



219 North Main Street, Suite 402
Barre, VT 05641 (p) 802-479-1030 | (f) 802-479-1835

MEMORANDUM

TO: Superintendents *AT*
FROM: Dr. Rebecca Holcombe, Secretary of Education
COPY: Hal Cohen, Secretary of AHS; Ken Schatz, Commissioner of DCF;
Justin Johnson, Secretary of Administration; James Pepper, Director of
Intergovernmental Affairs and Policy Advisor
SUBJECT: Act 166 Transition Relief Memo
DATE: September 14, 2016

Thank you so much for all your efforts to support implementation of Act 166 of 2014. You know, as I know, how important an opportunity this is for our children and families, and, in particular, for some of our most vulnerable children and families. We know how critical these early years are, and don't want to miss this opportunity.

Safety is a paramount concern. We are aware that some private providers are just beginning the CDD background checks and have not cleared in time for the start of the school year. To the extent possible, we want to ease the implementation of Act 166 while avoiding the undue burden on private partners of having to undergo multiple fingerprint checks for multiple district partners. This would simply increase cost and hassle for partners without increasing security for children or reducing the timeline.

With this memo, I suggest some strategies to support partnerships, while balancing the child safety intent of Act 1 (2009), 16 V.S.A. §§ 252 and 255, and our licensing regulations (which are focused on child safety) with the imperative to ensure every child has access to 10 hours a week for 35 weeks of high-quality pre-kindergarten.

CDD Clearance and 16 V.S.A. §§ 252 and 255

First, because the new CDD fingerprint-supported background check process is rigorous, we feel it needs to be our long-term approach to background checks. To that end, CDD is working to track, coordinate, verify, and disseminate results of its fingerprint-supported checks. CDD will be issuing a memo this week that offers instructions for Superintendents on how to provide to CDD, through an electronic form with a drop-down menu organized by county, a list of all partnering programs. Using this information, CDD will provide written assurance to Superintendents when

background clearances, including fingerprinting, are complete for individual program staff. This assurance will include:

- the name of the program;
- the standards against which the fingerprint clearance is evaluated;
- verification of the employees (by name) who met the standard;
- a statement that all program employees have been cleared, signed by CDD.

In addition, the federal government recently caught us all by surprise by determining that the complete results of fingerprint checks cannot be shared by CDD with third parties, which means CDD is limited in what it can release, despite the comprehensive nature of its checks. However, given the thoroughness of the CDD process (please see attachment for CDD requirements) and because CDD checks are subject to federal oversight and monitoring of compliance with these stringent ¹ regulations, I am confident in the quality and rigor of the CDD review. The Administration agrees that the CDD confirmation of clearance, together with clear definition of the criteria by which clearance is determined, is sufficient confirmation for you to meet your obligations under 16 V.S.A. §§ 252 and 255. Under 16 V.S.A. § 212(5), I am charged with directing and supervising your compliance with respect to the law. I am satisfied that, given the conflict in state and federal law, if you verify that CDD has completed its fingerprint-supported background check for every employee of a private provider who has not yet been cleared, as demonstrated by written confirmation from CDD as described above, you have substantially complied with your obligation under Section 255 by accepting the responsible Agency's (CDD's) written assurance. Next session, AOE and CDD will ask the Legislature to amend 16 V.S.A. § 255 to specify that CDD fingerprint-supported checks for preK providers satisfies the Superintendent's obligation.

TRANSITION RELIEF

Last year, due to my transition relief memo, you were not compelled to move forward with Act 166, and so only superintendents and systems that felt confident in their ability to independently complete fingerprinting and supervise the process in a timely way moved forward under Act 166 this past year. This year, all systems are compelled to move forward. Some systems have longstanding relationships with their private

¹ Federal law requires background checks to be completed every 5 years, whereas 16 V.S.A. §§255, 256 do not require renewed background checks if an employee has maintained continuous employment. In addition, federal law lists crimes which prohibit employment, whereas 16 V.S.A. §255 does not include a comprehensive list of crimes which categorically prohibit employment. Federal law also requires checks against national and state registries for 5 years prior to employment in any state a prospective employee has lived. Like superintendents in Vermont, CDD must also check employees against state registries, in addition to the federal requirements (expanding search beyond Vermont registries).

partners and some have already verified fingerprints for employees of all partners consistent with 16 V.S.A. §§ 252 and 255. In these regions, we hear superintendents are moving forward seamlessly with implementation of Act 166 through a mixed-delivery model. In some other regions, it has been more difficult to initiate and complete the fingerprint process, and more difficult to verify the universe of private partners who need to be cleared.

I do not want to lose sight, however, of our critical and shared goal: 10 hours a week for 35 weeks of high quality pre-kindergarten for every child. To this end, with this memo, I am issuing a second transition relief notice that I hope will serve to ensure that every child receives this pre-kindergarten opportunity, even with those providers that have not yet completed the CDD fingerprint-supported background check process, but which we expect to be cleared in the near future.

To those Superintendents and systems that have not already implemented Act 166, this memo is guidance on the flexibility the AOE can provide with respect to when the 35 weeks begins, to ensure that children do not lose access to this opportunity. Specifically, the 35 weeks of publicly-funded preK can begin with private partners when fingerprint-supported checks are complete, even if the 35 weeks run beyond the official end of the school year. A second option, with partners that have licensed educators on-site for sufficient hours to do so, is for you to execute agreements with private partners in the current year only to contract for a total of 350 hours by the end of the current FY 16-17 school year. In this latter case, this flexibility ensures that even if the delivery window is compressed, students still get the same number of hours of high quality pre-kindergarten that the Legislature intended.

Act 166 is a change in our state commitment to our children and to how we deliver education. It has required us to navigate two sets of federal regulations and two sets of state regulations. Some implementation challenges were inevitable, but we are excited to work with you to bring this terrific opportunity to our children.

Child Development Division's Fingerprint Supported Background Checks

Below please find information on the newly adopted Child Care regulations with respect to background checks. They are the same for Family Child Care Homes (FCCH) and Center Based Child Care and Preschool Programs (CBCCPP). Please note these parallel or are more rigorous than 16 V.S.A. Section 255 requirements.

7.2.4 The licensee shall ensure that no person shall be left alone with children without approval from the Division which shall be based on the results of the background check to include fingerprinting.

7.2.5 The Division shall complete and process all background check clearances as expeditiously as possible, but not to exceed forty-five (45) days from the day Vermont Crime Information Center receives all documentation.

7.2.6 Based on the results of background checks described in this section the following persons are prohibited and shall not operate, be employed at, or be allowed unsupervised access to children at the CBCCPP:

- A person who is required to complete a background check who refuses or knowingly makes a material false statement in connection with such background check;
- A person convicted of fraud;
- A person convicted of a felony consisting of:
 - Murder,
 - Child abuse or neglect,
 - A crime against children, including sexual activity or child pornography,
 - Spousal abuse,
 - A crime involving rape or sexual assault,
 - Kidnapping,
 - Arson,
 - Physical assault or battery, or
 - A drug related offense committed during the proceeding five (5) years;
- A person convicted of a misdemeanor offense against a child or another person consisting of:
 - Violence,
 - Child abuse or neglect,
 - Child endangerment,
 - Sexual assault or activity,
 - Child pornography; or
 - Other bodily injury;
- A person found by a court to have abused, neglected or mistreated a child, elderly or disabled person, or animal; or

- An adult or child who has had a report of abuse or neglect substantiated against them under Chapters 49 and 69 of Title 33 Vermont Statutes Annotated or
- A person registered, or is required to be registered, on a state sex offender registry or repository or the National Sex Offender Registry established under the Adam Walsh Child Protection and Safety Act of 2006.

7.2.7 The Department may determine a person as prohibited when there is information known that indicates his/her action or behavior may present children enrolled with risk of harm.

7.2.8 Exclusion of Persons Prohibited

7.2.8.1 The Division shall provide the result of the background check to the licensee that indicates whether the individual, for whom the background check was completed, shall be prohibited as required in the rule 7.2.6 or rule 7.2.7 of these regulations without revealing the basis for the decision as required in the rule 7.2.8.3 of these regulations and shall identify whether a prohibited person is eligible to request a variance.

7.2.8.2 When the Division has determined an individual to be prohibited as required in the rule 7.2.6 or rule 7.2.7 of these regulations, the Division shall provide the individual, for whom the background check was completed, the result of the background check; the basis for the decision; the process by which the individual may challenge the accuracy or completeness of the information contained in the basis for the decision; and whether the prohibition is eligible for a variance request.

7.2.8.3 The Division shall not share any information related to a background check with anyone other than as required in the rule 7.2.8.1 or rule 7.2.8.2 of these regulations.

7.2.8.4 Effective upon receipt of the determination, the licensee shall exclude persons whose background check has determined them as prohibited. This includes but is not limited to employment at the CBCCPP, from serving as the designated representative for the licensee, or from being regularly present at the CBCCPP.