

Memo

**To:** Act 166 PreK Providers, Superintendents, Principals and Early Childhood Education Coordinators

**From:** Ken Schatz, Commissioner   
Reeva Murphy, Deputy Commissioner, Child Development Division 

**CC:** Rebecca Holcombe, Secretary of Education  
Al Gobeille, Secretary of Human Services

**Re:** Changes in Vermont law related to background checks for Act 166 preK providers

**Date:** June 23, 2017

The Department for Children and Families is providing this memorandum to explain changes in the law relating to fingerprint supported background checks that were passed by the General Assembly during the 2017 legislative session. Act 49 (H.513) includes changes to title 16 intended to reduce the duplication of background checks for Act 166 preK providers and clarify responsibility for conducting background checks for public and private Act 166 preK providers. The statutory language is found at the end of this document.

Act 49 added a new paragraph that eliminates the responsibility of superintendents for conducting background checks on individuals operating an Act 166 preK program or employed by an Act 166 preK program (please see 16 V.S.A. §255(k) at the end of this memorandum). Act 49 provides for one limited exception, which allows superintendents to conduct background checks on their own employees in public school operated preK programs for the purposes of hiring and employment. The Department for Children and Families Child Development Division is responsible, through its licensing regulations, for conducting background checks on all individuals in Act 166 preK programs.

**Summary**

1. Effective May 23, 2017, superintendents have no obligation, or authority granted in title 16 of the Vermont statutes, to conduct background checks on individuals working exclusively in private Act 166 preK programs, including Head Start and recognized or approved independent school-based programs.
2. Individuals working in private and public Act 166 preK programs will continue to be fingerprinted and have background checks conducted by DCF's Child Development Division (CDD) as part of program licensing requirements following the CDD regulations.

3. Effective May 23, 2017, as a condition of hiring, superintendents have the discretion to fingerprint their new employees in public school-based preK programs and headmasters have the discretion to fingerprint new employees in recognized or approved independent school-based Act 166 preK programs. This background check would be in addition to the background check that CDD will conduct as part of the licensing process.
4. Individuals in any setting seeking an educator’s license will be fingerprinted by the AOE for educator licensure and re-licensure.

<b>Type of CDD PreK Program Licensee</b>	<b>CDD Background Check Authority and Responsibility</b>	<b>Superintendent Background Check Authority and Responsibility</b>	<b>Headmaster Background Check Authority and Responsibility</b>	<b>AOE Background Check Authority and Responsibility</b>
Private Act 166 PreK Provider, including those leasing space in a public school	Required- Program License	None	None	Required only for individuals seeking Educator’s License
Public School-Based Act 166 PreK Provider	Required- Program License	Discretionary- Employment	None	Required only for individuals seeking Educator’s License
Recognized or Approved Independent School-Based Act 166 PreK Provider	Required – Program License	None	Discretionary – Employment	Required only for individuals seeking Educator’s License

Because fingerprint criminal record results cannot be shared across entities for different purposes, this means that some individuals will need to be fingerprinted more than once to meet all requirements.

CDD has information posted on its website about its background check requirements, which may be found at <http://dcf.vermont.gov/cdd-blog/child-development-division-fingerprint-supported-background-checks>. You may also contact Christel Michaud, Director of Child Care Licensing, at (802) 224-6940, with questions related to CDD background check requirements.

Thank you.

**Statute in Title 16 – please note that the changes made by Act 49 (H.513) are underlined, with the section relevant to Act 166 preK providers denoted by underline and bold text.**

§ 255. Public and independent school employees; contractors

(a) Superintendents, headmasters of recognized or approved independent schools, and their contractors shall request criminal record information for the following:

- (1) the person a superintendent or headmaster is prepared to recommend for any full-time, part-time, or temporary employment;
- (2) any person directly under contract to an independent school or school district who may have unsupervised contact with school children;
- (3) any employee of a contractor under contract to an independent school or school district who is in a position that may result in unsupervised contact with school children;
- (4) any student working toward a degree in teaching who is a student teacher in a school within the superintendent's or headmaster's jurisdiction.

(b) After signing a user agreement, a superintendent or a headmaster shall make a request directly to the Vermont Crime Information Center. A contractor shall make a request through a superintendent or headmaster.

(c) A request made under subsection (b) of this section shall be accompanied by a set of the person's fingerprints and a fee established by the Vermont Crime Information Center that shall reflect the cost of obtaining the record from the FBI. The fee shall be paid in accordance with adopted school board policy.

(d)(1) Upon completion of a criminal record check, the Vermont Crime Information Center shall send to the superintendent a notice that no record exists or, if a record exists, a copy of any criminal record.

(2) Upon completion of a criminal record check, the Vermont Crime Information Center shall send to the headmaster a notice that no record exists or, if a record exists:

(A) A copy of Vermont criminal convictions.

(B) A notice of any criminal record that is located in either another state repository or FBI records, but not a record of the specific convictions. However, if there is a record relating to any crimes of a sexual nature involving children, the Vermont Crime Information Center shall send this record to the Secretary who shall notify the headmaster in writing, with a copy to the person about whom

the request was made, that the record includes one or more convictions for a crime of a sexual nature involving children.

(e) Information received by a superintendent or headmaster under subsection (d) of this section shall be forwarded as follows:

(1) In the case of a request other than one made on behalf of a contractor, the superintendent or headmaster shall forward a copy of the information to the person about whom the request was made.

(2) In the case of a request made on behalf of a contractor, the superintendent or headmaster shall inform the contractor in writing either that no record exists or that a record does exist but shall not reveal the content of the record to the contractor. The contractor shall then forward a copy of the information received to the person about whom the request was made.

(f) Information sent to a person by the Secretary, a headmaster, a superintendent, or a contractor under subsection (e) of this section shall be accompanied by a written notice of the person's rights under subsection (g) of this section, a description of the policy regarding maintenance and destruction of records, and the person's right to request that the notice of no record or record be maintained for purposes of using it to comply with future criminal record check requests pursuant to section 256 of this title.

(g)(1) Following notice that a headmaster was notified that a criminal record which is located in either another state repository or FBI records exists, a person may:

(A) sign a form authorizing the Vermont Crime Information Center to release a detailed copy of the criminal record to the person; or

(B) decline or resign employment.

(2) Any person subject to a criminal record check pursuant to this section may challenge the accuracy of the record by appealing to the Vermont Crime Information Center pursuant to rules adopted by the Commissioner of Public Safety.

(h) A superintendent or headmaster shall request and obtain information from the Child Protection Registry maintained by the Department for Children and Families and from the Vulnerable Adult Abuse, Neglect, and Exploitation Registry maintained by the Department of Disabilities, Aging, and Independent Living (collectively, the Registries) for any person for whom a criminal record check is required under subsection (a) of this section. The Department for Children and Families and the Department of Disabilities, Aging, and Independent Living shall adopt rules governing the process for obtaining information from the Registries and for disseminating and maintaining records of that information under this subsection.

- (i) A person convicted of a sex offense that requires registration pursuant to 13 V.S.A. chapter 167, subchapter 3 shall not be eligible for employment under this section.
- (j) The board of trustees of a recognized or approved independent school shall request a criminal record check and a check of the Registries pursuant to the provisions of this section prior to offering employment to a headmaster.
- (k) The requirements of this section shall not apply to superintendents and headmasters with respect to persons operating or employed by a child care facility, as defined under 33 V.S.A. § 3511, that provides prekindergarten education pursuant to section 829 of this title and that is required to be licensed by the Department for Children and Families pursuant to 33 V.S.A. § 3502. Superintendents and headmasters are not prohibited from conducting a criminal record check as a condition of hiring an employee to work in a child care facility that provides prekindergarten education operated by the school.**
- (l) The requirements of this section shall not apply with respect to a school district's partners in any program authorized or student placement created by chapter 23, subchapter 2 of this title; provided, however, that superintendents are not prohibited from requiring a fingerprint-supported record check pursuant to district policy with respect to its partners in such programs.

