

Schedule for fingerprinting school employees hired prior to July 1, 2013

I. What is the current status of the fingerprint law?

Under the “background checks” law that was enacted in 2013, employees who may have direct and unmonitored contact with children are now subject to a fingerprint-based check of state and national criminal history databases. At this point, all school employees hired since September 2013 should either have completed a background check or have a check in progress.

DESE has now released a schedule for all school employees hired prior to the 2013-2014 school year to complete the background check process. Based on the first initial of the employee’s last name, the schedule is:

A-D October 2014 through March 2015

E-K April 2015 through August 2015

L-P August 2015 through December 2016

Q-Z January 2016 through May 2016

II. Does DESE have legal authority to create this schedule?

Yes. The 2013 law states that “[i]ndividuals working in kindergarten through twelfth grade education whose employment or service began before the 2013-2014 shall submit fingerprints for state and national criminal history checks **on a phased-in basis** prior to the beginning of the 2016-2017 school year.” (Emphasis added)

The 2013 Act also authorized DESE to promulgate regulations to carry out the new law. DESE issued a regulation (603 CMR 51.05, Timing of National Criminal History Checks) that states:

(1)(b) Before the start of the 2016-2017 school year and **according to a schedule established by the Department**, school employers shall obtain and review national criminal history checks, and make required suitability determinations, for all employees who began work before the 2013-2014 school year and for all individuals who regularly provide school related transportation to children and who began work before the 2013-2014 school year.

III. Did DESE leave any discretion to the school employer?

DESE has authorized school employers to shift up to 10% of their staff into a different time period than is set forth in the DESE scheduled in order to

accommodate individual scheduling problems and needs. The school employer does not need to get prior approval from DESE for these scheduling deviations. DESE's regulations imply (but do not state) that employers can seek approval for deviations in excess of 10%. Finally, DESE also stated that all required checks for pre-September 2013 employees should be completed no later than June 30, 2016. A DESE official has assured the MTA that fingerprinting will be available throughout the months of July and August, 2016.

DESE states that, without a coordinated phased-in program, it would be virtually impossible to meet the requirements of the background check law by the start of the 2016-2017 school year. The Department is trying to create an orderly process so that the system can input background checks on a very large number of employees state-wide.

IV. Is there anything in this process that is subject to bargaining?

Yes. While school employers are mandated to comply with state laws and regulations, they are required to bargain over terms and conditions of employment that are within their discretion. The 2013 statute and DESE's regulations leave many details to local determination. Some examples (and this is not an exhaustive list) include:

- Determining which employees will be part of the 10% non-conforming group.
- Determining when and how the school employer will seek approval beyond 10% for employees who cannot or do not submit fingerprints within the period scheduled for them.
- Determining how (and what) employees who are on leave during their assigned period will be notified.
- Ensuring that an employee's failure to submit fingerprints within the assigned time block is not a basis for personnel action against the individual.
- Ensuring that the school employer will seek any necessary guidance from DESE when employee questions arise.
- Ensuring that the school employer provides proper notice and explanation of employee obligations.
- Bargaining over payment, in whole or part, of the statutory fee.

Please relay this information to your local leaders.