

From: Holcombe, Rebecca [Rebecca.Holcombe@vermont.gov]
Sent: Thursday, September 08, 2016 3:54 PM
To: Pepper, James
Subject: Fwd: Child Development Division background check exclusionary criteria

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From: "**Michael Clark**" <mclark@ecsuvt.org>
Date: Thu, Sep 8, 2016 at 3:52 PM -0400
Subject: Re: Child Development Division background check exclusionary criteria
To: "Holcombe, Rebecca" <Rebecca.Holcombe@vermont.gov>

Rebecca

I held a conference call today with the three child care centers that will be providing pre-school through ACT166 partnerships with ECSU this afternoon. I am writing to share our plan to move forward with you, in the hope you will be able to either provide information that a more efficient resolution was reached at a state level or it can help you share the experience ECSU has had to go through to ensure students get access to pre-school in a legal manner.

As you can imagine the directors at the child care centers are quite upset with this process. They are receiving information that contradicts what I am saying to them from AHS/CDD. They are exceptionally upset that a delay in forming a partnership with them may impact the funding they receive and have indicated they may elect to take legal action against ECSU if that ends up happening.

In an effort to ensure our students get access to high quality pre-school programs ECSU has agreed to:

Send an employee to each center to do the paperwork and verification necessary to perform a background check (This will take the better part of a work day).

Pay the \$47.50 to perform the required background check. I anticipate this will cost ECSU approximately \$200 total per center.

Perform and evaluate the results of each of the background checks.

We anticipate receiving the results of the background checks to take between 2-6 weeks.

Thank you again for your work. I'm sure you share some of the same frustrations. Please feel free to use this e-mail in any way that helps resolve this issue.

On Fri, Sep 2, 2016 at 7:47 PM, Holcombe, Rebecca <Rebecca.Holcombe@vermont.gov> wrote:

Michael,

I am so sorry. I do not have an answer yet. I am working with the administration and will be in touch as soon as possible.

Thank you for all your good leadership and hard work.

I hope you have a good weekend.

R

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On Wed, Aug 31, 2016 at 5:52 PM -0400, "Michael Clark" <mclark@ecsuvt.org> wrote:

Secretary Holcombe

Essex-Caledonia SU is hitting a snag regarding implementation of ACT 166. Earlier this week I sent the attached two letters to providers who have indicated they would like to have partnerships with us (one letter for the provider and one letter for families potentially affected). As a result of these letters and conversations with providers it became clear that there is confusion regarding how ECSU can receive a "secondary dissemination" of the background checks being performed on the employees of the pre-qualified programs. In an effort to clear up this confusion my office reached out to Shanna Smith for clarification and was redirected to Jen Benedict.

Jen clarified for me that providers would not be receiving the background checks initiated by the Child Development Division and instead would receive information indicating whether an employee met the requirements to operate, be employed at or be allowed unsupervised access to children at the CBCCPP or not. Jen shared the understanding that while Supervisory Unions could share secondary disseminations with each other it was a violation of federal law for entities other than supervisory unions to share the background checks. Jen did indicate the CDD could provide an assurance to ECSU for the employees who met the requirements outlined in the e-mail I have forwarded with this e-mail.

Based on the information Jen provided and my understanding of my responsibilities one solution I see to move forward that would satisfy the requirements of Act 166 and Section 255 would be for my office to perform a background check on each of employee at the private providers. This solution has significant costs both directly (each background check we perform costs approximately \$42) and indirectly (the only HR person in my office estimates that each background check we perform takes an estimated 20-30 minutes of her time). Multiplying this by all of the different District, Union, and Provider combinations seems like a waste of resources for duplicative work.

The second solution in my mind is for ECSU to adopt the same standards as the CDD for employment working alone with children. Based on my first reading of the CDD's standards they appear to be both rigorous and comprehensive. Next the CDD would preform the background check and provide me (the ECSU Superintendent) an assurance that based on the background check the employee met the standards for working alone with students. This process would protect children, is streamlined and likely protects ECSU from liability. The challenge by preforming background checks in this manner is I (as the ECSU Superintendent) may not have complied fully with section 255. It is the advice of counsel that: "*If we fail to comply with Section 255, you risk licensing action by AOE. It can easily be argued that your knowing decision to violate the statute constitutes unprofessional conduct.*" So in order to proceed with this option I would need an assurance from the AOE doing so doesn't violate the statute and does not constitute unprofessional behavior.

I appreciate any help and or assurance you can provide. I have copied Pietro Lynn and Jeff Francis on this e-mail at Pietro's request. Pietro worked with me earlier today to help decide if option two would sufficiently protect the district from liability.

Thank you

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From: **Benedict, Jennifer** <Jennifer.Benedict@vermont.gov>

Date: Wed, Aug 31, 2016 at 2:28 PM

Subject: FW: Child Development Division background check exclusionary criteria

To: "mclark@ecsuvt.org" <mclark@ecsuvt.org>

Cc: "sblodgett@ecsuvt.org" <sblodgett@ecsuvt.org>

Let's try this again...

Jen Benedict, Director

Child Care Licensing & Financial Assistance Program

DCF – Child Development Division

(c) [802-224-6236](tel:802-224-6236)

From: Benedict, Jennifer

Sent: Wednesday, August 31, 2016 2:27 PM

To: 'mclark@esuvt.org' <mclark@esuvt.org>

Cc: 'sblodgett@ecsuvt.org' <sblodgett@ecsuvt.org>

Subject: Child Development Division background check exclusionary criteria

Hi Mike,

As per our discussion, below are the newly adopted Child Care regulations with respect to background checks. I did include the procedural regulations for context. The yellow are the prohibited crimes/findings. Thank you for taking the time to discuss today and please let me know if you have any additional questions.

7.2.4 The licensee shall ensure that no person shall be left alone with children without approval from the Division which shall be based on the results of the background check to include fingerprinting.

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7.2.5 The Division shall complete and process all background check clearances as expeditiously as possible, but not to exceed forty-five (45) days from the day

Vermont Crime Information Center receives all documentation.

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7.2.6 Based on the results of background checks described in this section the following persons are prohibited and shall not operate, be employed at, or be allowed unsupervised access to children at the CBCCPP:

- A person who is required to complete a background check who refuses or knowingly makes a material false statement in connection with such background check;

- A person convicted of fraud;
- A person convicted of a felony consisting of:
 - Murder,
 - Child abuse or neglect,
 - A crime against children, including sexual activity or child pornography,
 - Spousal abuse,
 - A crime involving rape or sexual assault,
 - Kidnapping,
 - Arson,
 - Physical assault or battery, or
 - A drug related offense committed during the proceeding five (5) years;
- A person convicted of a misdemeanor offense against a child or another person consisting of:
 - Violence,
 - Child abuse or neglect,
 - Child endangerment,
 - Sexual assault or activity,
 - Child pornography; or
 - Other bodily injury;
- A person found by a court to have abused, neglected or mistreated a child, elderly or disabled person, or animal; or

- An adult or child who has had a report of abuse or neglect substantiated against them under Chapters 49 and 69 of Title 33 Vermont Statutes Annotated or
- A person registered, or is required to be registered, on a state sex offender registry or repository or the National Sex Offender Registry established under the Adam Walsh Child Protection and Safety Act of 2006.

7.2.7 The Department may determine a person as prohibited when there is information known that indicates his/her action or behavior may present children enrolled with risk of harm.

7.2.8 Exclusion of Persons Prohibited

7.2.8.1 The Division shall provide the result of the background check to the licensee that indicates whether the individual, for whom the background check was completed, shall be prohibited as required in the rule 7.2.6 or rule 7.2.7 of these regulations without revealing the basis for the decision as required in the rule 7.2.8.3 of these regulations and shall identify whether a prohibited person is eligible to request a variance.

7.2.8.2 When the Division has determined an individual to be prohibited as required in the rule 7.2.6 or rule 7.2.7 of these regulations, the Division shall provide the individual, for whom the background check was completed, the result of the background check; the basis for the decision; the process by which the individual may challenge the accuracy or completeness of the information contained in the basis for the decision; and whether the prohibition is eligible for a variance request.

7.2.8.3 The Division shall not share any information related to a background check with anyone other than as required in the rule 7.2.8.1 or rule 7.2.8.2 of these regulations.

7.2.8.4 Effective upon receipt of the determination, the licensee shall exclude persons whose background check has determined them as prohibited. This includes but is not limited to employment at the CBCCPP, from serving as the designated representative for the licensee, or from being regularly present at the CBCCPP.

Jen Benedict, Director

Child Care Licensing & Financial Assistance

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Michael J. Clark
Essex Caledonia Supervisory Union
Superintendent

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Michael J. Clark
Essex Caledonia Supervisory Union
Superintendent

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