

**Arizona Legislature**  
**School Fingerprinting & Criminal History**  
**Information Technical Advisory Committee**

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**FINAL REPORT**

**Submitted to the Legislature**  
**As required by Laws 1999, Chapter 262**  
December 15, 1999

**Committee Members:**

Senator Tom Smith, Co-Chair  
Senator Linda Aguirre  
Mr. Tom Boone  
Mr. Craig Emanuel  
Dr. Chuck Essigs  
Ms. Kristi Ford  
Dr. Renae Humberg

Representative Laura Knaperek, Co-Chair  
Representative Debora Norris  
Mr. Terry Jennings  
Ms. Terri Mainwaring  
Ms. Onnie Shekerjian  
Ms. Myrna Sheppherd  
Ms. Corinne Velasquez



# Arizona State Legislature

1700 West Washington

Phoenix, Arizona 85007

July 26, 2000

The Honorable Brenda Burns  
President of the Senate  
1700 West Washington  
Phoenix, AZ 85007

The Honorable Jeff Groskost  
Speaker of the House  
1700 West Washington  
Phoenix, AZ 85007

Dear President Burns and Speaker Groskost:

Laws 1998, Chapter 218 (HB 2697) established the School Fingerprinting and Criminal History Information Technical Advisory Committee. Committee membership was expanded by Laws 1999, Chapter 262. The Committee was charged with conducting hearings, reviewing and studying issues related to the fingerprinting of certified public school personnel and issuing a report to the Legislature by December 15, 1999. The attached report was prepared to comply with the provisions of Laws 1999, Chapter 262.

As chairmen of the Committee, we would like to thank the members of the Committee for their diligent work and participation on the Committee. We would also like to recognize the number of public citizens and stakeholders that came before the Committee to testify and provide input on this very important and evolving issue. It is our hope that the State of Arizona move forward to ensure the safety of public school students.

Sincerely,

Senator Tom Smith, Cochair  
School Fingerprinting & Criminal History  
Information Technical Advisory Committee

Representative Laura Knaperek, Cochair  
School Fingerprinting & Criminal History  
Information Technical Advisory Committee

TS/LK/KS/jas  
Attachment

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*All materials submitted to the Committee and tapes of the meeting are on file with the Senate Resource Center.*

**SCHOOL FINGERPRINTING & CRIMINAL HISTORY  
INFORMATION TECHNICAL ADVISORY COMMITTEE  
FINAL REPORT**

**MEMBERS:**

Senator Tom Smith, Co-Chair  
Senator Linda Aguirre  
Mr. Tom Boone, Asst. Superintendent, Deer Valley Unified School District  
Mr. Craig Emanuel, Investigator of Crimes Against Children, Dept. of Education  
Mr. Chuck Essigs, Asst. Superintendent for Business Services, Mesa Unified School District  
Ms. Kristi Ford, Payson School District No. 10  
Dr. Renae Humberg, Sierra Vista School District  
Mr. Terry Jennings, Maricopa County Attorney's Office  
Ms. Terri Mainwaring, Administrator for Elementary Operations, Peoria Unified School District  
Ms. Onnie Shekerjian, Arizona public school student  
Ms. Myrna Sheppherd, representing a large school district  
Ms. Corinne Velasquez, Administrator, State Board of Education

**ESTABLISHMENT:**

The School Fingerprinting and Criminal History Information Technical Advisory Committee was established by the Legislature of the State of Arizona in the Forty-third Legislature, Second Regular Session (Laws 1998, Chapter 218, Section 3). Committee membership was modified by the Legislature of the State of Arizona in the Forty-fourth Legislature, First Regular Session (Laws 1999, Chapter 262, Section 33).

**COMMITTEE CHARGE:**

The purpose of the Committee is to do the following:

- Improve the safety of students in public schools who are in contact with persons employed by a school district, but for whom a fingerprint check has not been completed;
- Reduce the costs of conducting fingerprinting and criminal history information checks for school districts; and
- Expedite the certification process for school personnel.

**REQUIREMENTS:**

The Committee shall submit a report of its findings to the President of the Senate and the Speaker of the House of Representatives by December 15, annually.

**TERMINATION:**

December 31, 1999

**PUBLIC MEETINGS:**

Although created in 1998, the Committee did not meet until the 1999 legislative interim period. Many of the issues to be examined, as noted in the charge of the committee, were believed to have been resolved with the enactment of Laws 1998, Chapter 218, Section 3 and other fingerprinting “clean-up” legislation (Laws 1999, Chapter 316). During the 1999 legislative session, changes were made to expand the committee membership in S.B. 1336 (Laws 1999, Chapter 262, Section 33).

The Committee held two public meetings. Proceedings of these meetings were recorded for the public and minutes, attachments and tapes are on file in the Senate Resource Center.

December 6, 1999 (Minutes-Attachment D)

December 16, 1999 (Minutes-Attachment F)

**RECOMMENDATIONS:**

The Committee adopted the following recommendations:

- Develop legislation to recognize other states’ certification and provide reciprocity.
- Develop legislation to require that all certified school employees be fingerprinted or refingerprinted upon renewal of certification.

# **ATTACHMENT**

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NEW LANGUAGE APPEARS LIKE THIS

*Stricken language appears like this*

Remaining language appears like this

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## Chapter 262 - 441R - C Ver of SB1336

**Reference Title: committees; boards; establishment criteria; repeal**

Sec. 33. Laws 1998, chapter 218, section 3 is amended to read:

Sec. 3. School fingerprinting and criminal history information technical advisory committee; duties

A. A technical advisory committee is established consisting of the following members *appointed by the speaker of the house of representatives* :

1. At least one member of the house of representatives and not more than two of whom are from the same political party **AND WHO ARE APPOINTED BY THE SPEAKER OF THE HOUSE OF REPRESENTATIVES .**

2. One member with expertise in investigating crimes against children **WHO IS APPOINTED BY THE SPEAKER OF THE HOUSE OF REPRESENTATIVES .**

3. One member representing a small isolated school district **AND WHO IS APPOINTED BY THE SPEAKER OF THE HOUSE OF REPRESENTATIVES .**

4. One member representing a large school district having a student count of *5000* **FIVE THOUSAND** or more **AND WHO IS APPOINTED BY THE SPEAKER OF THE HOUSE OF REPRESENTATIVES .**

5. One member with expertise in school personnel administration **WHO IS APPOINTED BY THE SPEAKER OF THE HOUSE OF REPRESENTATIVES .**

6. One member who is a parent of a child enrolled in a public school in Arizona **AND WHO IS APPOINTED BY THE SPEAKER OF THE HOUSE OF REPRESENTATIVES .**

**7. AT LEAST ONE MEMBER OF THE SENATE, NOT MORE THAN TWO OF WHOM ARE FROM THE SAME POLITICAL PARTY, AND FIVE MEMBERS WHO SATISFY THE REQUIREMENTS PRESCRIBED IN PARAGRAPHS 2 THROUGH 6 OF THIS SUBSECTION AND WHO ARE APPOINTED BY THE PRESIDENT OF THE SENATE.**

B. The speaker of the house of representatives shall designate one member to serve as *a chairperson* **COCHAIRPERSON** of the committee . *and* **THE PRESIDENT OF THE SENATE SHALL DESIGNATE ONE MEMBER TO SERVE AS COCHAIRPERSON OF THE COMMITTEE.** Membership shall also include the superintendent of public instruction or **THE SUPERINTENDENT'S** designee.

C. The unexcused absence of a member for more than three consecutive meetings is justification for removal. If the member is removed, notice shall be given of the removal pursuant to section 38-292, Arizona Revised Statutes.

D. Vacancies shall be filled by appointment of a qualified person by the person who is entitled to make the appointment as provided in subsection A of this section.

E. The committee may use the expertise and services of legislative staff, joint legislative budget committee staff, the staff of the department of education , and the staff of the state board of education.

F. Members of the committee are not eligible to receive compensation or reimbursement of expenses.

G. The committee shall:

1. Explore policy options to improve the safety of students in public schools who are in contact with persons employed by a school district, but for whom a fingerprint check has not been completed.

2. Explore policy options for reducing the cost of conducting fingerprinting and criminal history information checks for school districts.

3. Explore policy options for expediting the certification process for school personnel.

4. Submit a report by December 15 , **1998, OF EACH YEAR** containing the committee's findings and recommendations including any proposed legislation to the speaker of the house of representatives **AND THE PRESIDENT OF THE SENATE** .

**ATTACHMENT  
B**

# ARIZONA STATE LEGISLATURE

## INTERIM MEETING NOTICE OPEN TO THE PUBLIC

### School Fingerprinting and Criminal History Information Technical Advisory Committee

**Date:** Monday, December 6, 1999

**Time:** 1:30 p.m.

**Place:** Senate Appropriations Room 109

#### AGENDA

1. Call to Order
2. Review of Charge and History
  - Legislative Staff
3. Presentations
  - "Fingerprinting and the Certification Process"  
**Leslie Hetzer**  
Director of Certification  
Arizona State Board of Education
  - **Corinne Velasquez**  
Executive Director  
Arizona State Board of Education
  - "Applicant Fingerprint Processing"  
**D. C. Britt**  
Manager, AZAFIS, Operations Division  
Department of Public Safety
4. Public Testimony
5. Discussion and Recommendations
6. Closing Remarks and Adjournment

#### **Members:**

Senator Smith, Cochair  
Senator Aguirre  
Mr. Tom Boone  
Mr. Craig Emanuel  
Dr. Chuck Essigs  
Ms. Kristi Ford  
Dr. Renee Humberg

Representative Knaperek, Cochair  
Representative Norris  
Mr. Terry Jennings  
Ms. Terri Mainwaring  
Ms. Onnie Shekerjian  
Ms. Myrna Sheppherd  
Ms. Corinne Velasquez

Persons with a disability may request a reasonable accommodation such as a sign language interpreter, by contacting the Senate Secretary's Office: (602)542-4231 (voice). Requests should be made as early as possible to allow time to arrange the accom

**ATTACHMENT  
C**

**ARIZONA STATE LEGISLATURE**  
**Forty-fourth Legislature – First Regular Session**

**SCHOOL FINGERPRINTING AND CRIMINAL HISTORY INFORMATION**  
**TECHNICAL ADVISORY COMMITTEE**

Minutes of Meeting  
Monday, December 6, 1999  
Senate Appropriations Room 109 – 1:30 p.m.

**Members Present**

Senator Linda Aguirre  
Senator Tom Smith, Cochair  
Representative Debora Norris  
Representative Laura Knaperek, Cochair  
Mr. Craig Emanuel  
Dr. Chuck Essigs  
Ms. Kristi Ford  
Ms. Terri Mainwaring  
Ms. Onnie Shekerjian

**Members Absent**

Mr. Tom Boone  
Dr. Renee Humberg  
Mr. Terry Jennings  
Ms. Myrna Sheppard  
Ms. Corinne Velasquez

(Tape 1, Side A)

The meeting was called to order by Senator Smith at 1:30 p.m. and was immediately recessed for lack of a quorum. The meeting reconvened at 1:38 p.m. and attendance was noted.

**CHARGE AND HISTORY OF THE COMMITTEE**

**Kimberly Yee, Senate Education Research Analyst**, explained the Committee was established by Laws 1999, chapter 262 and the Committee's charge is to improve the safety of students in public schools who are in contact with employees hired by school district personnel whose fingerprint checks have not yet been completed. In addition, the charge is to reduce the cost of fingerprinting and criminal history checks for school districts and to expedite the certification process for school personnel. She noted the Committee is required to submit reports annually by December 15 of each year, including any proposed legislation, and the Committee is repealed from and after December 31, 1999.

**Eileen Klein, House Advisor to the Majority**, explained she was formerly the House Education Committee Analyst and in 1998 worked on H.B. 2697, which created this Committee. She stated the legislation deals with how to get certified and uncertified school district personnel into the classroom prior to receiving the results of a fingerprint check. She noted the problem at the time was that because statute requires personnel to be fingerprinted before being in the classroom, districts were having to hire people who were certified to work along with those who were still waiting for their fingerprint results to come back. H.B. 2697 granted temporary authority to allow personnel to be in the classrooms unsupervised while they were waiting for the fingerprint check results, if the school districts complied with the following:

1. Documentation of the necessity of hiring and placing someone in a classroom prior to obtaining fingerprint results.
2. Completion of a statewide criminal history background check by the Department of Public Safety every 120 days until receipt of the fingerprint results.
3. Obtaining references from the applicant's current employer and the past two employers, unless the applicant was employed at their previous job for more than five years.
4. Supervision of the applicant until the results of the fingerprint check are completed. "Supervised" was not defined in statute and interpretation was left to the discretion of the school district.

Ms. Klein explained if an applicant was awaiting permanent certification, then the Arizona Department of Education (ADE) was to issue a conditional certification to those individuals until they obtained permanent certification.

Ms. Klein noted that H.B. 2697 created a study committee of House members to follow up on the conditional certification process and to cover the issues of student safety and expediting the certification process. The committee never convened because at the time it was felt that many of the issues were largely resolved. Senate members were added to the Committee by the 1999 legislation and the charge remained the same.

**Representative Knaperek** explained this was her legislation and was established to resolve any potential problems because when the legislation was being worked, some concerns were expressed.

**Senator Aguirre** requested two questions be addressed:

1. How long it takes to obtain a conditional certificate?
2. Does the certificate have to be in place before an applicant is hired by the district?

Ms. Klein, with respect to the second question, noted that the district could hire prior to the receipt of the permanent certification and the conditional certification, as long as the district has met all of the other requirements listed above.

Senator Smith noted one problem, especially in the rural areas, is that a district will hire a teacher and maybe a week or two before the school year starts that teacher will get a better offer and there is insufficient time to obtain a fingerprint check for a new hire. He pointed out another problem in Maricopa County is that some of the superintendents feel they could be held personally responsible if a teacher who is not certified does something wrong before the certification process is complete.

**Kathy Knox, House Research Analyst for the Public Institutions and Universities Committee and the Rural and Native American Affairs Committee**, explained that an interagency task force worked for several years to consolidate and streamline the fingerprinting process for several state agencies. The agencies are those that license people to work with children and developmentally disabled adults and children, and include:

- Administrative Office of the Courts (AOC)
- Department of Economic Security (DES)
- Arizona Department of Education (ADE)
- Department of Health Services (DHS)
- Department of Juvenile Corrections (DJC)
- Department of Public Safety (DPS)

Ms. Knox explained in 1998 legislation was adopted that established a new division within DPS to screen applicants for fingerprint clearance cards. Prior to 1998, each agency had a different procedure for fingerprint clearance. The legislation standardized the procedures by rewriting certain sections of law. Class one and class two fingerprint clearance cards were created by the 1998 bill. A class one card allows a person to work with all children, while a class two card allows a person to work with children, but not with developmentally disabled children.

Ms. Knox stated that in order to get a clearance card, a person cannot have been convicted of certain crimes, which are listed in the legislation. However, a person who is initially denied a fingerprint clearance card can ask for a hearing and present their case to the Board of Fingerprinting. This would allow, for example, a person who has been convicted of a drug charge but who is now rehabilitated, to work as a drug counselor. The exception would be made only if the Board was convinced it was a good idea. The Board consists of a representative from AOC, DES, ADE, DHS and DJC.

Ms. Knox stated in 1999 legislation was enacted to address some of the problems brought to light during the development and implementation phase. Many of the provisions were requested in order to clarify the original provisions; however, a few were substantive changes:

1. Non-certified school employees were deleted from the two-tiered fingerprint clearance card system established by the 1998 legislation. Non-certified school personnel will continue to be fingerprinted under the "old" system. Certified personnel will be fingerprinted according to the new system.

2. Falsification or misrepresentation on an application for employment with a school district was classified as a class 3 misdemeanor (up to 30 days in jail/\$500 fine).
3. Exempted instructors who teach students off school property at a college or university or as part of a vocational training program from fingerprinting requirements. Written consent of the parent or guardian of the pupil is required in this situation.
4. Allows a school district to provide general supervision rather than direct supervision for a person who has been hired before the district has received the results of their fingerprint check.
5. Postponed the effective date of the 1998 legislation from July 1, 1999 to August 16, 1999.

Senator Smith noted that Kathy Knox had worked on the fingerprint bill for several years. He explained DPS was made the central depository for all fingerprinting and they received money to rehabilitate one of their buildings. He stated that approximately 93% of people who have their fingerprints checked do not have problems that show up. He explained the time element for getting fingerprint checks completed is still a problem and stated there are still some "bugs" to work out in the system.

In response to Representative Knaperek, Ms. Knox stated she believes representatives of the school districts and the ADE brought the amendment to exempt non-certified employees from the new system.

**Tom Pickrell, representing the Arizona School Boards Association (ASBA)** explained that ASBA and the Arizona Association of School Personnel Administrators requested the change. He noted that one consequence of entering into the fingerprint clearance card system is that the school district is no longer entitled to see the criminal history of the applicant and when this was realized, the school districts became concerned. As a result there was a lack of confidence and the school districts felt they were losing control over the information they needed for hiring purposes.

In response to Representative Knaperek, Mr. Pickrell explained that the school district was not able to obtain the full information because of the terms of the agreement between the FBI and the DPS. A criminal history check cannot be transferred beyond the Board of Fingerprinting or the DPS when the issuer is the Board of Fingerprinting or the DPS. However, if the school district originates the application for the fingerprint clearance check, then the district will receive the full report. He explained this policy is a result of a federal/state agreement regarding how criminal history information is handled.

Representative Knaperek questioned why the school district would not originate the request on a non-certified employee applicant. Mr. Pickrell stated under the fingerprint clearance card system, the originator is the applicant who wants the card, however, under the system that was retained, the school district is asking for the fingerprint check. Representative Knaperek clarified that under the new system it is the individual as opposed to the district.

Representative Knaperek questioned why it is not a problem for certified applicants. Mr. Pickrell stated there certainly are issues. He explained since a teacher must be fingerprinted as part of their certification, school districts do not routinely fingerprint teachers, but rather have traditionally accepted the judgment of the State Board of Education that the teacher is qualified to be teaching in the school district.

Senator Aguirre questioned if the individual could sign a release allowing the school district to obtain all information. Mr. Pickrell stated he has not researched that issue, but he did not see why a district could not ask the individual to provide a criminal history record if they have it.

## **PRESENTATIONS**

**Lt. Rick Knight, Legislative Liaison, DPS, introduced Mr. D.C. Britt, Manager of the Arizona Automated Fingerprint Identification System (AZAFIS).** Mr. Britt presented an Overview entitled the Applicant Fingerprint Processing School Employee Applicants (see Attachment A). He stated the specific question as to who can have access to fingerprint information is governed by federal public law as well as state statutes, and is not just a matter of an agreement between the FBI and DPS.

Mr. Britt explained access of fingerprint information primarily does not go to who originates the card but rather who makes the decision; the concept being that only those people who need that information should have access to it. The decision-maker in the case of non-certified personnel is the school district. On the certificated side ADE does not need that information because the decision has already been made, the information has been reviewed, and the criminal history information is not disseminated any further than is necessary to make that fitness determination. He added the information is considered highly confidential.

Senator Aguirre questioned if someone was accused but not convicted, would the school district get that information as well? Mr. Britt stated they would receive arrest and conviction information and the same information is provided in each case, it is just provided to a different place. Senator Smith stated he knows many of the districts want the information individually, however, it goes to the ADE because they are the ones who certify teachers and if the person is not qualified to teach, they are not certified.

Mr. Essigs stated school districts have confidence in the ADE certification process for certificated employees. He noted there is a large turnover rate with noncertificated employees and fingerprint checks come back relatively quickly with the system in place now. He referenced page 4 of his handout regarding the turnaround times for fingerprint processing.

(Tape 1, Side B)

Mr. Britt noted that it is taking longer at the present time because the FBI misplaced approximately 30,000 fingerprint cards. He stated they are working with the FBI on a daily basis to correct the problem. He added he is confident the FBI will get the problem resolved.

In response to Senator Smith, Mr. Britt indicated the FBI has resolved 85% to 90% of the problem, but a few hundred of the cards are still missing.

In response to Mr. Essigs, Mr. Britt stated the State level check has always been turned around within 3-5 days and that timeline continues today and has not degraded.

Ms. Shekerjian asked what the DPS goal is in terms of timelines? Mr. Britt referred to pages 4 and 5 of his handout.

Ms. Ford stated it is taking 3-4 months to get a certificated employee through the process, which might be because they are in a rural district. Mr. Britt responded that did not sound correct and he would follow up on it. Senator Smith requested that Ms. Ford meet with Mr. Britt after the meeting regarding this problem.

Ms. Ford stated their biggest problem is out of state hirings because of the length of the FBI process.

Ms. Mainwaring stated part of the problem is that teachers come to the districts from out of state and they are just starting the process and many of the in-state applicants have already gone through the process. Ms. Ford added there is no recognition of state-to-state certification and it is necessary to start at "square one".

Senator Smith suggested that legislative staff meet with those involved and identify the specific problems.

Representative Knaperek stated it sounded like a reciprocity issue, which would require legislation and noted that as long as another state's standards are the same as Arizona's, or better, there should not be a problem.

Representative Norris stated that she is also from the rural area and last year it took her three months to obtain her completed fingerprint check.

Senator Smith requested that Mr. Britt report back to him at the end of the school year on the progress of the fingerprint process.

In response to Mr. Essigs, Senator Smith stated that one of the tasks of the Committee will be to look into the problems involved with out-of-state hirings.

In response to Representative Knaperek, Mr. Britt stated non-certified fingerprint checks go directly to the school districts.

In response to Representative Knaperek, Senator Smith stated it would be inappropriate at this time to work on a one-tiered system because other agencies are also trying to get involved in the DPS fingerprint system and are being brought in one at a time on a step by step basis and suggested that at the present time it is best to leave it like it is.

Ms. Ford concurred with Senator Smith explaining that early release certificates cannot be obtained if the first tier is taken away.

Kathy Knox clarified that non-certified and certified employees are in the two-tiered system under the original legislation from 1998. Last year the school districts had concerns once they realized they were not going to be able to get criminal history background information on all of the people as they had in the past. The districts came to the Legislature and asked that the non-certified be "carved out" of the two-tiered system.

**Craig Emanuel, Committee Member, presented information on behalf of Corinne Valasquez, Executive Director, Arizona State Board of Education and Leslie Hetzer, Director of Certification, Arizona State Board of Education.**

Mr. Emanuel suggested streamlining the timeline by strike in the eighteen-month requirement in Arizona Revised Statutes, section 15-534, subsection H, because a fingerprint card is good for three years. He stated the three years allows a student at one of the State universities in a preparatory program to start the process three years prior to their graduation date which would reduce delay time.

In response to Representative Knaperek, Mr. Emanuel stated as he understood it, the two-tiered fingerprint system is an on-line automated system, so if there is any criminal history movement by the cardholder, it would be reported immediately to the entity that had requested the fingerprint clearance card.

Senator Aguirre suggested that students begin the process prior to or during the student teaching process. Senator Smith stated that recommendation would be researched.

Ms. Hetzer explained certification has become a function of the State Board of Education and was formerly under the ADE. She indicated she has made many new changes since her employment began last May, including longer customer service hours; a counter for various customer services; 21-line "live" phone system; and a 28% production increase with a smaller staff.

(Tape 2, Side A)

Senator Aguirre asked if any of the functions of certification are available "on-line". Ms. Hetzer explained she does not know the exact problem, but there is presently a security issue using the Internet, but they are definitely looking at that possibility in the future.

Ms. Hetzer stated they have taken a proactive approach and are going out to the universities and meeting with the student teachers and informing them of the fingerprinting process, which is in addition to the work the universities are doing in this area.

Senator Smith stated he believes the number one area of concern is to try to speed up the fingerprint check timeline.

Mr. Britt stated they have taken steps to correct the problem and hope to have it resolved soon. He said the problem is not just with the FBI but also with software problems at the DPS. He emphasized that the FBI has been very cooperative and has been working very hard to resolve the problem.

Ms. Ford stated that a big concern of their personnel department is that when a Class 2 card is received and no further information is given, it automatically puts up a "red flag" in the personnel department and they do not hire the person. Senator Smith stated an applicant should provide the information if they are honest and want to be hired.

Representative Knaperek pointed out that "developmentally disabled" is a "child" and a parent of a "typical" child, might wonder why they were held to a different standard.

Representative Knaperek, referencing page 4 of the handout, questioned if the \$44 total fee is paid every three years. Mr. Britt confirmed it was. He was not sure if the non-certified fee was an annual fee or how often it had to be renewed.

**Jay Kaprosy, Legislative Liaison, ADE**, explained that presently a teacher certificate is valid for six years and an individual is able to obtain their fingerprints prior to certification. He added there is not a requirement at this time that once you are fingerprinted that you ever have to be fingerprinted again. As a result, there are three years when DPS can track if an offense has occurred.

Mr. Kaprosy stated there has been discussion as to whether that system is effective or not in trying to create a higher level of safety. He indicated the State Board of Education would like to have legislation introduced this year to require a valid fingerprinting card or proof of submitting an application for a new fingerprinting card for recertification. He stated the reason is that every three years may prove to be punitive and that this was the best way to assure a higher level of safety. He said currently, the language reads that for recertification the applicant will not be required to obtain a fingerprint card or to be fingerprinted at all, which the Board felt was an oversight.

Representative Knaperek stated she thought an employee did not actually have to be fingerprinted again every three years and that the fingerprint was somehow "updated". Mr. Kaprosy indicated the law reads that for the purposes of certification a person needs a valid class 1 or class 2 fingerprint card and there is no requirement that the person at all times maintain a valid fingerprint card.

Representative Knaperek clarified that what the Legislature did was change the statute that mandated certification based on this practice, but did not address the issue of recertification within this practice. Mr. Kaprosy stated in the past an individual would come in for certification and get fingerprinted, which gives a "snapshot" of criminal history for one point in time, and they were exempt from ever being fingerprinted again. He stated the Department does feel a huge step has been taken to better that system and increase safety, however one more step should be taken to have individuals fingerprinted again. He did not know if DPS would have them

electronically on file or not, but the person would have to go through some process to obtain a fingerprint card.

Senator Aguirre stated it would be an extreme burden on a teacher to be refingerprinted each time they are recertified. Senator Knaperek stated there are actually two issues; recertification and refingerprinting.

Mr. Kaprosy stated whether there is a need to actually physically roll fingerprints again is one issue and DPS would be better to speak to that. He clarified there is no mechanism in place, other than someone reporting to the ADE, regarding the issue of recertification.

In response to Senator Smith, Mr. Britt explained that when DPS submits the fingerprint cards they are "flagged" so that if there is an arrest, a confidential report is printed in his office on a daily basis indicating such. He clarified that this process only applies to fingerprints under the Applicant Clearance Card Team (ACCT) Process, not the non-certified, which is part of the reason for the difference in the cost. He cautioned that it is only a state-level check and is not the FBI, and that is why the refingerprinting is required. He explained that when the FBI is finished with the fingerprint cards they destroy them, as a result, the fingerprints have to be resubmitted to the FBI to obtain current information. He stated the FBI does not have a "flag" type program and the only way to find out activity of an offense in another state in the interim is to rerun the fingerprint cards at the national level.

In response to Mr. Emanuel, Mr. Britt indicated that the fingerprints are kept in the ACCT database until the person reaches age 99 and are not removed after three years. Mr. Britt clarified under the present three-year period, if in year four a crime is committed, no one is notified because the card will have expired. He added it is their understanding of the statute that every three years there will be a resubmission of the fingerprint cards to be run through the FBI process again.

In response to Senator Aguirre, Mr. Kaprosy explained that it was more appropriate and fair to teachers that they simply be refingerprinted upon recertification.

(Tape 2, Side B)

Representative Knaperek stated it sounds like we are proposing a stricter, more regulated system and suggested that the school districts, teacher unions and school board associations should be contacted to find out if this is a liability issue. Mr. Kaprosy stated it will be an additional requirement placed on teachers for recertification, however, it is a safety and common sense issue so that we can assure every individual who enters a classroom with students has the highest level of security that we can reasonably ask.

Senator Smith stated it is obvious more discussion is needed and he asked that someone representing DPS, ADE, teachers, school districts, etc. get together and talk about this issue. He stated he has worked on the fingerprinting issue for four or five years and he is confused.

Ms. Ford stated that when they have a new hire in her district they also run the applicant through Arizona Drug Screening and Investigations.

Senator Smith noted he was not looking to impose any additional administrative burdens on teachers.

In response to Senator Smith, Ms. Yee explained the intent of today's Committee meeting was to resolve some of these issues but also to inform the Committee that the legislation from last year did take care of many of the issues noted in the charge of the Committee. She suggested the issues brought forward at this meeting could be discussed in a working group assigned by the Chairman.

Senator Smith stated he would form a working group to resolve the problems and asked Ms. Yee to take the names of those members who want to be on the working group. Ms. Yee suggested the working group meet at the end of next week and she would generate a memo to indicate the time and place and would send a copy to all members of the Committee.

Senator Smith asked Mr. Kaprosy to put something in writing before the working group meets identifying: the problem; what is actually happening at the present time; and recommendations to solve the problem. Senator Smith asked that Craig Emanuel and D.C. Britt attend the working group meeting.

Ms. Yee asked that anyone in the audience who would like to attend the working group meeting contact her after the meeting adjourns.

Representative Knaperek asked Ms. Yee to draft reciprocity language for the working group meeting.

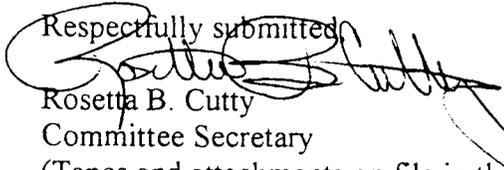
**Greg Harris, representing the Northeast Valley Education Consortium,** stated the Consortium includes Cave Creek, Fountain Hills, Scottsdale, and Paradise Valley. He volunteered his services to work on the reciprocity issue and the superintendent personal liability issue.

Senator Smith asked Mr. Kaprosy to also provide information for the working group on the issues Mr. Harris mentioned. Mr. Kaprosy stated he does not have personal knowledge regarding the liability issue and suggested the Committee may need a lawyer.

Senator Smith asked Mr. Pickrell to look into the issues Mr. Harris brought up.

Senator Smith adjourned the meeting at 3:10 p.m.

Respectfully submitted,

  
Rosetta B. Cutty  
Committee Secretary

(Tapes and attachments on file in the Secretary of the Senate's Office.)

# **OVERVIEW**

## **APPLICANT FINGERPRINT PROCESSING**

### **SCHOOL EMPLOYEE APPLICANTS**

AZAFIS OPERATIONS DIVISION  
ARIZONA DEPARTMENT OF PUBLIC SAFETY

**APPLICANT FINGERPRINT PROCESSING  
SCHOOL EMPLOYEE APPLICANTS**

<p align="center"><b>Individuals Applying for Certificated Positions APPLICANT CLEARANCE CARD TEAM (ACCT) PROCESSING</b></p>	<p align="center"><b>Individuals Applying for Noncertificated Positions APPLICANT TEAM ONE (AT-1) PROCESSING</b></p>
<p align="center"><b>Statutory Requirements</b></p> <ul style="list-style-type: none"> <li>• ARS 41-1758, ARS 15-534, Section 28.</li> <li>• Applicant must obtain a Class I or Class II Fingerprint Clearance Card.</li> <li>• Applicant must obtain a Fingerprint Clearance Card renewal every 3 years.</li> <li>• Fingerprint Clearance Card requirements apply to any applicant who applies for initial certification on or after 08/16/99.</li> <li>• Certificated personnel who applied for initial certification prior to 01/01/90 were not required to be fingerprinted as a condition of certification.               <ul style="list-style-type: none"> <li>- These individuals are exempt from the Fingerprint Clearance Card requirements, even when applying for their 6-year teacher certification renewal.                   <ul style="list-style-type: none"> <li>... Unless their school district requests the Dept. of Education to fingerprint the individual.</li> </ul> </li> <li>- ARS 15-534.a does not clearly state what Dept. of Education is to do with these fingerprints.                   <ul style="list-style-type: none"> <li>... <i>Note:</i> Dept. of Education no longer has statutory authority to obtain federal criminal history checks for certification purposes.</li> </ul> </li> <li>- The Department of Education <i>may</i> issue conditional certification <i>before</i> the applicant has obtained a Fingerprint Clearance Card. (See Page 6)</li> </ul> </li> </ul>	<p align="center"><b>Statutory Requirements</b></p> <ul style="list-style-type: none"> <li>• ARS 15-512.</li> <li>• School districts must ensure applicants for noncertificated employment are fingerprinted for criminal history background checks. This requirement does not apply to:               <ul style="list-style-type: none"> <li>- Certificated personnel.</li> <li>- Personnel required to be fingerprinted for a license they must hold as a condition of employment. (<i>Example:</i> licensed school nurse.)</li> <li>- Personnel requesting reinstatement at the same district, <i>if</i> the individual applies for reinstatement within a year.</li> <li>- Parents of a child in the district and other volunteers who provide direct services to pupils under the supervision of a certificated employee.</li> </ul> </li> <li>• An individual currently, or previously, employed by District A who is applying for a noncertificated position with District B, must be fingerprinted.</li> <li>• A district <i>may</i> fingerprint any other current or prospective paid or non-paid employee for the purpose of obtaining a criminal history background check.               <ul style="list-style-type: none"> <li>- The district must pay the FBI applicant processing fee for these particular categories of employees.</li> <li>- The district <i>may not</i> charge these particular applicants for the cost of the FBI fee.</li> </ul> </li> <li>• Fingerprints to be submitted within 20 days of employment.</li> </ul>

**APPLICANT FINGERPRINT PROCESSING  
SCHOOL EMPLOYEE APPLICANTS**

**Individuals Applying for Certificated Positions  
APPLICANT CLEARANCE CARD TEAM (ACCT) PROCESSING**

**The Process**

- Applicant obtains Fingerprint Clearance Card packet (fingerprint card, application, and instructions) from ACCT or Dept. of Education. *Note: some schools and school districts also stock these packets.*
- Applicant completes personal identification sections on the fingerprint card provided.
- Applicant has his/her fingerprints taken on the card provided.
- Applicant completes application form.
- Applicant mails completed fingerprint card and application form, along with appropriate fee, to ACCT.
- ACCT establishes computer file (ACCTRAK) on applicant.
- AZAFIS Fingerprint Unit (AFPU) searches fingerprints through Arizona Automated Fingerprint Identification System (AZAFIS) and returns search results to ACCT.
- ACCT mails fingerprint card to Federal Bureau of Investigation (FBI) for fingerprint-based national level check.
- ACCT reviews state-level search results:
  - If applicant is awaiting trial, or has been convicted of a precluded offense (as designated in ARS 41-1758), clearance card is denied.
  - If disposition data is incomplete, ACCT researches further.
  - ACCT may not issue a clearance card based solely upon state-level results.
- ACCT receives, reviews, FBI search results.
  - If applicant is awaiting trial, or has been convicted of a precluded offense (as designated in ARS 41-1758), Fingerprint Clearance Card is denied.

**Individuals Applying for Noncertificated Positions  
APPLICANT TEAM ONE (AT-1) PROCESSING**

**The Process**

- School district obtains blank fingerprint cards and inventory forms from AT-1.
- School district ensures that applicant is fingerprinted on card provided.
- School district submits completed fingerprint card, completed inventory sheet, and applicable FBI fees to AT-1.
- AT-1 establishes computer file (FACT) on applicant and conducts state-level criminal history check based upon name, date of birth, and social security number.
  - *Note: No state-level fingerprint search is done on applicant fingerprint cards submitted for AT-1 processing.*
- AT-1 mails results of state-level criminal history records checks to contributing school district for use in making its fitness determination.
- AT-1 mails fingerprint card to FBI for national-level criminal history records search, based upon fingerprint search.
- AT-1 receives FBI search results.
- AT-1 mails FBI results to contributing school district for use in making its fitness determination.

**APPLICANT FINGERPRINT PROCESSING  
SCHOOL EMPLOYEE APPLICANTS**

<p align="center"><b>Individuals Applying for Certificated Positions APPLICANT CLEARANCE CARD TEAM (ACCT) PROCESSING</b></p>	<p align="center"><b>Individuals Applying for Noncertificated Positions APPLICANT TEAM ONE (AT-1) PROCESSING</b></p>
<p align="center"><b>The Process (Continued)</b></p> <p>... Notice to applicant includes specific information concerning the precluded offenses which resulted in the denial being issued.</p> <p>... ACCT notifies the Dept. of Education when a denial issued. Notification may not include criminal history information.</p> <ul style="list-style-type: none"> <li>- If arrest disposition is incomplete, ACCT researches further.</li> <li>• If missing arrest disposition data (from either state or national level checks) cannot be located within 15 business days following receipt of FBI search results, ACCT must deny clearance cards.             <ul style="list-style-type: none"> <li>- Denials based upon this 15-day requirement are automatically appealable to the Board of Fingerprinting (BOF).</li> </ul> </li> <li>• BOF may grant a "good cause exception," and request DPS to issue a Fingerprint Clearance Card.             <ul style="list-style-type: none"> <li>- If the board is unanimous, there are no restrictions.</li> <li>- If not, card is good only at designated agencies.</li> </ul> </li> <li>• If the applicant does not have a criminal history record, or his/her criminal history record does not include any of the precluded Class I offenses , a Class I Fingerprint Clearance Card is issued.</li> <li>• If the applicant has a criminal history record that does not include any of the precluded Class II offenses, a Class II Fingerprint Clearance Card is issued.</li> <li>• ACCT notifies the Department of Education whenever either a Class I or Class II Fingerprint Clearance Card has been issued.</li> <li>• Cleared applicants are responsible to notify their employers when they receive their Fingerprint Clearance Cards.</li> <li>• Fingerprint Clearance Cards are good for 3 years from date of issue.</li> </ul>	<p align="center"><b>The Process (Continued)</b></p> <p align="center">N/A</p>

**APPLICANT FINGERPRINT PROCESSING  
SCHOOL EMPLOYEE APPLICANTS**

<p align="center">Individuals Applying for Certificated Positions <b>APPLICANT CLEARANCE CARD TEAM (ACCT) PROCESSING</b></p>	<p align="center">Individuals Applying for Noncertificated Positions <b>APPLICANT TEAM ONE (AT-1) PROCESSING</b></p>
<p align="center"><b>Fees</b></p> <ul style="list-style-type: none"> <li>• FBI: \$24</li> <li>• State: \$20</li> <li>• Total: <u>\$44</u></li> </ul>	<p align="center"><b>Fees</b></p> <ul style="list-style-type: none"> <li>• FBI: \$24 (Except for volunteers working with minors, the elderly, or the disabled, for whom the fee is \$18.)</li> <li>• State: N/A</li> <li>• Total: <u>\$24</u></li> </ul>
<p align="center"><b>Projected Average Turnaround Times:</b></p> <ul style="list-style-type: none"> <li>• ACCT: 8 calendar days when all applicable offense and disposition information is received in response to criminal history checks.</li> <li>23 calendar days when pertinent disposition information is not received in response to criminal history checks.</li> <li>• FBI: 16 calendar days.</li> <li>• Total: <u>24-39</u> calendar days.</li> </ul>	<p align="center"><b>Projected Average Turnaround Times</b></p> <ul style="list-style-type: none"> <li>• AT-1: 7 calendar days.</li> <li>• FBI: 16 calendar days.</li> <li>• Total: <u>23</u> calendar days.</li> </ul>

**APPLICANT FINGERPRINT PROCESSING  
SCHOOL EMPLOYEE APPLICANTS**

Individuals Applying for Certificated Positions <i>APPLICANT CLEARANCE CARD TEAM (ACCT) PROCESSING</i>	Individuals Applying for Noncertificated Positions <i>APPLICANT TEAM ONE (AT-1) PROCESSING</i>
<p align="center"><b>Actual Average Turnaround Times</b></p> <ul style="list-style-type: none"> <li>• ACCT: 20 calendar days<sup>1</sup></li> <li>• FBI: 45 calendar days (est.)<sup>2</sup></li> <li>• Total: <u>65</u> calendar days (appx.)</li> </ul>	<p align="center"><b>Actual Average Turnaround Times</b></p> <ul style="list-style-type: none"> <li>• AT-1: 5.5 calendar days.</li> <li>• FBI: 56.2 calendar days.</li> <li>• Total: <u>61.7</u> calendar days.<sup>3</sup></li> </ul>

<sup>1</sup>Includes 3 days ACCT processing prior to submission to FBI and 17 days ACCT processing after return of FBI search results.

<sup>2</sup>Because of continuing software and other types of problems, return of FBI search results has been sporadic. For example, none of the search results concerning applicant cards submitted to the FBI in August 1999 were received until November 1, 1999. Search results concerning other fingerprint cards submitted in August 1999, have still not been received. As ACCT just began receiving FBI results in November regarding cards submitted in September, it appears that FBI turnaround time for cards submitted after August 1999 will be somewhat shortened; i.e., roughly 30-45 calendar days.

<sup>3</sup>Based upon AT-1 fingerprint cards completely processed since July 1, 1999.

**APPLICANT FINGERPRINT PROCESSING  
SCHOOL EMPLOYEE APPLICANTS**

**Conditional Certification Requirements**

ARS 15-534.E permits the Department of Education to issue conditional certification before an applicant has obtained a Fingerprint Clearance Card if *all* the following conditions are met:

- The hiring school district verifies in writing on a form provided by the Department of Education the necessity for hiring and placement of the applicant prior to the applicant receiving a Fingerprint Clearance Card, and
- the hiring school district has the Department of Public Safety (DPS) run a *state-level only* fingerprint-based check every 20 days, and
- the hiring school district completes a search of criminal records in all local jurisdictions outside Arizona in which the applicant has resided in the previous five years, and
- the hiring school district obtains references from the applicant's current employer and two most recent previous employers, except for applicants who have been employed for at least five years by the applicant's most recent employer, and
- the hiring school district provides general supervision of the applicant until the applicant receives permanent certification from the Department of Education.

*rules*

# ARIZONA STATE LEGISLATURE

## INTERIM MEETING NOTICE OPEN TO THE PUBLIC

### School Fingerprinting and Criminal History Information Technical Advisory Committee

**Date:** Monday, December 6, 1999  
**Time:** 1:30 p.m.  
**Place:** Senate Appropriations Room 109

#### AGENDA

1. Call to Order
2. Review of Charge and History
  - Legislative Staff
3. Presentations
  - "Fingerprinting and the Certification Process"  
**Leslie Hetzer**  
Director of Certification  
Arizona State Board of Education
  - ~~Corinne Velasquez~~ *Craig Emanuel*  
Executive Director  
Arizona State Board of Education
  - "Applicant Fingerprint Processing"  
**D. C. Britt**  
Manager, AZAFIS, Operations Division  
Department of Public Safety
4. Public Testimony
5. Discussion and Recommendations
6. Closing Remarks and Adjournment

#### Members:

- ✓ Senator Smith, Cochair
- ✓ Senator Aguirre
- ✓ Mr. Tom Boone
- ✓ Mr. Craig Emanuel
- ✓ Dr. Chuck Essigs
- ✓ Ms. Kristi Ford
- 8 ✓ Dr. Renee Humberg

- ✓ Representative Knaperek, Cochair
- ✓ Representative Norris
- ✓ Mr. Terry Jennings
- ✓ Ms. Terri Mainwaring
- ✓ Ms. Onnie Shekerjian
- Ms. Myrna Sheppherd
- Ms. Corinne Velasquez

Persons with a disability may request a reasonable accommodation such as a sign language interpreter, by contacting the Senate Secretary's Office: (602)542-4231 (voice). Requests should be made as early as possible to allow time to arrange the accommodation.

**ATTACHMENT  
D**

**REVISED \*\*\* REVISED \*\*\* REVISED**

## **ARIZONA STATE LEGISLATURE**

### **INTERIM MEETING NOTICE** **OPEN TO THE PUBLIC**

**School Fingerprinting and Criminal History  
Information Technical Advisory Committee**

**Date:** Thursday, December 16, 1999  
**Time:** 1:00 p.m. to 2:30 p.m.  
**Place:** Senate Appropriations Room 109

#### **AGENDA**

1. Call to Order and Opening Remarks
2. Overview of School Fingerprinting Issues
3. Public Testimony
4. Discussion
5. Consideration of Recommendations
6. Adjournment

#### **Members:**

Senator Smith, Cochair  
Senator Aguirre  
Mr. Tom Boone  
Mr. Craig Emanuel  
Dr. Chuck Essigs  
Ms. Kristi Ford  
Dr. Renee Humberg

Representative Knaperek, Cochair  
Representative Norris  
Mr. Terry Jennings  
Ms. Terri Mainwaring  
Ms. Onnie Shekerjian  
Ms. Myrna Sheppherd  
Ms. Corinne Velasquez

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**ATTACHMENT  
E**

# ARIZONA STATE LEGISLATURE

## Interim Committee Meeting School Fingerprinting and Criminal History Information Technical Advisory Committee

Minutes of the Meeting  
Thursday, December 16, 1999  
1:00 p.m. Senate Appropriations Hearing Room

### Members Present:

Senator Tom Smith, Co-Chair  
Senator Linda Aguirre  
Dr. Chuck Essigs  
Ms. Onnie Shekerjian  
Mr. Terry Jennings

Representative Laura Knaperek, Co-Chair  
Mr. Craig Emanuel  
Ms. Terri Mainwaring  
Ms. Corinne Velasquez

### Members Absent:

Representative Debora Norris  
Ms. Kristi Ford  
Dr. Renee Humberg

Mr. Tom Boone  
Ms. Myrna Sheppherd

### Staff:

Kimberly Yee, Senate Education Analyst

Kathy Seeglitz, Senate Assistant Research Analyst

### TAPE 1, SIDE A

Senator Smith called the meeting to order at 1:00 p.m., and called for a short recess for lack of a quorum. The meeting reconvened at 1:12 p.m. and attendance was noted.

Senator Smith informed the Committee he has met with Jay Kaprosy, Legislative Liaison, Arizona Department of Education (ADE) and D.C. Britt, Department of Public Safety (DPS) to discuss their assistance with the fingerprinting issue. Senator Smith explained that if a teacher commits a crime within or outside the State of Arizona, DPS will be notified and DPS would then notify ADE. He noted teachers would not be grandfathered into this routine. Senator Smith indicated there are approximately 1200 teachers who have not been fingerprinted within the State, and approximately 123,000 individuals within the database of certificate holders that have never been fingerprinted. He mentioned that this process of grandfathering provisions was done in another state with 40 percent encountering some problems.

In response to Senator Smith's statement, Jay Kaprosy, Legislative Liaison, Arizona Department of Education (ADE) replied that the actual percent was 6 percent, an important and sizeable-enough number to take note of the issue. Mr. Kaprosy referenced ADE's memo dated December 16, 1999 regarding Proposal for the Fingerprinting of Certification Personnel for Recertification (See Attachment B). The proposal requires schoolteachers and administrators seeking recertification to submit a new application for fingerprint clearance.

Mr. Kaprosy expanded on Senator Smith's comments on the grandfathering provision by stating the provision has allowed a considerable number of teachers to never be fingerprinted and they are, in many cases, teaching. Mr. Kaprosy pointed out that the 123,000 individuals were not all classroom teachers, they are certified individuals who are not fingerprinted. Currently, he indicated, there are approximately 45,000 teachers working in the State, and there are individuals, administrators, etc. who also have teaching certificates, but there is a considerable number of potential certificates of individuals who have not been fingerprinted.

Mr. Kaprosy stated there is no formal process for the notification of the individual's employer or the State Board of Education in an instance of criminal activity occurring after the initial criminal history check. He noted this as a "true deficiency" to get the State Board of Education informed of those issues. Fingerprinting for recertification would enable the employer and the Board to become aware of criminal history. Currently, under the fingerprint clearance card system, DPS has the ability to recheck the criminal history of cardholders during the three-year period in which the fingerprint card is valid. Mr. Kaprosy noted there would continue to be a gap in the security of students as a fingerprint card is valid for three years and a teaching certificate is valid for six years.

Mr. Kaprosy added that other proposals might have included asking teachers to maintain a valid fingerprint card at all times. He said that this routine would have been burdensome, by dealing with another date. ADE's conclusion, he said, is to have fingerprinting become a portion of other recertification's process that would be the least burdensome to teachers. Mr. Kaprosy pointed out that the justification of this is obviously safety. He said if one situation occurs, it is probably one too many, therefore, ADE would like to take whatever steps they can to assure the highest level of security that they can reasonably expect in the State.

In referencing the second page of the memo, Mr. Kaprosy outlined the type of situations dealt with by ADE. He described the Mr. X case, a real case, as one of the more egregious cases currently being reviewed and awaiting a hearing before the Professional Practices Advisory Committee under the State Board of Education. Mr. Kaprosy explained the Mr. X case, a grandfathered teacher, one of many, who has never been fingerprinted for certification. Mr. X received his certificate in 1987 with no fingerprint and background checks; then went on to teach in several school districts. During this time, he was arrested for assaults in Kingman and Glendale. Most disturbing was an assault of a child off school grounds in 1984. Mr. X continues to teach and has never received a fingerprint check, regardless of the fact that in 1998, his certificate was renewed and was not required to have a fingerprint check at that time. Mr. Kaprosy concluded that Mr. X would have been removed from the classroom as a result of the assaults, had there been a fingerprint check done prior to recertification. Mr. Kaprosy emphasized this to be a real problem and an issue of safety.

Mr. Kaprosy stated he is familiar with some of the reactions to this as another small cost and administrative burden for teachers and possibly for districts as well. However, both are quite insignificant in comparison to potentially putting students at risk. At this point, he said, ADE hopes to move forward with legislation to ask that teachers be refingerprinted for the purposes of recertification or to be refingerprinted in those situations in which they had not been refingerprinted in the past.

Senator Smith questioned whether those individuals who have never been fingerprinted would wait until the recertification process and then fingerprinted. Mr. Kaprosy answered that would be correct.

In response to Senator Smith and Ms. Shekerjian, Mr. Kaprosy replied that all administrators and teachers must go through a renewal of their certificates. He stated this is an issue to ultimately get all of those individuals working closely with children fingerprinted.

Representative Knaperek reminded the Committee of the last meeting held on the issue of how difficult the recertification process is for out of state teachers coming in and perhaps looking into reciprocity in the certification process. Representative Knaperek noted that Brian Lockery has been doing some work on the issue.

**Brian Lockery, House Education Research Analyst**, reviewed a rough draft on reciprocity recommendations (See Attachment C). He said one possible recommendation is to have the State Board of Education enter into contract with states that offer substantially equal requirements for fingerprinting cards or certification. Allow certification for one year, then have teachers recertified in Arizona. Second recommendation is to have the State Board of Education enter into contract with the states that offer equal requirements and have them roll them into the next recertification process, fingerprinted in Arizona.

Representative Knaperek asked for input or possible restrictions. Senator Smith replied that it was his recommendation to not have the bill held up because the issue brought forth would take time for ADE to work with other states to get some type of reciprocity. By that time, he said the fingerprinting process might be resolved, as far as time element goes.

Senator Smith informed the Committee that the Federal Bureau of Investigation (FBI) in Washington, D.C. is currently in the process of locating approximately 33,000 fingerprinting cards that have been lost. The FBI will determine by the end of the week whether they have been lost, if the cards are lost, the individuals will be refingerprinted at no cost. He noted there are currently problems with the time it takes to go through this process by sending the cards to Washington and having them returned. However, input would be taken regarding Representative Knaperek's proposal by possibly adding an amendment to the fingerprinting bill as it goes through the process.

Dr. Essigs reminded the Committee that what could be done to help Arizona's school districts recruit teachers would be some reciprocity, now that recruitment is done nationally.

Ms. Shekerjian said she supports comments made by Dr. Essigs by adding that it would be a little bit easier and would make sense to recruit in those states where reciprocity took place.

In terms of reciprocity, Mr. Kaprosy stated ADE would like to see it in place for a limited amount of time, so that individuals could be recertified with Arizona's rigorous academic standards and to the assessments and qualifications the Legislature and State Board of Education have set. Reciprocity would be important for getting more teachers to the State. He added that a year or such is appropriate to address those issues that are specific and have been deemed important to Arizona.

**D.C. Britt, Manager, Fingerprinting Identification Bureau/DPS**, replied that DPS has no position on the issue of reciprocity that he is aware of. However, on the timing of the recertification, he said he would like to see a uniform time for recertification managed more efficiently because teachers are the only group in the program that have a different date than everyone else.

In response to Senator Smith's inquiry about teachers having a fingerprint card in order to become certified, Mr. Britt affirmed that was correct after the effective date as stated in ADE's proposal of having to go back and pick up the individuals who have not been fingerprinted.

Senator Smith asked if the teacher would now be fingerprinted every time they would apply for recertification. Mr. Britt answered this was not correct, the individuals might be fingerprinted before that, a year or two, depending on what their time period is, but they would always need a valid clearance card. As stated under ARS 41-1758.02 he said that is every three years. Senator Smith responded to not consider the three years because the three-year routine would be changed.

Senator Smith questioned whether teachers applying for recertification every six years could have their fingerprint card submitted with their recertification. He asked if anyone would be prevented from doing this, taking approximately 30 to 60 days before it goes through the fingerprinting process, but would appear to be more simplified that they apply to get fingerprinted every time they apply for recertification.

In response to Senator Smith's question, Mr. Britt replied that this is ADE's proposal. This is different than everyone else in the Applicant Clearance Card Team (ACCT) program by having different cycles for everyone plus introducing another for people out of state by having their one-year, three-year, and six-year recertification process under the same program. Senator Smith asked that the three-year be excluded for people that are not in education because it would be taken care of within the next year or so. For the present time, he asked the Committee if they agreed that educators would be certified and fingerprinted when they get their initial certification, and fingerprinted every time they apply for recertification. The Committee had no problems with this.

Senator Smith said the separate issue that has not been completed yet, is reciprocity. He said if teachers from out of state contracted with another state and there is an agreement that basically the certification process is about equal or so forth, there is some reciprocity. He asked the Committee if they understand that the reciprocity would be good for a year and at the end of the year they would apply for certification in the State of Arizona.

In response to Senator Smith's question, Dr. Essigs answered that they have agreed some timelines were appropriate, taking the Arizona Constitution and a few other things into consideration, but he did not think everyone agreed upon the one-year time period.

On the fingerprinting issue, Dr. Essigs clarified Senator Smith's query that a teacher from Iowa, New York or Minnesota who came to Arizona would initially be fingerprinted. With regard to recertification, Senator Smith asked the Committee if they have any problems whether that becomes a different issue if they are given one, two or three years.

Representative Knaperek asked why teachers should be refingerprinted if they were just fingerprinted in Iowa and have been through the system for all the states. She feels there are some "bugs" to work out, but sees the Committee making the recommendation that they move forward with some legislation, whether it be attached to the bill or not, she said it did not matter. She emphasized the need to have ADE and the Legislature start working on this by taking a look at the issues because there are too many pieces hanging out for them to know how to do it.

Representative Knaperek stated the Committee needs to at least make sure that there will be legislation offered this year whether it passes, or wait until 2001 if it takes that long to work out the "bugs". She noted that some parts of it could happen, assuming right away.

**Representative Knaperek moved the Committee include in a recommendation or move forward on the agreement of reciprocity with other states. The motion was CARRIED by voice vote.**

Senator Smith referred to the fingerprinting issue, asking if there was a motion that the teachers are fingerprinted upon renewal of certification.

**Representative Knaperek moved the Committee recommend that all certified employees will be fingerprinted again upon renewal of their certification.**

Mr. Jennings asked for clarification if the recommendation included an individual going through the physical process of being fingerprinted or just a recheck of an existing fingerprint. Senator Smith explained that his could not be done because the fingerprints are destroyed once the FBI run the prints through the system, therefore, a new set of fingerprints would be needed.

**The motion CARRIED by voice vote.**

Senator Smith asked for any public testimony.

**Mr. Tom Pickrell, representing Arizona School Board Association (ASBA)** said ASBA would certainly support the refingerprinting of certificate holders and noted that reciprocity is a good idea. In reference to Mr. Kaprosy's statement of not having a formal process of reporting and transferring subsequent criminal encounters with a certificate holder, Mr. Pickrell stressed the need to have this type of system established. Right now, he said, the certification unit does not know exactly who the employer is of the certificate holder. He suggested that perhaps the State Board place a "rule making" in the system so that they are aware of the certificate holders' employers, so that when information is received from DPS there could be immediate notification and the district can take action. One concern with regard to the ADE situation is that, while they may learn that a clearance card has been suspended, they are still at a serious disadvantage, and they do not have the criminal history report. He stressed the importance to understand that while ASBA is trying to get DPS and the Board of Fingerprinting involved, ADE still has a vital role to play with regard to the investigation of certificate holders. He emphasized the need to have a strong and capable investigative arm at ADE and he does not see how that role is performed without having a criminal history report. He noted this is an ongoing concern he has as a result of this new system.

One other concern he has involves the State Board of Education hearings regarding the fitness of an individual to teach or to work in the school system. He said that becomes a public hearing at some point when a complaint is filed; for that reason the press can look and see what is going on. Under the new system, the Board of Fingerprinting will be operating completely in an executive session context. Paraphrasing from the Old Testament, Mr. Pickrell recited, "there will come a time, there will be a king or pharaoh who does not remember the prophet Moses." He expressed his confidence in the individual who has been appointed by the ADE to serve on the Board of Fingerprinting. He noted his

concern about some of the decisions the State Board has made with regard to some of the people who are up for receipt of their license, and feels the press has done a good job in reporting some of the decisions that have been made. He feels the need to understand that the press is the media's ability to comment upon the judgement of these public officials is going to be closed out completely.

Referring to the ADE Memo, Representative Knaperek asked Mr. Pickrell if the issues he brought forth were outlined in this memo. Mr. Pickrell noted that the ADE Memo was prepared in response to Senator Smith's request that the issue of administrator liability be looked at regarding a decision to put an employee into service before the fingerprints have cleared. He noted that the issues he mentioned are other issues he has as the clearance program unfolds.

Senator Smith asked Mr. Britt if he would like to respond to Mr. Pickrell's statement. Mr. Britt replied that is their plan when DPS is aware of information on subsequent offenses. DPS will notify the State Board of Education and the Board of Fingerprinting, which includes specific criminal history information. Senator Smith replied that was his understanding.

Mr. Pickrell emphasized that while there is a reporting system from DPS to ADE, ADE will be in a position to report to the employing school district immediately that a card has been suspended.

Senator Smith said he understands a teacher is employed by ADE and not by the district. Confidentiality is involved, the district is notified and the district can put the teacher on administrative leave with pay, but what he thinks DPS wants to do is send the information to the district. He asked Mr. Pickrell if his understanding is correct?

#### **TAPE 1, SIDE B**

Mr. Pickrell replied that currently the state law allows the exchange of information between the employing school district and the certification unit. He stated that in his opinion, they are capable of exchanging that information. He explained the certification unit does know a card has been suspended. However, they do not know who employs the certificate holder and who to call to inform that one of their employees has lost his or her card.

Representative Knaperek questioned why the teacher could not be matched to the employer. In response to the discussion, Dr. Essigs said that each October, the School District Employee Report (SDER) that consists of all the teachers is sent to ADE so that they should be matched. However, the report does not stay current, it is a "snapshot" as of October, but that would be 99 percent of teachers under an annual contract so they should be able to match up to the SDER in their certification file to see where that teacher is employed.

Senator Smith commented it is an ADE problem. Mr. Pickrell agreed with Senator Smith and stated that he believes it will take some rule making on the part of the State Board. He said he agrees the information is submitted to the ADE, but there is not a system in place that notification happens automatically.

In response to Mr. Pickrell, Senator Smith replied that this appears to him as an internal problem and not a legislative problem. He explained that if ADE or the State Board of Education receive

information and do not know where the teachers are employed, it is ADE's responsibility to find the district where they are employed.

Ms. Velasquez replied that one of the issues that has been discussed with Mr. Pickrell several times has been the State Board of Education's responsibility for the certification of teachers and not the employment. She added that having been advised by the Attorney General's office, the information they receive from DPS is for the purpose of certification only and should not be used against someone in an employment situation.

Senator Smith questioned why the school should not be notified if a report was received that Mr. Tom Smith committed an assault and was charged with a felony. Ms. Velasquez clarified that the information could be used to file a complaint against an individual's certificate. However, if it were an offense that is being thought of as not worth going after an individual's certificate, no one would be notified.

Representative Knaperek asked in what circumstances, if ADE did not think it was important enough to take away someone's certificate, what other types of information would be needed. Dr. Essigs replied that there might be a teacher with two or three other violations in a district where there were violations of policy that may not be enough for the State to withdraw their certificate, but is adequate for the district to dismiss them. He said that the teachers are in their classroom everyday, noting that the district should have all the information on their employees.

Representative Knaperek stressed that a criminal history was being discussed and asked what types of criminal history did not warrant ADE perhaps revoking or suspending a certificate. She said she could not think of any other than jaywalking or some violation of that nature.

In response to Representative Knaperek, Ms. Velasquez gave the example of a 25-year-old convicted of a DUI; the State would probably not file a complaint to revoke that person's certificate, although the employer may want to be aware of it.

Representative Knaperek said she understands the Attorney General has said the employer can not be contacted about what has happened to someone's certificate. Ms. Velasquez replied that the information that is being provided to them does not extend to their employment.

Senator Smith asked Mr. Kaprosy if he would like to add any light to the discussion. Senator Smith said that DPS was doing their job by notifying ADE that an individual has been charged with a crime.

Mr. Kaprosy said that he was "treading on thin ice" only because he does speak for the State Board of Education, and this truly being a State Board of Education issue, where ADE is associated with it. In reference to the SDER that Dr. Essigs referred to, he explained that ADE might take the necessary steps to try and locate the teacher. However, he thinks the State of Board of Education is working in conjunction with ADE in situations, which action has been taken against someone's certificate or a hearing has been ordered. He added that ADE would do what they can to notify districts in that situation with the information that they have.

Senator Smith said he is aware of teachers who have been charged with child molestation and have been put on administrative leave until a hearing has been done. After the hearing, some action is taken. Therefore, he is aware that some school districts are getting information one way or another.

Dr. Essigs replied that is because most of the cases start at the school districts. He explained that normally the school district is aware before the State Board of Education because the person was arrested. He said that the district is required by statute to inform the State Board of Education when there is a reason for an individual's certificate to be withdrawn. In the case where it comes the other way, as discussed, he suggested that legislation could be enacted which says that information is available to the State Board of Education also needs to be available to the school district.

Ms. Velasquez said she understands that this would be some type of federal secondary dissemination.

Senator Smith agreed and said this was not likely to be solved today, and that legal consultation and information would be looked into. He asked Mr. Kaprosy if he is aware of the problem? Mr. Kaprosy answered that he understood the problem and commended Mr. Pickrell on the issues he brought forth. The first issue was a concern as to whether the State Board of Education would receive the criminal history information as a result of an offense of a card holder, stating that this has been cleared up as Mr. Britt made reference to. The other issue of the State Board of Education is notifying districts of situations where a hearing has been scheduled for an individual's certificate, he said that is an issue that may need to be addressed. At this time, they are working in conjunction with the State Board of Education and ADE to locate individuals in those types of situations, but there is not legislative or board rule provision to do that. He said that there is simply a friendly relationship between ADE and the State Board of Education to share information like this. Mr. Kaprosy stated that this would be looked into further along with Mr. Pickrell after this meeting.

Senator Smith also asked that the Attorney General's office be contacted to find out what can be done.

Ms. Shekerjian said that she is aware of some incidents that occurred in the past couple of years and asked whether or not this reporting piece has been in place from DPS to the State Board for a long period of time and just was not effective. Mr. Kaprosy replied that the reporting piece has been in place since October 16<sup>th</sup>, in fact, it was something new and believes it will improve the safety of students because there is an opportunity to keep up-to-date on the potential in-state offenses. He said with the blessings of this Committee ADE would go forward with the proposals to re-fingerprint for recertification or simply fingerprint for certification. He said that it was also important to know that the language was drafted to make sure there was no further concern about this so that there would not be a situation, such as the case that is currently being dealt with the FBI.

Senator Smith said what he gathers is that when the school knows about it, it goes to ADE, but the problem exists when DPS knows about it, notifies ADE but does not reach the school. Mr. Kaprosy stated that is correct. Senator Smith asked Mr. Kaprosy to have this looked into and to inform the Legislature as to whether changes would be needed in the statutes to get this straighten out. Mr. Kaprosy agreed.

Senator Smith introduced Mr. John Wright, and turned the gavel to Co-Chair Representative Knaperek.

**John Wright, Vice-President of the Arizona Education Association**, middle school teacher from Window Rock School District in Northeastern Arizona said he would like to offer brief comments from the perspective of a certified teacher and advocate for those teachers recognizing the serious needs on record keeping, reporting, and notification.

Representative Knaperek asked Mr. Wright if he was present when this Committee made its first two and last two recommendations. Mr. Wright stated that he entered the room just after the recommendation was based on the memorandum from the ADE. With regard to the reciprocity recommendation, Mr. Wright stated that he was given the information, and understood the recommendation made.

Representative Knaperek asked Mr. Wright if he could specifically address any of the issues, recommendations or concerns brought forth. Mr. Wright said that the issue of reciprocity is valuable, one both in terms of notification, and in a larger context in terms of what might be done for certification itself. He said he thinks that the fingerprinting of certificated personnel for recertification is an example of asking teachers to "bare the brunt" of a problem that is essentially a record keeping and notification problem. He said if he was here in a timely manner, he would have asked the Committee to not consider their recommendation because he believes the issue is something that can be worked out in a technologically and bureaucratically efficient way.

Representative Knaperek replied that the Committee does not have an answer and does wish the issue could be taken care of in a bureaucratic manner, but there isn't and that the safety of children is at stake. She said unfortunately this is what happens every year when she is down at the Capitol, she knows there will be more and more people fingerprinted because of the issues of today's society. Representative Knaperek asked the members if they would like to have further discussion on the Committee's recommendation, she would be willing to listen, otherwise the meeting would be adjourned and have further discussion during the legislative session.

There being no further business the meeting was adjourned at 1:56 p.m.

Respectfully submitted,



Melissa C. Upshaw, Committee Secretary

(Tape and attachments on file in the Secretary of the Senate's Office/Resource Center.)





## Arizona Department of Education

# Memorandum:

**To:** School Fingerprinting and Criminal History Information Technical Advisory Committee  
**Date:** 12/16/99  
**Re:** Proposal for the Fingerprinting of Certificated Personnel for Recertification

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### Proposal:

**Require that school teachers and administrators seeking recertification submit a new application for fingerprint clearance.**

### Background:

Arizona's fingerprinting laws have grandfathered teachers that had been certificated prior to the enactment of the fingerprinting law. This provision has remained throughout the recent revisions of the teacher fingerprinting process. Although Arizona employs approximately 40,000-45,000 teachers at a given time, the database of certificate holders indicates 123,321 individuals that have never been fingerprinted. Other states have had grandfathering provisions. **For example, Florida reversed their grandfather provision and determined that 6.25% of their certificate holders had an offense on their criminal history.**

Historically, fingerprint and criminal history reports required for certification have provided a snapshot of the individual's criminal history, and **there has been no process for the notification of the individual's employer or the State Board of Education in an instance of criminal activity occurring after the initial criminal history check.** Fingerprinting for recertification would enable the employer and the Board to become aware of criminal activity.

Under the current fingerprint clearance card system, The Department of Public Safety has the ability to recheck the criminal history of cardholders during the three-year period in which the fingerprint card is valid. **There will continue to be a gap in the security of students as a fingerprint card is valid for three years and a teaching certificate is valid for six years.**

### Justification:

**The State should take any reasonable and appropriate action to assure the highest level of safety for children. A single incident in which a child is harmed or exposed to inappropriate behavior is too many. Teachers should be fingerprinted for recertification.**

## **A Real world application of fingerprinting deficiencies...**

This is an actual case that is currently under review by the Professional Practices Advisory Committee of the State Board of Education. It is included in this correspondence to illustrate the weaknesses this proposal hopes to address.

### **Mr. X**

- Mr. X is a teacher who was never required to receive a fingerprint check. Mr. X is a grandfathered teacher.
- **Mr. X received his teaching certificate in 1987 and attested to his fitness to teach on his application. Mr. X was not fingerprinted at the time of his certification.**
- No background check of Mr. X was conducted at the time.

*Note: Background checks are an effective method of determining past behavior and may bring to light information not available on a criminal history check. It is strongly advised that school districts and charter schools perform thorough background investigations.*

- Mr. X taught in Kingman, Arizona
- **In 1991, Mr. X is alleged to have been convicted of assault in Kingman, Arizona**
- Mr. X taught in Bowie, Arizona
- **In 1991, Mr. X was arrested for assault with intent in Glendale, Arizona**
- **In 1994, Mr. X was arrested for assault of a child off school grounds**
- Mr. X has taught in the Washington Elementary School District in Phoenix, Arizona
- Mr. X has taught in the Dysart Unified District in Phoenix, Arizona
- **In 1998, Mr. X renewed his teaching certificate without receiving a fingerprint check**
- **Mr. X is currently teaching**
- Mr. X is awaiting a hearing before the Professional Practices Advisory Committee
- **The State Board of education received notice of criminal activity only as the result of a newspaper article exposing Mr. X.**

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**ASBA MEMORANDUM**

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**To:** Rep. Laura Knaperek and Sen. Tom Smith (Co-Chairs) and members of the School Employee Fingerprinting and Criminal History Information Technical Advisory Committee

**From:** Tom Pickrell

**Subject:** School Administrators' professional responsibility and personal liability for a school district's failure to conduct a fingerprint check, background investigation or other pre-hiring procedure.

**Date:** December 13, 1999

**cc:** Eileen Klein, Kathy Knox, Kimberly Yee, John Wright, Mary Kay Haviland, Greg Harris, Jack LaSota

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At the meeting last week, you asked me to examine the legal question whether a school administrator could be held responsible for the district's failure to conduct a fingerprint check, background investigation or other pre-hiring procedure. Specifically, there was concern that an administrator could lose his or her certificate or suffer personal liability if a student were injured by a teacher or other employee who was placed into service before the district obtained the results of a fingerprint check.

In responding to your question, I will consider separately the issues of professional responsibility and of personal liability. In brief summary, an administrator who has been delegated responsibility for conducting pre-employment investigations could suffer disciplinary action, including revocation of certification, if the State Board of Education determines that the administrator's actions constitute unprofessional conduct. Whether the State Board of Education would find unprofessional conduct or take disciplinary action probably would depend upon whether the administrator's actions were willful or wanton. With regard to the issue of personal liability, an administrator would be covered by the district's liability insurance unless the insurer proved that the administrator failed to act in good faith and within the scope of his or her duties.

I have also attached to this memo a more detailed summary of the new Fingerprint Clearance Card System as it applies to school employees.

**A. Professional Responsibility.**

School districts and their officials have a variety of specific duties regarding job applicants and employees that are designed to safeguard students. These duties fall into three categories:

1. **Fingerprint and Background Checks.** Under §A.R.S. 15-512 (A) and (F), the legislature directs school districts to determine the fitness of a noncertificated employee or volunteer to work with students by taking two precautionary measures: 1) a fingerprint check, which involves submitting a person's set of fingerprints to the DPS/FBI and reviewing the person's criminal history report, and 2) a background investigation, which involves making good faith attempts to obtain information about the person's work performance from previous employers. Under §15-512(J), a

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superintendent or designee who is responsible for carrying out the district's policy regarding background investigations is guilty of unprofessional conduct and subject to disciplinary action by SBOE if the person fails to carry out that responsibility. No equivalent statement is made regarding the duty to conduct fingerprint checks.

2. Immoral Conduct Reporting. Under §15-514(B), a superintendent who has reasonable grounds to believe that another certificated person has committed an act of immoral conduct that would constitute grounds for termination or criminal charges must report the conduct to ADE. Failure to report such conduct is grounds for disciplinary action by SBOE.

3. Child Abuse Reporting. Under §15-514(A), any certificated person or governing board member who has reasonable grounds to believe that a certificated person has committed an act that must be reported as child abuse to Child Protective Services or law enforcement agencies must also report the matter to ADE. Failure to make such a report to ADE is grounds for disciplinary action by SBOE.

SBOE is authorized to take disciplinary action, including revocation of certification, against a school administrator who commits immoral or unprofessional conduct. The terms "immoral" and "unprofessional" conduct are not defined by statute; however, the above-cited provisions of Title 15 clarify that, at a minimum, the following actions constitute unprofessional conduct:

- Failing to carry out an assigned duty to conduct background investigations of prospective employees or volunteers.
- Failing to report to ADE immoral conduct by a certificated employee that would be grounds for termination or criminal charges.
- Failing to report to ADE alleged child abuse by a certificated person.

SBOE has discretion to determine when conduct falls sufficiently below professional norms to warrant a finding of unprofessional conduct. In my opinion, SBOE would likely conclude that a school administrator's willful failure to conduct a fingerprint check is unprofessional conduct although that duty is not designated by statute as unprofessional conduct.

At last week's meeting, Greg Harris, speaking on behalf of a group of school districts, mentioned that some school administrators are reluctant to place a teacher or noncertificated employee into service prior to the completion of a fingerprint check because of concern about professional responsibility or personal liability. A.R.S. 15-534(E) requires SBOE to issue a conditional certificate before the teacher obtains a fingerprint clearance card if the school district meets the following requirements:

- Verifies that the district needs to place the teacher into service before the fingerprint card can be obtained.
- Obtains from DPS a statewide criminal history information check.
- Searches the criminal records in all local jurisdictions outside of Arizona where the teacher lived during the past five years.
- Obtains references from the teacher's current employer and two most recent previous employers if the teacher was employed within the last five years.

- Provide general supervision until the teacher receives permanent certification.

Similarly, A.R.S. 15-512(K) allows school districts to put noncertificated employees into service before completion of the fingerprint check if the district documents its need, obtains the DPS criminal history check and previous employment references, and provides ongoing general supervision.

Could a school administrator have his or her certificate revoked because of an incident where a student was injured by an employee who was placed into service before the district or SBOE obtained the results of the fingerprint check? The answer depends upon whether the administrator followed the requirements for conditional placements specified in 15-512(K) and -534(E). If the requirements were met, SBOE could not find unprofessional conduct because the administrator discharged his or her duty. If, however, placement into service was improper because the specified conditions were not met, then SBOE would have discretion to find unprofessional conduct. In such situation, however, the SBOE presumably would consider culpability factors, such as evidence indicating that the failure was willful or inadvertent.

### **B. Personal Liability.**

As a general rule, school districts and their employees are liable for their tortious actions, which would include willful or negligent acts that result in injury to students. Under §12-820.01, a school district is not liable for acts or omissions of its employees constituting "the exercise of an administrative function involving the determination of fundamental governmental policy," but this grant of absolute immunity has been narrowly construed to exclude routine, managerial decisions by school employees. The decisions or procedures followed by a school administrator in determining whether an applicant is suitable for employment, therefore, would in all likelihood not be immune from a tort claim.

Under §A.R.S. 15-387, a school district may procure insurance to pay claims against the district's officers and employees if claims arise when the employees and officers were "acting in the scope of their employment or authority." The coverage agreements issued by The Arizona Risk Retention Trust, which is the State's largest school district liability trust with more than 180 member districts, indicate that a school administrator will be indemnified, as a "covered party" for any liability imposed as a result of a wrongful act that occurs while the administrator acts in his or her official capacity. School administrators may also obtain, at their own expense, additional insurance to cover claims that fall outside of the district's insurance coverage.

Returning to the scenario where a student is injured by an employee placed into service before his or her fingerprints have cleared, I believe that the school district and administrator would receive no immunity from the student's tort claim. The district, however, could expect its liability, if any, to be fully insured. Likewise, the administrator could expect to be indemnified by the district for his or her legal fees and costs unless it were proved that the administrator acted in bad faith or outside of the scope of his or her duties.

Attached is a more detailed summary of the Fingerprint Clearance Card System as it applies to school employees. Please feel free to call or e-mail me with any questions. My telephone number is (602) 254-1100 and my e-mail address is [tpickrell@azsba.org](mailto:tpickrell@azsba.org).

# ASBA LEGAL NOTES

SEPTEMBER 21, 1999

TOM PICKRELL  
DIRECTOR OF LEGAL SERVICES

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## **School Employee Fingerprinting Requirements: A Summary of the New Fingerprint Clearance Card System**

### **I. Certificated Employees**

Effective August 16, 1999, persons seeking certification from the Department of Education must have a valid class one or two fingerprint clearance card. Student teachers who have obtained fingerprint clearance within the 18 months prior to August 16 may obtain their certificates without a fingerprint clearance card. Authority and procedures for the Department of Education to fingerprint applicants for certification are withdrawn.

Applicants for certification must certify to the State Board of Education whether they are awaiting trial or have been convicted of certain criminal offenses. Of these "precludable offenses," misdemeanor drug offenses involving possession of marijuana or dangerous drugs are eliminated and driving under the influence of alcohol or drugs (DUI) and domestic violence are added.

ADE may issue a conditional certificate before the applicant obtains a fingerprint clearance card, provided that the district:

- Verifies in writing on a form provided by ADE the necessity for hiring and placing the applicant into service before a fingerprint check is completed.
- Obtains from DPS a statewide criminal history information check on the applicant. Subsequent criminal history checks must be completed every 120 days until a permanent certificate is received.
- Searches the criminal records of all local jurisdictions outside of Arizona where the applicant has lived in the previous five years.
- Obtains "references" from the applicant's current employer and two most recent previous employers (unless the applicant has had only one employer for the previous five years).
- Provides "general supervision" of the applicant until he or she receives permanent certification from ADE.

The Superintendent of Public Instruction may also impose any additional conditions or restrictions that she deems necessary.

### **II. Noncertificated Employees and Volunteers**

All current legal requirements for the fingerprinting of noncertificated personnel and volunteers by school districts are reinstated, subject to several amendments. School districts must obtain a fingerprint check of all noncertificated employees and other persons who are not employed but provide services directly to students without the

supervision of a certificated employee, unless the person falls within one of the following exemptions:

- Persons hired before January 1, 1990.
- Volunteers who are a parent or legal guardian of a student attending the school.
- Teachers, administrators, bus drivers, child-care workers and other persons who must be licensed to be employed and who must be fingerprinted to be licensed.
- Persons who reestablish employment with the district within 12 months after termination of employment.
- Persons who provide instruction or other education services to a pupil, with the written consent of the parent or guardian of the pupil, under a work-release program, advance placement course or other education program that occurs off school property.

For the purposes of defining who must be fingerprinted, "supervision" means "under the direction of and, except for brief periods of time during the school day or a school activity, within sight of a certificated employee when providing direct services to pupils."

A district may hire and place a noncertificated employee into service before receiving the results of the mandatory fingerprint check. But, if the employee is "required or allowed to have unsupervised contact with pupils," the applicant whose fingerprints have not yet cleared cannot be placed into service unless the district:

- Documents in the applicant's file the necessity for hiring and placing the applicant into service before a fingerprint check can be completed.
- Obtains from DPS a statewide criminal history information check on the applicant. Subsequent criminal history checks are also required every 120 days until a permanent certificate is received.
- Obtains "references" from the applicant's current employer and two most recent previous employers (unless the applicant has had only one employer for the previous five years).
- Provides "general supervision" of the employee until his or her fingerprints have cleared.

The Superintendent of Public Instruction may also impose any additional conditions or restrictions that she deems necessary to protect the health or safety of students.

A person who makes a false statement, representation or certification in any application for employment with a school district or for certification with the Department of Education is guilty of a class three misdemeanor.

### III. Questions and Answers about the Fingerprint Clearance Card System

1. *What is the difference between a class one and class two card?*

If a person has a class two fingerprint clearance card, the criminal history of that person includes an offense that precludes him/her from receiving a class one card. The list of precludable offenses for a class one and class two cards are attached to this memo.

A school district cannot obtain cardholders' criminal history report from DPS. Under A.R.S. §15-512(G), however, school districts can require anyone—applicant or employee, classified or certificated—to submit to a fingerprint check that will enable the district to receive a current criminal history report for the person even if he or she has a fingerprint clearance card. The district must bear the cost of the fingerprint check.

2. *How can a school district or person obtain an application for fingerprint clearance card?*

School districts can obtain fingerprint clearance card application packets to give to persons who they intend to hire as a certificated employee by calling DPS at (602) 223-2279.

3. *How long will it take to get a fingerprint clearance card?*

The fee for a fingerprint clearance card is \$44, and the application process is projected to require from 24 to 39 calendar days if the applicant's criminal history record does not contain a precludable offense. If the applicant has a precludable offense, the process will be delayed until the Board of Fingerprinting can hear a petition for good cause exception.

The substitution of DUI and domestic violence convictions for minor drug convictions on the list of precludable offenses is expected to cause the rate of applications requiring review by the Board of Fingerprinting to increase from 1/2 percent to two percent. In other words, the Board of Fingerprinting may need to hear four times more petitions for a good cause exception from education certificate applicants than the State Board of Education heard when it conducted such hearings.

4. *What information will be on a fingerprint clearance card?*

A fingerprint clearance card will indicate the date of issuance and expiration and the holder's name, height, weight, sex and birthdate. The card will be similar to a driver's license, but not include a photo.

5. *Does a fingerprint card expire?*

Fingerprint clearance cards expire three years after their issuance and will require a subsequent fingerprint check for renewal.

6. *Must an education certificate holder maintain a valid fingerprint card?*

According to §15-534, a person must have a valid class one or class two fingerprint clearance card to apply for an education certificate. A certificate holder, however, is not

required to maintain a valid card to keep his/her certificate in good standing or to renew his/her certificate.

7. *How can a school district get information about the status of an application or fingerprint card?*

A school district can inquire about the status of an application by calling DPS at (602) 223-2279. If the district can provide the control number of the application, DPS will advise whether the application (1) was received or (2) is still in process or (3) has been completed. If the application has been completed, the applicant should be able to produce the card.

School districts also can inquire about the status of a fingerprint clearance card. The district must provide the card number, which is indicated on the card. DPS will respond to this inquiry by stating only that the card number is or is not valid. DPS will not reveal to the employer why the card is invalid. If a card number is invalid, however, this means that the card has expired or has been suspended or revoked.

DPS plans to automate its telephone system that the employer can telephonically transmit the application control or card number and immediately receive a computer-generated voice answer.

8. *What happens if a fingerprint cardholder commits a precludable offense?*

DPS will *suspend* a card prior to its normal expiration if DPS finds that the holder has been charged with a precludable offense after the card's issuance. DPS will *revoke* a card if the holder is convicted of a precludable offense after the card's issuance. If a card has been suspended or revoked, DPS will request that the holder return it, but DPS has no means of recovering the card if the holder does not comply with the request.

9. *Will an employing school district be informed if a teacher or administrator's fingerprint card is suspended or revoked?*

DPS will administer a file stop system for fingerprint clearance cards. Under this system, when a set of fingerprints for any arrest *in Arizona* is submitted to DPS, the prints will be checked to determine if they match those of a cardholder. If a match occurs, DPS will then check to see if the arrest is for a precludable offense. If the offense would preclude the individual from obtaining a clearance card, the card will be suspended and notice of the suspension will be sent to (1) the cardholder, (2) the licensing agency, such as ADE, and (3) the Board of Fingerprinting. The file stop system will not detect arrests outside of Arizona.

SBOE will be informed by DPS when an education certificate holder has been arrested for a precludable offense in Arizona. SBOE, however, currently does not maintain a record of the employers of certificate holders. Therefore, it cannot immediately notify employing school districts when it receives notice that a cardholder has been arrested for a precludable offense. An employing school district may eventually learn of the arrest if the certification unit conducts an investigation to determine whether to decertify the certificate holder.

## ADDENDUM

### I. CLASS ONE OFFENSES

#### Offenses that Absolutely Preclude Clearance:

1. Sexual abuse of a minor.
2. Sexual abuse of a vulnerable adult.
3. Incest.
4. First or second degree murder.
5. Kidnapping.
6. Arson.
7. Sexual assault.
8. Sexual exploitation of a minor.
9. Sexual exploitation of a vulnerable adult.
10. Commercial sexual exploitation of a minor.
11. Commercial sexual exploitation of a vulnerable adult.
12. Felony offenses involving sale, distribution or transportation of, offer to sell, transport or distribute or conspiracy to sell, transport or distribute marijuana, dangerous drugs or narcotic drugs.
13. Robbery.
14. Child prostitution as prescribed in section 13-3212.
15. Child abuse.
16. Abuse of a vulnerable adult.
17. Sexual conduct with a minor.
18. Molestation of a child.
19. Molestation of a vulnerable adult.
20. Manslaughter.
21. Aggravated assault.
22. A dangerous crime against children as defined in section 13-604.01.
23. Exploitation of minors involving drug offenses.
24. Felony offenses involving contributing to the delinquency of a minor.
25. Taking a child for the purposes of prostitution as defined in section 13-3206.

#### Offenses that Preclude Clearance unless a Good Cause Exception is Granted by the Board of Fingerprinting:

1. Endangerment.
2. Threatening or intimidating.
3. Assault.
4. Unlawfully administering intoxicating liquors, narcotic drugs or dangerous drugs.
5. Assault by prisoners with intent to incite a riot or participate in a riot.
6. Assault by vicious animals.
7. Drive by shooting.
8. Assaults on officers or fire fighters.
9. Discharging a firearm at a structure.
10. Indecent exposure.
11. Public sexual indecency.
12. Lewd and lascivious acts.
13. Criminal damage.
14. Aggravated criminal damage.
15. Theft.
16. Unlawful use of means of transportation.
17. Theft by extortion.
18. Shoplifting.
19. Unlawful failure to return rented property.
20. Issuing a bad check.
21. Forgery.
22. Criminal possession of a forgery device.
23. Obtaining a signature by deception.
24. Criminal impersonation.
25. Theft of a credit card or obtaining a credit card by fraudulent means.
26. Receipt of anything of value obtained by fraudulent use of a credit card.
27. Forgery of a credit card.
28. Fraudulent use of a credit card.
29. Possession of any machinery, plate or other contrivance or incomplete credit card.
30. False statement as to financial condition or identity to obtain a credit card.
31. Fraud by person authorized to provide goods or services.
32. Credit card transaction record theft.
33. Bribery of a public servant.
34. Trading in public office.
35. Commercial bribery.
36. Improper influence on a public officer or employee for consideration.
37. Misconduct involving weapons.
38. Misconduct involving explosives.
39. Depositing explosives.
40. Misconduct involving simulated explosive devices.
41. Concealed weapon violation.
42. Enticement of any persons for purposes of prostitution.

43. Procurement by false pretenses of any person for purposes of prostitution.
44. Procuring or placing persons in a house of prostitution.
45. Receiving earnings of a prostitute.
46. Causing one's spouse to become a prostitute.
47. Detention of persons in a house of prostitution for debt.
48. Keeping or residing in a house of prostitution or employment in prostitution.
49. Pandering.
50. Transporting persons for the purpose of prostitution or other immoral purposes.
51. Possession and sale of peyote.
52. Possession and sale of a vapor-releasing substance containing a toxic substance.
53. Sale of precursor chemicals.
54. Possession, use or sale of marijuana, dangerous drugs or narcotic drugs on school grounds or near schools.
55. Manufacture or distribution of an imitation controlled substance.
56. Manufacture or distribution of an imitation prescription-only drug.
57. Manufacture or distribution of an imitation over-the-counter drug.
58. Possession or possession with intent to use an imitation controlled substance.
59. Possession or possession with intent to use an imitation prescription-only drug.
60. Possession or possession with intent to use an imitation over-the-counter drug.
61. Manufacture of certain substances and drugs by certain means.
62. Adding poison or other harmful substance to food, drink or medicine.
63. Dropping objects from an overpass.
64. A criminal offense involving criminal trespass and burglary under Title 13, Chapter 15.
65. A criminal offense involving business and commercial frauds under Title 13, Chapter 22.
66. A criminal offense involving organized crime and fraud under Title 13, Chapter 23.
67. Child neglect.
68. Neglect of a vulnerable adult.
69. Misdemeanor offenses involving contributing to the delinquency of a minor.
70. Driving under the influence of intoxicating liquor or drugs as prescribed in section 28-1381 or aggravated driving under the influence of intoxicating liquor or drugs as prescribed in section 28-1383.
71. Offenses involving domestic violence.

## II. CLASS TWO OFFENSES

### Offenses that Absolutely Preclude Clearance:

1. Sexual abuse of a minor.
2. Incest.
3. First or second degree murder.
4. Sexual assault.
5. Sexual exploitation of a minor.
6. Commercial sexual exploitation of a minor.
7. Child abuse.
8. Sexual conduct with a minor.
9. Molestation of a child.
10. A dangerous crime against children as defined in section 13-604.01.
11. Exploitation of minors involving drug offenses.

### Offenses that Preclude Clearance unless a Good Cause Exception is Granted by the Board of Fingerprinting:

1. Arson.
2. Felony offenses involving contributing to the delinquency of a minor.
3. Felony offenses involving sale, distribution or transportation of, offer to sell, transport or distribute marijuana, dangerous drugs or narcotic drugs.
4. Felony offenses involving the possession or use of marijuana, dangerous drugs or narcotic drugs.
5. Burglary.
6. Aggravated or armed robbery.
7. Robbery.
8. Kidnapping.
9. Manslaughter.
10. Aggravated assault.

11. Driving under the influence of intoxicating liquor or drugs as prescribed in section 28-1381 or aggravated driving under the influence of intoxicating liquor or drugs as prescribed in section 28-1383.
12. Offenses involving domestic violence.

## **Reciprocity Recommendations**

### **(VERY rough language):**

The State Board of Education shall enter into contract with states that require substantially equal fingerprint background checks as this state. The contract shall state that the State Board of Education shall accept the fingerprint background check from that state for a period of one year. After one year, the instructor shall submit all paperwork for a fingerprint background check required by the State Board of Education.

OR

The State Board of Education shall enter into contract with states that require substantially equal fingerprint background checks as this state. The contract shall state that the State Board of Education shall accept the fingerprint background check from that state and that the fingerprint background check is valid for three years.

REVISÉ \*\*\* REVISED \*\*\* REVISED

## ARIZONA STATE LEGISLATURE

### INTERIM MEETING NOTICE OPEN TO THE PUBLIC

#### School Fingerprinting and Criminal History Information Technical Advisory Committee

→ **Date:** Thursday, December 16, 1999  
**Time:** 1:00 p.m. to 2:30 p.m.  
**Place:** Senate Appropriations Room 109

#### AGENDA

1. Call to Order and Opening Remarks
2. Overview of School Fingerprinting Issues
3. Public Testimony
4. Discussion
5. Consideration of Recommendations
6. Adjournment

#### Members:

Senator Smith, Cochair  
Senator Aguirre  
Mr. Tom Boone  
Mr. Craig Emanuel  
Dr. Chuck Essigs  
Ms. Kristi Ford  
Dr. Renee Humberg

Representative Knaperek, Cochair  
Representative Norris  
Mr. Terry Jennings  
Ms. Terri Mainwaring  
Ms. Onnie Shekerjian  
Ms. Myrna Sheppherd  
Ms. Corinne Velasquez

Persons with a disability may request a reasonable accommodation such as a sign language interpreter, by contacting the Senate Secretary's Office: (602)542-4231 (voice). Requests should be made as early as possible to allow time to arrange the accommodation.