

KROKIDAS & BLUESTEIN

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UPDATED: CLIENT ALERT

REGARDING CRIMINAL BACKGROUND CHECKS

This Client Alert updates information from our March 28, 2013 Client Alert, entitled “CORI Reform: New Background Check Requirements for Educators, School Staff, and Contractors”

Schools should be aware that the Massachusetts Executive Office of Education (EOE) has issued guidance entitled “Frequently Asked Questions Regarding Background Checks Law” (“FAQ”). A copy of the FAQ is located here: <http://www.mass.gov/edu/2013newsupdates/frequently-asked-questions-regarding-background-checks.html>. The FAQ discusses the background and implementation of the new criminal background checks law in detail, including the following:

- **Implementation Timeline.**
 - The Statute - In its current form, the new law requires all new hires for the 2013-2014 school year, including educators, maintenance workers, cafeteria staff, transportation staff, and contractors, to be subject to fingerprint-based checks.
 - The FAQ - The FAQ refers to the possibility of seeking an extension from the Massachusetts Legislature for implementing the law since the procedure for collecting and submitting fingerprints to the FBI national database is still being developed by the Executive Office of Public Safety and Security. However, there is at present no pending legislation proposing an extension of implementation.
 - New Hires - A proposed amendment to the law was filed in the legislature last week authorizing schools to “conditionally employ” new hires who have been cleared after a state background check (CORI) and who disclose any out-of-state criminal convictions. During the current hiring season, schools should consider amending their offer letters and employment agreements to condition employment on satisfaction of the new requirements.

- **Significance of the Law.** According to the FAQ, prior to the passage of the new law, Massachusetts was the only state in the nation that was not conducting national fingerprint-based criminal history checks through the FBI’s national criminal history database for kindergarten through twelfth grade employees. The new law “closes those loopholes.”

- **Fees.** The fees for the fingerprinting may be reimbursed in cases of financial hardship by the school committee, superintendent, or principal, or the DESE-licensed or funded program. [Correction: The March 28, 2013 Client Alert incorrectly provided that fees may be reimbursed by DESE.]

- **Updates to FAQ.** Updates on implementation of the new law, including pertinent amendments, will be posted here: <http://www.mass.gov/edu/2013newsupdates/frequently-asked-questions-regarding-background-checks.html>. Charter Schools are advised to check the EOE site regularly for updates, particularly for updates on implementation dates and conditional hiring.

For additional information or guidance on criminal background checks, and for assistance with offer letters and employment agreements, please contact Attorney Anjali Waikar (awaikar@kb-law.com) or Attorney Elka Sachs (esachs@kb-law.com), at Krokidas & Bluestein LLP.