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LEGAL UPDATE

March 3, 2010

To: Superintendents, Member School Districts (K-12)

From: Marko Fong, Assistant General Counsel 

Subject: Activity Supervisor Clearance Certificate Guidance
Memo No.: 08-2010

The Commission on Teacher Credentialing (CTC) recently issued guidance on the Activity Supervisor Clearance Certificate (ASCC), which becomes mandatory on July 1, 2010, for non-certificated individuals who supervise, direct or coach a pupil activity program that is sponsored by, or affiliated with a school district or county office of education.¹

In its FAQ about the ASCC,² CTC stresses that the ASCC is only required if the individual is actually supervising students directly. For instance, assistant coaches, work-based learning mentors, or drivers for overnight field trips are not specifically required to obtain the ASCC. CTC has also determined that charter schools are not subject to the requirements of Education Code section 49024.

Districts and county offices of education (LEAs) continue to have discretion for volunteers who do not directly supervise students. Currently, many LEAs fingerprint most volunteers and all classified employees. CTC has indicated that its online application process will require any individuals who do not already have a clearance issued by the Commission on Teacher Credentialing (usually teachers and administrators are the only individuals who do) to be re-fingerprinted. In addition, the ASCC must be renewed every five years, though new fingerprinting is not required for renewals. The estimated cost of each ASCC application is

¹ See Legal Update 32-2009

² <http://www.ctc.ca.gov/seminars/AB-1025/AB-1025-FAQs.pdf>

\$106.00. CTC has indicated that it should have its online application system ready to go in March 2010, so that districts can meet the July 1, 2010 deadline.

Classified Employees:

Prior to July 1, LEAs should inventory which non-certificated positions and duties will require the ASCC. As appropriate, job descriptions should be written or amended to state whether the position involves the direct supervision of students and requires the ASCC. For any non-certificated positions that involve regular contact with students, the LEA should state clearly who directly supervises the activity. CTC does not require that “supervision” be line of sight contact with students at all times. For instance, the principal or designated teachers could be the direct supervisor for recess.

CTC is currently giving LEAs relatively broad discretion to define both “direct supervision” and “school-based activity” for ASCC purposes. LEAs should adopt policies or amend current policies to define both of these terms.

There may be some classified employees whose current duties do involve the direct supervision of students. For example, bus drivers, yard duties, instructional assistants and work experience mentors may fall into this category. The law makes specific exceptions for **volunteer** supervisors for breakfast, lunch and other nutritional periods, and **volunteer** aides supervised by a certificated staff member but not for employees. It is important to note that the ASCC is not simply a check for past arrests; it is an examination of fitness and character similar to the clearance currently in place for certificated staff. This includes questions about being removed from prior similar positions regardless of whether or not an arrest took place. The ASCC is designed to be a more thorough and restrictive process than existing mandatory provisions covering classified employees. It is thus possible that some permanent non-certificated employees who supervise students will not be able to obtain the certificate despite having received fingerprint clearance previously from the DOJ.

LEAs should look carefully at classified job descriptions that include student contact and prepare to possibly dismiss or redefine positions for affected classified employees who cannot obtain an ASCC. LEAs should also anticipate having to negotiate some of these personnel implications with any represented group of employees.

Volunteers:

CTC has made it clear that only volunteers who directly supervise or coach students in school-based activities will be required to obtain the ASCC. LEAs should catalog their range of volunteer activities and specify that a certificated staff member of an ASCC holder is directly supervising students for that activity. Any field trips or off-campus activities documentation should also contain this information. While volunteer activity is less defined than paid employment, LEAs should use this catalog of volunteer opportunities to minimize the possibility that students are being directly supervised or coached by individuals who are either not certificated or who do not have an ASCC.

LEAs that already fingerprint volunteers should review their policies to minimize confusion about which volunteers should obtain the ASCC. Going forward, it would be simplest for LEAs to require the ASCC for all volunteers who need to be fingerprinted instead of the traditional fingerprint clearance, but the process is expensive (\$109 vs. \$29) and clearance will likely take more time due to the number of factors that may be examined. As mentioned above, CTC has indicated that unless the individual has had his/her fingerprints previously cleared by the CTC for a certificated position, then it will be necessary to get re-fingerprinted for the ASCC.

Despite the fact that CTC is not requiring the ASCC for most assistant coaches, LEAs should be aware that problems with walk on assistant coaches helped provoke this legislation. LEAs have the discretion to require the ASCC for a broader range of individuals than CTC has described and they may want to exercise it. Even though CTC is largely leaving the definition of "supervision" to the discretion of the LEA, schools should exercise appropriate caution for reasons beyond CTC and the ASCC. For example, a certificated employee who cannot check in on an activity on a regular basis cannot properly supervise that activity as a liability matter. LEAs may want to coordinate this with their insurance carrier.

Charter Schools:

Although CTC is saying that charters are not currently subject to Education Code section 49024, LEAs authorizing charters may still wish to include in their agreements with charter schools that the ASCC be implemented. In any case, charter school employees are currently still required to obtain fingerprint clearance.

Temporary Certificates:

CTC has acknowledged that there may be instances of delay and has made provisions for temporary Certificates to be issued by the county office pending final clearance. If an individual needs a Temporary County Certificate (TCC) he/she will need to fingerprint clearance for the county as well as the state. Out of state applicants who have resided less than a year in California are required (recommended) to have both DOJ (state) and FBI fingerprint clearance. As more details become available about the individual right to appeal and the legal implications of pending appeals by current employees, we will update you at that time.

If you have any questions, please contact any of our attorneys.