



Labor and Employment Law Update

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TO FINGERPRINT OR NOT TO FINGERPRINT: AB 346 AND WHAT YOU NEED TO KNOW NOW

Under the newly implemented AB 346, Districts can either require that noncertificated employees and volunteers who will be alone with students in district-sponsored activities obtain an Activities Supervisor Clearance Certificate (“ASCC”) or be dual fingerprinted by the DOJ and FBI. The remainder of this Update will describe the provisions of the new law and provide general recommendations for complying with it.

How did the current law come to be?

Written to protect students from employees and volunteers with criminal histories, AB 1025 (Conway) required background checks through fingerprints and subsequent arrest notifications for walk-on coaches in California schools. Each of the individuals covered by AB 1025 was required to submit both DOJ and FBI fingerprints to the Commission on Teacher Credentialing (“CTC”) **and** to obtain an ASCC from the CTC. During the legislative process, AB 1025 was expanded to include all noncredentialed employees and volunteers who coach, direct, or supervise a student activity or program sponsored by or affiliated with a school district. This was quite an expansion!

Soon after the signing of AB 1025, the education community noted significant problems and raised legitimate questions as to the breadth and practicality of the law. As a result, an amended bill, AB 346, was put forth as urgency legislation with the intention of improving and clarifying AB 1025. AB 346 was signed into law by Gov. Schwarzenegger on July 9, 2010 and took effect immediately upon signature.

What does the law provide?

Dual Fingerprinting v. ASCC

- AB 346 provides districts with the option of either requiring that all noncertificated employees or volunteers supervising students in school-sponsored student activity programs obtain an ASCC from the CTC or submit dual fingerprints to clear both DOJ and FBI criminal background checks prior to commencing employment or volunteering. Therefore, a district may now require dual fingerprints in lieu of the ASCC.
- If a district currently requires dual fingerprinting for its noncertificated employees and volunteers, the district is already in compliance with the law and will not need to change its policies.

Impacted Employees and/or Volunteers

- AB 346 expanded the category of individuals required to obtain an ASCC or be dual fingerprinted. Now, all noncertificated employees and volunteers who will be alone with students in district-sponsored activities fall under the law—not just coaches.

Exceptions

- Any volunteer supervisors for breakfast, lunch, or other nutritional periods are exempted from these requirements.
- Further, any nonteaching volunteer aides under the immediate supervision and direction of certificated personnel are exempted from these requirements. Nonteaching volunteers are defined in the law to include parent volunteers in a classroom or on a field trip or a community member providing noninstructional services. (Education Code §49024.)
- Employees and/or volunteers merely *affiliated* with a district are no longer included in the law.

Fingerprinting Consortia

- AB 346 also provides that districts and county offices of education may elect to form consortiums for fingerprinting purposes. (Education Code §45125.01.)

What does Schools Legal Service recommend?

Impacted Employees and/or volunteers

- Each district must determine which of its employees and volunteers will be required to obtain an ASCC and/or which will be required to comply with the fingerprint obligations. A simple test can be used to make this determination: each noncertificated employee or volunteer who is not exempted as described above and who is alone with students in a school-sponsored activity, must either obtain an ASCC or submit fingerprints to both the DOJ and FBI.
- We recommend that districts err on the side of inclusion when in doubt rather than exempting certain groups of employees or volunteers that *may* fall under the requirements of AB 346.
- We also advise that any board policies and job descriptions be appropriately updated to follow the district's decisions in regards to AB 346.

Dual Fingerprinting v. ASCC

- Each district must also decide whether or not it will require dual fingerprints in lieu of the ASCC. We recommend that districts use caution when selecting the ASCC requirement.
- The full impact of requiring classified individuals to obtain a certificate from the CTC is currently unknown. Requiring a certificate from the CTC may affect the rights and responsibilities of a district and its classified employees in currently unintended ways.
- Additionally, there is no requirement that the CTC notify a district of an employee or volunteer's subsequent arrest. Thus, a district may allow an individual to work

alone with students who, unbeknownst to the district, has been charged with committing a criminal offense.

Retroactive Application

- Although AB 346 is arguably not retroactive– meaning it only applies to new employees and volunteers who supervise district-sponsored activities after July 9, 2010– we recommend that each district work quickly to ensure **all** of its employees and volunteers fitting its pre-determined categories of individuals covered by the law be dual fingerprinted.
- If information regarding criminal behavior by an employee or volunteer could have been known to a district and that employee or volunteer harms a student, district personnel may find it difficult to justify a lack of knowledge based on the argument that the law did not require the fingerprinting since the individual began supervising an activity in a year earlier than 2010.

Who Pays for the Fingerprints

- Districts are not required under AB 346 to pay for the dual fingerprints for its employees and/or volunteers.
- Nevertheless, some districts have decided to fund, either fully or partially, the fingerprints for those individuals currently employed or volunteering in the district to ensure their compliance with the new law. In these districts, new hires or volunteers will be held responsible for the cost of dual fingerprints from this point forward.
- Of course, these approaches and alternatives to them should be evaluated by each district based on its needs and financial circumstances.
- To assist with the costs associated with the new law, the DOJ is now offering a one-time special from **September 1-December 31, 2010** where it will allow districts to obtain a FBI only background check for employees who have already been fingerprinted by the DOJ. The cost of the FBI background check is \$19 for employees and \$15 for volunteers plus any applicable fee charged by the live scan

site. To obtain the necessary forms for this special offer, contact the DOJ Processing Program at 916-227-3836.

Although AB 346 was intended to clear up questions and concerns presented by AB 1025, many questions still remain about its impact on individual districts and specific groups of employees and volunteers. Should you have any questions about AB 346's requirements or its impact on your district, please feel free to contact the undersigned.

– Melissa H. Brown

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