

From: London, Sarah [Sarah.London@vermont.gov]
Sent: Thursday, September 01, 2016 7:39 AM
To: Pepper, James; Springer, Darren; Allen, Susan
CC: Johnson, Justin
Subject: Fwd: Attorney Client

Perhaps there is hope.

Sent from my iPhone

Begin forwarded message:

From: "Holcombe, Rebecca" <Rebecca.Holcombe@vermont.gov>
Date: September 1, 2016 at 6:00:19 AM EDT
To: "London, Sarah" <Sarah.London@vermont.gov>
Subject: Re: Attorney Client

Thanks. Very helpful. I will get my team to work on exploring options related to this.

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On Wed, Aug 31, 2016 at 11:32 PM -0400, "London, Sarah" <Sarah.London@vermont.gov> wrote:

Happy to talk more when we speak on Friday. The statute that governs executive orders is 3 VSA 2002 below. In sum, the Governor can reorganize state agencies contrary to statute, but such orders must be submitted to the Legislature for approval.

As you know, legislative leaders can do letters to clarify legislative intent. And law enforcement officers, including licensing authorities, can issue directives stating they are temporarily waiving their enforcement of certain laws as a matter of prosecutorial discretion.

My understanding from looking at other state's education/ criminal background information online is that a number of other state departments/agencies of education allow for conditional clearances as set forth in NY materials online below. (I.e., if you are just waiting on your out-of-state background check, you can be conditionally cleared pending those results.). I have not understood why this cannot be done as a temporary and reasonable exercise of the Agency of Education's discretion with respect to its licensees, or why it can't be issued as guidance from the Agency to its licensees during this period of transition.

Hope that is helpful and happy to talk more Friday.
Sarah

Q: What are conditional clearances and emergency conditional appointments?

A: Conditional clearances issued by NYSED are time limited. They are good for 45 days with the option for one additional 45 day extension. The conditional clearance is issued by NYSED when the state process is complete but the federal process is not complete. It is almost always due to poor fingerprint quality which resulted in a rejection of the fingerprints by the FBI. Once NYSED issues a conditional clearance, a school may make a conditional appointment. The employee must sign a statement indicating to the best of his or her knowledge, any criminal history he or she has in any jurisdiction outside of New York State. An **emergency conditional appointment** is not issued by NYSED. It is an emergency appointment approved by the local school employer when an unforeseen vacancy occurs. The employee must sign a statement indicating to the best of his or her knowledge, any criminal history he or she has in any jurisdiction. The emergency conditional appointment is good for 20 days. The school must have a policy in effect to provide for the safety of school children who have contact with an employee under such circumstances.

§ 2002. Executive Orders

(a) The Governor may propose by Executive Order changes in the organization of the Executive Branch of government which are not consistent with or will supersede existing organization provided for by law. The Executive Order shall be submitted to both houses of the General Assembly.

(b) An Executive Order issued under this chapter shall be presented to the General Assembly not later than January 15th of the year in which the General Assembly sits. The Executive Order shall become effective unless disapproved by resolution of either House of the General Assembly within 90 days, or before final adjournment of that annual session, whichever comes first.

Sent from my iPad

On Aug 31, 2016, at 10:32 PM, Holcombe, Rebecca
<Rebecca.Holcombe@vermont.gov> wrote:

Sarah,

A year ago, I issued a transition relief memo that delayed implementation of Act 166 due to an inability to get rules done in time for an unrealistic start date.

Is there really no way the Gov can issue a transition relief memo that waives 255 with respect to private providers who have passed CDDs fingerprint supported background check, **for one year**, until the legislature has tie to correct the obvious glitch in statute?

He would be an absolute hero. These providers and Supts all really want to make this work.

R

Rebecca Holcombe, Secretary of Education
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