

PRIVATE SCHOOL ALERT

MASSACHUSETTS ENACTS NEW CRIMINAL BACKGROUND CHECK REQUIREMENTS FOR SCHOOLS

On January 10, 2013, Governor Deval Patrick signed into law H.B. 4307, “An Act Relative to Background Checks,” imposing new fingerprint-based criminal background check requirements on all public and private schools, as well as programs licensed, funded or approved by the Massachusetts Department of Early Education and Care (“EEC”). EEC and the Massachusetts Department of Elementary and Secondary Education have not yet issued regulations pursuant to the new law.

The new law requires both state and federal fingerprint-based criminal background checks for all current and prospective school employees, including individuals who regularly provide school-related transportation to children and subcontractors or laborers providing services on school grounds who may have direct and unmonitored contact with students. Fingerprinting and federal background checks were not previously required. The new background check requirements go into effect for the 2013 – 2014 school year for new employees, while current school employees must submit fingerprints for federal background checks within the next three years. The new requirements do not apply to volunteers at independent schools.

Employees and applicants must pay a fee associated with conducting the fingerprint-based criminal background checks, not to exceed \$55 for certified educators and \$35 for other employees. Schools may reimburse individuals for all or part of the fee on the grounds of financial hardship, although the statute does not address whether schools may reimburse in the absence of financial hardship. Schools will be able to obtain state and federal criminal background information to be used as part of the employment process.

Schools continue to be required to periodically—but not less than every three years—obtain all available criminal offender record information (CORI) from the Massachusetts Department of Criminal Justice Information Services for any current or prospective employee who may have direct and unmonitored contact with children. Under the new law, the CORI requirement now also extends to individuals who regularly provide school-related transportation to children and subcontractors or laborers providing services on school grounds who may have direct and unmonitored contact with students.

Schools are advised to consult legal counsel to assess the applicability of the new requirements and to update policies and procedures relative to the use of criminal history information to ensure compliance with the new law prior to the 2013 – 2014 school year.

For more information, contact Peter F. Carr, II at pcarr@eckertseamans.com or 617.342.6857 or Julia B. Vacek at jvacek@eckertseamans.com or 617.342.6844. Mr. Carr and Ms. Vacek practice in the litigation department of the Boston Office of Eckert Seamans Cherin & Mellott, LLC with experience representing private independent schools.

NOTE: The information in this advisory is for general, educational purposes. It is not intended to be, and should not be considered, legal advice with respect to any particular situation.