



UPDATED MEMBER ALERT

BACKGROUND CHECKS/ASCCS FOR SCHOOL AND BOOSTER CLUB EMPLOYEES AND VOLUNTEERS

I. INTRODUCTION

On July 1, 2010, new Education Code Section 49024 took effect. The new law required noncertificated volunteer or classified employees intending to “supervise, direct, or coach” a “pupil activity program” sponsored by or affiliated with a school district to first obtain an Activity Supervisor Clearance Certificate (“ASCC”). To obtain an ASCC, the applicant had to successfully complete a criminal background check performed by the California Commission on Teacher Credentialing and pay a processing fee.

Shortly after Section 49024 was enacted, various parties expressed concern with the overbreadth of the new law and its negative effect on volunteers and existing employees. Consequently, on July 9, 2010, Governor Schwarzenegger signed into law remedial legislation (AB 346) that contained an emergency clause rendering it immediately effective. With these revisions, Education Code Section 49024 now states:

- (a) Prior to assuming a paid or volunteer position to work with pupils in a pupil activity program sponsored by a school district, all noncertificated candidates shall obtain an Activity Supervisor Clearance Certificate from the Commission on Teacher Credentialing pursuant to subdivision (f) of Section 44258.7.
- (b) A pupil activity program sponsored by a school district includes, but is not limited to, scholastic programs, interscholastic programs, and extracurricular activities sponsored by a school district or school booster club, including, but not limited to, cheer team, drill team, dance team, and marching band.
- (c) Volunteer supervisors for breakfast, lunch, or other nutritional periods pursuant to Sections 44814 and 44815, and nonteaching volunteer aides, as defined in Section 35021, under the immediate supervision and direction of certificated personnel of the district, shall not be required to obtain an Activity Supervisor Clearance Certificate. For purposes of this section, a nonteaching volunteer aide includes a parent volunteering in a classroom or on a field trip or a community member providing noninstructional services.
- (d) Candidates may be issued a temporary certificate in accordance with Sections 44332 and 44332.5 while the application is being processed.
- (e) This section does not apply to a candidate who is required by the school district to clear a Department of Justice and Federal Bureau of Investigation criminal background check prior to beginning the paid or volunteer activities described in subdivision (a).

II. AREAS PRIMARILY AFFECTED BY RECENT LEGISLATIVE CHANGES

The statutory modifications to Section 49024 relate to three primary issues:

- Noncertificated employees or volunteers who have been previously cleared by a DOJ/FBI criminal background review conducted through a particular school district need not obtain an ASCC for that school district. If the employee or volunteer becomes employed/involved with a pupil activity program in a different school district, they must either participate in another DOJ/FBI background review process through the new school district or obtain an ASCC. Consequently, districts operating under these procedures should face no additional compliance obligations pursuant to Section 49024, particularly when Section 49024 does not require ongoing or subsequent monitoring of criminal histories.

- The ASCC or background review requirement is now limited only to employees or volunteers “working with” students in district-sponsored “pupil activity programs.” The background check requirement has now been removed for “nonteaching volunteer aides” “supervised” by a certificated employee when they are providing in-classroom assistance or chaperoning field trips, dances, etc. If no such supervision by a district certificated employee exists, the individual must be cleared through the ASCC or district’s criminal history review processes.
- If the activity or event is not “district sponsored,” or not a “pupil activity program” as defined by Section 49024, the participating employees or volunteers are not covered by the background check requirements of this law.

III. ONGOING ISSUES AND CONCERNS

The statutory modifications have greatly clarified the intent and scope of the statute. There is at least one area, however, where the statutory changes have not unequivocally resolved the need/lack of need for background checks or compliance with the ASCC process.

Many incorporated/unincorporated booster clubs conduct activities not generally considered “district-sponsored.” Such events may not even be brought to the attention of the district or its administration until after they have occurred. The question then becomes what constitutes a “school booster club”-sponsored “activity program” requiring the booster club to ensure that its involved parents/adult volunteers comply with Section 49024.

Unlike school districts,¹ there is no statutory framework or legislative history that could readily be found providing guidance on this issue. We know that Section 49024 was enacted as a safety measure to prevent individuals having a documented history of certain characteristics or incidents from interacting with students. The statutory provisions, however, do not indicate whether the background check requirement was intended to apply to non-district sponsored, off-campus fundraisers merely because sport/club members are expected (but not “required”), encouraged, or are likely to participate. Because such events involve parent/adult volunteers interacting with students, the purpose of the statute might best be fulfilled by a broad reading of Section 49024 as applying to all such events. Alternately, the statute might be read in a restrictive manner, applying only to those events sanctioned by a district where student attendance is required as part of a district-sponsored program.

Incorporated booster clubs should independently evaluate their rights and obligations under Section 49024. Because unincorporated booster clubs may be considered direct volunteers of the district, the district should ensure that these groups comply with all statutory obligations. Districts may wish to obtain guidance on these issues from their general counsel, particularly with respect to individual compliance questions relating to their booster clubs and their associated Board Policies and Administrative regulations that may create or modify their obligations associated with such groups.

IV. LIABILITY AND RISK MANAGEMENT CONSIDERATIONS

Section 49024 does not include fine, penalty or other consequence provisions. The statute, however, is intended to protect the safety and welfare of students. It is reasonable to conclude that a court could hold that a violation of the statute, when the violation allegedly results in some manner of harm to a child, will at least be the basis for a finding of “negligence per se” in any resulting civil action. *Evidence Code 669*. The district would then need to factually prove that the statutory violation did not cause the injury, often a very difficult burden of proof. In cases where the failure of compliance with Section 49024 is highlighted in the media, or where the failure of compliance appears particularly willful or egregious, an adverse event could also gain the interest of law enforcement officials or prosecutors with respect to protective provisions for children and students under the Penal Code.

¹ Education Code Section 44808 limits a district’s liability only to those off-campus activities where it (a) plans, schedules or directly participates in the event, (b) requires student attendance at the event or activity as part of a class or extra-curricular activity, (c) receives class or attendance credit for the event, (d) transports students to or from the event, or (e) otherwise assumes responsibility for the event through affirmative actions indicating the district is a sponsor or responsible party. With respect to school districts, a “district-sponsored” “pupil activity program” would likely be interpreted in a manner consistent with Section 44808, with only those individuals working with students in such areas needing to undergo a background check.