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## LEGAL UPDATE

August 23, 2010

**To: Superintendents, Member K-12 Districts**

**From: Marko H. Fong, Assistant General Counsel**

**Subject: Supervisory Certificate Clarification Re: Fingerprinting and ASCC AB 346  
Memo No. 20-2010**

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After some confusion about which staff and volunteers still needed to be fingerprinted, and which staff are required to obtain an Activity Supervisor Clearance Certificate (ASCC),<sup>1</sup> the state further clarified matters through AB 346 (signed into law on July 9, 2010) which modifies Education Code sections 45125.01 and 49024.

Types of fingerprint based clearance for non-certificated staff and volunteers:

1. Department of Justice (“DOJ”) fingerprinting, which is required by law for all classified employees under Education Code section 45125. The DOJ process usually takes seven business days for clearance. Details on the fingerprinting process for Sonoma County can be found on the website.<sup>2</sup>
2. Federal Bureau of Investigation (“FBI”) fingerprinting, which is required for prospective classified employees who have either lived outside California within the last twelve months, or where the individual has lived in California for less than seven years and has a past conviction for a sex offense involving a minor or a drug offense involving distribution to or use by a minor<sup>3</sup>. The FBI clearance may take between thirty to sixty days.
3. Activity Supervisor Clearance Certificate (“ASCC”): This process is administered by the Commission on Teacher Credentialing (“CTC”) and requires applicants to submit both

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<sup>1</sup> Legal Update Memo 33-2009 – Supervisors of Pupil Activity Programs Must be Cleared by CCTC  
Legal Update Memo 08-2010 – Activity Supervisor Clearance Certificate Guidance

<sup>2</sup> <http://www.scoe.org/pub/htdocs/fingerprinting.html>

<sup>3</sup> This may sound odd, but those aren’t necessarily disqualifying offenses for classified employment.

DOJ and FBI fingerprinting and may include information beyond an individual's conviction and arrest record. It is more thorough and more expensive because ASCC holders directly supervise students in school-sponsored activities. The ASSC is a statewide clearance, while fingerprint clearances are usually handled at the local or county level. It also must be renewed periodically.

Due to the long lead time for FBI clearances, there are provisions for the County Superintendent to issue temporary certificates pending the completion of the ASCC process.<sup>4</sup>

Which clearance is appropriate?

### Classified Employees

- 1) All prospective classified employees must get a DOJ clearance and in some cases an FBI clearance as detailed above. The DOJ regularly updates when there is a change in an individual's conviction record.
- 2) Classified Employees who directly supervise students in school-sponsored activities may also have to get an ASCC. Special Ed assistants, bus drivers, and playground supervisors often are alone with students, but those are considered part of the regular educational program as opposed to school-sponsored activities for purposes of the ASCC. Districts do have the discretion to ask or require individuals who work directly with children in any way to get an ASCC.

In general, band, speech, drama (after school), chorus, competitive cheerleading, academic decathlon, and athletics are the types of school-sponsored activities covered by the ASCC. Classified employees who have significant roles that call for them to be alone with students beyond the school day should be required to obtain the ASCC in addition to regular fingerprint clearance.

- 3) Volunteers who are not subject to the ASCC are generally not required by law to be fingerprinted. Districts generally have the discretion to adopt policies that require some or all volunteers or regular visitors to the school to be fingerprinted. If a volunteer has regular contact with students (directly supervised or not), it would be prudent to fingerprint.
- 4) There is no clear legal requirement about whether non-ASCC volunteers must get either DOJ clearance, FBI Clearance, or both. We recommend that Districts who choose to fingerprint prospective non-ASCC volunteers have them get both clearances. Doing both provides a greater level of protection for students and volunteers often broaden their roles as their relationship with a school expands. Volunteers or classifieds who have already been fingerprinted either through DOJ or FBI do not have to obtain the other clearance unless they need to apply for the ASCC.

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<sup>4</sup> Education Code section 49024 (d)

- 5) Certain volunteers are required to obtain the ASCC under Education Code Section 49024 if they directly supervise students in a school-sponsored activity away from a certificated staff member or an ASCC holder. Just as with classifieds, this would generally apply to athletics, cheer, debate, music, drama and other activities that directly purport to be School X's team, show, or event.

While District's have the discretion to require virtually any volunteer to obtain an ASCC, activities that are at or related to school but not school sponsored are generally not subject to the ASCC. Non-covered activities would include a soccer league that uses a school field but is otherwise unaffiliated with the District beyond the fact that students and parents participate in it on their own time, workplace mentors, career day speakers, and booster clubs (snack bar workers operated by the booster club). Section 49024 specifically exempts non-teaching volunteer aides supervised by a teacher, field trip drivers and chaperones, parents volunteering in the classroom or playground, and individuals participating in school breakfast programs.

### AB 346 specifics

AB 346 modified Education Code section 45125.01, to affirm that local districts may agree among themselves to appoint a single district superintendent or the county superintendent to serve as a single point of contact for:

- 1) Sending fingerprints to the DOJ and/or the FBI.
- 2) Receiving reports of convictions for serious and violent felonies, criminal history records, and reports of subsequent arrests.
- 3) Creating and maintaining a common list of persons eligible for employment or volunteer duties with schools in the county or surrounding area.

The agency that serves as the central point of contact shall submit an interagency agreement to the DOJ to confirm its authority to send and receive information for member districts. County offices and consortiums may find it helpful to maintain a list of cleared and non-cleared individuals within the county.

The act also modifies Education Code section 49024, to better clarify who must obtain an ASCC by exempting non-teaching volunteer aides, including parents volunteering in a classroom or on a field trip and community members providing non-instructional services if they are under the immediate supervision of one or more certificated personnel.

Districts should determine which classified positions may require the individual to obtain an ASCC and add the requirement to those job descriptions. They should also develop policies to clarify which volunteers should be fingerprinted and which should be required to obtain the greater level of assurance of the ASCC.

Please contact one of our attorneys if you have any questions about either specific situations or amending or developing fingerprint/ASCC policies.