be no more than $55 for employees who are certified by DESE and no more than $35 for employees who are not certified by DESE. The final cost has not yet been announced. Once collected, the fee must be deposited into a trust fund created by the bill. As a further complication, the bill allows for school committees and superintendents to reimburse applicants for all or part of the fingerprint fee on the grounds of "financial hardship."

The State Police and FBI will then forward to the district (directly to the responsible individual who is the superintendent, principal, administrator or committee) for the purpose of determining the suitability of the current or prospective employee or contractor. The Department of Criminal Justice Information Systems will retain a copy of all records. Upon receipt of the information, the receiving party shall notify the Commissioner of DESE of any criminal record information that is "relevant to the fitness for licensure of any holder of or application for a Massachusetts educator's license."

Open Questions

The bill's amendments to Chapter 71 raise a number of questions such as by whom will the fingerprint process be conducted, what information is "relevant" such that it must be submitted to DESE, and what will be the standard for waiving the fingerprint fee because of "financial hardship." Importantly, the bill authorizes and requires DESE to promulgate regulations necessary to implement the new requirements. We anticipate that the regulations will provide guidance on these and other issues.

What is clear now is that the bill's requirements will impose a heavy burden on public school districts to ensure that these searches are conducted regularly and properly and that reports are reviewed thoroughly and the proper information is provided to DESE. It will also impose a new and likely unpopular burden on educators and staff as they will face enhanced scrutiny. Some districts will face new information about their employees and that some of that information will lead to disciplinary actions including dismissal. This will present a significant challenge to districts, especially when dealing with teachers with professional teacher status.

While these new requirements are amendments to statutes that cannot be overwritten by collective bargaining agreements (i.e. a district could not agree with a union not to conduct these searches)

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there may be an impact bargaining obligation if the law and/or its regulations negatively impact unionized employee wages, hours and/or terms and conditions of employment. Districts are encouraged to contact their MBJ attorney to discuss how best to implement these requirements without running afoul of G.L. c. 150E and the Department of Labor Relations. All districts should give an adequate window of time to discuss any mandatory subjects prior to the implementation of these new CORI search requirements.

The bill referenced in this article is House No. 4307. It amends Chapter 15D (pertaining to early child care licensure) and Chapter 71, Section 38R (pertaining to public school districts and private schools) of the Massachusetts General Laws. It is not separately codified as a statute.

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