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STUDY COMMITTEE REPORT WITH RECOMMENDATIONS
PURSUANT TO PUBLIC LAW 1995, CHAPTER 547, ENTITLED
"AN ACT TO PROVIDE FOR RECORD CHECKS OF
ELEMENTARY AND SECONDARY EDUCATION
EMPLOYEES AND APPLICANTS"

Submitted to the Joint Standing Committee
on Education and Cultural Affairs

December 15, 1996

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STATE OF MAINE
DEPARTMENT OF EDUCATION
23 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0023

ANGUS S. KING, JR.
GOVERNOR

J. DUKE ALBANESE
COMMISSIONER

February 10, 1997

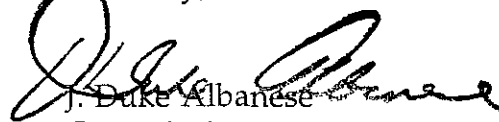
Sen. Peggy Pendleton, Chair
Rep. Shirley Richard, Chair
Members, Joint Standing Committee
on Education and Cultural Affairs

Dear Senator Pendleton, Representative Richard and
Other Members of the Joint Standing Committee
on Education and Cultural Affairs:

I am pleased to forward to you the Study Committee Report which has been prepared pursuant to Public Law 547, entitled "An Act to Provide for Record Checks of Elementary and Secondary Education Employees and Applicants". The issues that the Study Committee were asked to address are important and the recommendations that have been made, if implemented, could further protect Maine school children. That is, not only State but also National Criminal History Record Checks are being recommended for school employees and an approval status for school employees over whom the State currently has no authority is also being recommended. Also, L.D. 503, entitled "An Act to Provide for State and Federal Criminal Record Checks on Educational Personnel in the State" reflects and, if enacted, would respond to many of this Study Committee's recommendations.

I look forward to your review of this Study Committee Report, and I and members of the Study Committee would be willing to provide additional assistance or information.

Sincerely,


J. Duke Albanese
Commissioner

JDA:lm

Enclosure



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1996

TABLE OF CONTENTS

	<u>Page</u>
Background Information	1
Report Recommendations in follow up to Four Issues	
1. Whether to require federal record checks for employees or applicants for employment who are seeking certification, authorization or renewal	2
2. Whether federal and state criminal history record checks should be required for employees or applicants for employment who have contact with children but whose positions do not require certification, authorization or renewal	4
3. Whether the state criminal history record checks required in sub-section 2 must be conducted at the state or local level	4
4. Whether allegation information concerning employees or applicants for employment may be shared and by whom	5
5. Miscellaneous	6
Summary	6
Appendices	
A. Public Law 1995, Chapter 547, Study Committee Members	i
B. An Act to Provide for Record Checks of Elementary and Secondary Education Employees and Applicants	iii
C. Relevant Department of Education Rule Information	vi
D. Copies of pertinent Department of Education Rules	vii
E. Proposed draft legislation for criminal history record information and approval procedure	xix

Study Committee Report with Recommendations Pursuant to Public Law 1995, Chapter 547, entitled "An Act To Provide For Record Checks Of Elementary And Secondary Education Employees And Applicants".

Background Information

This Study Committee, which had representatives (see Appendix A) from the Maine Education Association, Maine Principals Association, Maine School Management Association, Department of the Attorney General, Department of Education, Department of Public Safety, Department of Human Services, the Child Abuse and Neglect Council, and the American Federation of Teachers, was convened "to make recommendations on measures to protect children through record checks of elementary and secondary education employees and applicants for employment". (See Appendix B) This Study Committee met on the following dates, usually for approximately two hours: July 29, September 4, October 4, October 30, and November 20, 1996.

The Study Committee was to consider four issues:

1. Requiring federal record checks for employees or applicants for employment who are seeking certification, authorization or renewal;
2. Requiring federal and state record checks for employees or applicants for employment who have contact with children but whose positions do not require certification, authorization or renewal;
3. Whether the state record checks required in subsection 2 must be conducted at the state or local level; and
4. Whether allegation information concerning employees or applicants for employment may be shared and by whom.

Unless otherwise noted, the recommendations contained in this report were reached by consensus.

Study Committee members also reviewed proposed draft legislation pertaining to state and national criminal history record checks which would include all school personnel and applicants who reasonably would be expected to have access to children. Study Committee members wanted to ensure that the conviction data from the criminal history record check would be used in denying, revoking or suspending an individual's certificate, authorization, or, if enacted, approval.

Report Recommendations in follow up to Four Issues

This Study Committee report contains recommendations for the Joint Standing Committee on Education and Cultural Affairs' consideration and possible action, in response to the four issues outlined for the Study Committee's review in Public Law 1995, Chapter 547 (see Appendix B). They are:

1. ISSUE: Whether to require federal record checks for employees or applicants for employment who are seeking certification, authorization or renewal.

RECOMMENDATIONS: Beginning no later than January 1, 1999, federal criminal history record checks be conducted by the Maine Department of Education in conjunction with the Maine State Bureau of Identification and the Federal Bureau of Investigation (F.B.I.) on all applicants seeking initial certification (see Appendix C) or initial authorization (see Appendix C) in Maine.

It is further recommended that, at the time of renewal of a certificate or authorization when a state criminal history record check for conviction data is done, a national criminal history record check also would be conducted.

It is also recommended that, similar to Public Law 1995, Chapter 547, the Commissioner of Education be given discretion regarding whether to require a national criminal history record check if one has been conducted within the previous 24 months.

Because the Federal Bureau of Investigation will not conduct national criminal history record checks without legible fingerprints as well as without other specific criteria being satisfied,¹ fingerprinting is necessary for all individuals for

¹Information obtained from the Federal Bureau of Investigation states:

Pursuant to Public Law 92-544, the FBI is empowered to exchange identification records with officials of state and local governments for purposes of licensing and employment if authorized by the state statute which has been approved by the Attorney General of the United States.

Based on information provided by the FBI, the standards are:

1. The authorization must exist as a result of legislative enactment;

whom national criminal history record checks are conducted.²

Consistent with Public Law 547, it is recommended that applicants be responsible for paying the fees.³ The American Federation of Teachers representative expressed a dissenting view regarding who should be responsible for fees.

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2. The authorization must require fingerprinting of the applicant; [emphasis added]
 3. The authorization must, expressly or by implication, authorize use of FBI records for screening of the applicants;
 4. The authorization must not be against public policy;
 5. The authorization must not be overly broad in its scope; and
 6. Must identify the specific category of applicant/licensee.

Fingerprint card submissions to the FBI under Public Law 92-554 must be forwarded to the State Identification Bureau (SIB). The State must also designate an authorized governmental agency to be responsible for receiving and screening the results of the record check to determine an applicant's suitability for employment or licensing.

²Study Committee members, if feasible, would like fingerprint cards to be retained rather than destroyed so that individuals at the time of renewal would not need to have new fingerprints taken.

³The Study Committee members recognize that fees are subject to change; however, \$24 is the current fee for the Federal Bureau of Investigation's criminal history record check for a non-criminal justice agency. There is a possibility that \$2 of the \$24 fee might be returned to Maine's State Bureau of Identification if certain procedures are utilized by Maine's State Bureau of Identification. It is recommended that either state or local law enforcement personnel do the fingerprinting; the estimated charge for fingerprinting of an individual is from \$2 to \$5.

Subsequent to the November 20, 1996 Study Committee meeting, information was obtained that, in Vermont, not only law enforcement personnel but also education personnel trained by the Department of Public Safety do fingerprinting. Further exploration of this option might be considered.

2. ISSUE: Whether federal and state criminal history record checks should be required for employees or applicants for employment who have contact with children but whose positions do not require certification, authorization or renewal.

RECOMMENDATION: It is recommended that all applicants for whom certification or authorization is not needed for employment in public schools and approved private schools, be required to complete state and national criminal history record checks prior to hire at the local level.⁴

3. ISSUE: Whether the state criminal history record checks required in subsection 2 must be conducted at the state or local level.

RECOMMENDATIONS: The members of the Study Committee are recommending that the state (and national) criminal history record checks be conducted at the state rather than the local level. Several reasons for this position were given. Due process protections exist for individuals who are denied certification or approval of letters of authorization (hereafter referred to as "authorization") (see Appendices C and D). Conducting state and national criminal record checks utilizing conviction data is expected to be more cost effective at the state level because applicants are likely to apply for jobs in more than one school district. Also, there is a greater likelihood of uniformity in the utilization of conviction data at the state level.

Similar to the certification and authorization procedures, the members of the Study Committee are recommending that approval be enacted by the Legislature and rules promulgated by the State Board of Education for the Department of Education so that the individuals listed in number 2 (individuals who are not certified or authorized), are covered.⁵ The Study Committee recommends that, if

⁴Anyone who reasonably is expected to have access or contact with children should be covered. It is further recommended that, beginning in January, 1999, already-employed school personnel for whom certification or authorization is not necessary, be required to have state criminal history record checks regarding conviction data and national criminal history record checks.

⁵These individuals would include personnel in food services, clerical services, buildings and grounds, bus operations, coaching, etc.

Based on the figures reported on the 1995-96 Number of Professional Staff by Position Title Public and Private Major Position Form, it appears that at least 7,000 individuals in the aforementioned categories would need to seek approval. Also, it is recommended that the approval procedure for substitute teachers who currently

approval is authorized by the Legislature, renewal of approval should occur no sooner than once every five years.

Although the Study Committee was not asked to address the issue of volunteers, Study Committee members urge the Legislature to further evaluate whether state and national criminal history record checks utilizing conviction data should be conducted on volunteers in order to further ensure the safety of Maine school students.

4. ISSUE: Whether allegation information concerning employees or applicants for employment may be shared and by whom.

RECOMMENDATIONS: One reason why the Study Committee has recommended that approval of school personnel who are not certified or authorized be passed by the Legislature is that the Department of Education currently receives intake allegation information, usually from the Department of Human Services, on certain school personnel for whom it has no authority to take action. Moreover, under existing law, Department of Education staff may not share the allegation information received from the Department of Human Services with the local superintendent or school attorney unless the school administration is already aware of the allegation. Therefore, with approval, the Department of Education would have the authority to take action against school personnel for whom certification or authorization is not required.

It is recommended by the Study Committee that, in substantiated allegations of physical and/or sexual abuse in child protective services cases involving school personnel, if staffing permits, the Department of Human Services share this information with the Commissioner of the Department of Education (or his or her designee). The aforementioned information currently is not provided to the Department of Education, and statutory changes likely would be required.

At this time, the Study Committee does not want unsubstantiated allegations of physical or sexual abuse to be shared by either the Department of Education or the Department of Human Services with local school administrators.

number approximately 5,000 be revised and require that, at the state level, an application be completed.

These changes would require additional resources for the certification subteam; the Study Committee members suggested, at a minimum, one support staff position and one additional professional position. Internally, Department of Education staff have discussed reallocation of staff duties as well as the possibility of contracting out services.

There was consensus among Study Committee members that the need exists for on-site investigations for some of the allegations, and this need is not being addressed due to a lack of resources.

5. Miscellaneous

The Study Committee requests that this report note that current funds generated by the Department of Education's Certification and Placement Subteam are paid to the State of Maine Treasurer and go into the General Fund (rather than a designated account) pursuant to Title 20-A M.R.S.A. § 13007.

Summary

The Study Committee strongly recommends that, no later than January 1, 1999, all school personnel be required to have state and national criminal history record checks which would require fingerprinting. The conviction data from the state and national criminal history record checks would be utilized in determining whether a person's eligibility for certification, authorization, or approval would be affected.⁶ The Study Committee recognizes that conducting state and national

⁶The following sections are examples showing when an individual's criminal history may affect his/her eligibility for certification or its equivalent:

Department of Education rule, Chapter 115, Part I, Section 6.1, is entitled Grounds for revocation and suspension. Under Section 6.1(A), an individual who

was convicted in any state or federal court of a criminal offense involving the physical or sexual abuse or exploitation of a child within the previous five years shall be sufficient grounds for revocation or suspension of that person's certificate.

Under 6.1(B), subject to the limitations of the Occupational License Disqualification on the Basis of Criminal Record Act,

Conviction of a crime which involves dishonesty or false statement or which relates directly to the services rendered within the scope of the certificate or conviction of any crime for which incarceration for one year or more may be imposed is grounds for revocation or suspension of a certificate.

criminal history record checks on Maine school personnel is only one step in the process of further protecting Maine's students.⁷

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⁷Currently, the Department of Education does not know if an individual has honestly responded to the question on the back of the application which asks: "(1) Have you ever been convicted of any crime other than a minor traffic offense?". There have been situations where applicants from in state and out of state have lied about sex convictions (as well as other serious crimes) and, as a result, students were placed in jeopardy.

APPENDIX A
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APPROVED

MAR 20 '96

CHAPTER

547

STATE OF MAINE BY GOVERNOR

PUBLIC LAW

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY-SIX

H.P. 617 - L.D. 827

An Act to Provide for Record Checks of Elementary and
Secondary Education Employees and Applicants

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 20-A MRSA c. 221, sub-c. III, first 2 lines are repealed and the following enacted in their place:

SUBCHAPTER III

EMPLOYEE AND APPLICANT RECORDS

Sec. 2. 20-A MRSA §6101, sub-§1, ¶E and F, as enacted by PL 1981, c. 693, §§5 and 8, are amended to read:

E. Major and minor fields of study recognized by the post-secondary institutions attended; and

F. Degrees received and dates awarded; and

Sec. 3. 20-A MRSA §6101, sub-§1, ¶G is enacted to read:

G. Criminal history record information obtained pursuant to section 6103.

Sec. 4. 20-A MRSA §6101, sub-§2, ¶B, as amended by PL 1987, c. 620, §1, is further amended to read:

B. Except as provided in paragraph A, information in any form relating to an employee or applicant for employment, or to the employee's immediate family, ~~shall~~ must be kept confidential if it relates to the following:

(1) All information, working papers and examinations used in the examination or evaluation of all applicants for employment;

(2) Medical information of any kind, including information pertaining to diagnosis or treatment of mental or emotional disorders;

(3) Performance evaluations, personal references and other reports and evaluations reflecting on the quality or adequacy of the employee's work or general character compiled and maintained for employment purposes;

(4) Credit information;

(5) Except as provided by subsection 1, the personal history, general character or conduct of the employee or any member of the employee's immediate family;

(6) Complaints, charges of misconduct, replies thereto to complaints and charges of misconduct and memoranda and other materials pertaining to disciplinary action;

(7) Social security number; and

(8) The teacher action plan and support system documents and reports maintained for certification purposes; and

(9) Criminal history record information obtained pursuant to section 6103.

Sec. 5. 20-A MRS §6103 is enacted to read:

§6103. Criminal history record information conviction data

Beginning January 1, 1999, certification, authorization and renewal under chapters 501 and 502 are subject to the provisions of this section.

1. Conviction data obtained; reliance. The commissioner shall obtain criminal history record information containing a record of conviction data from the Maine Criminal Justice Information System for any person applying for certification, authorization or renewal. The commissioner may rely on information provided by the Maine Criminal Justice Information System within 24 months prior to the issuance of a certificate, authorization or renewal.

2. Issuance restriction. Issuance of a certificate, authorization or renewal to any person whose criminal history record information includes a criminal conviction is subject to the provisions of Title 5, chapter 341 and section 13020.

3. Confidentiality. Any information obtained pursuant to this section is confidential.

4. Expenses. Notwithstanding Title 26, sections 594 and 629, the expense of obtaining the information required by this section must be paid by the applicant.

Sec. 6. Study committee. The Commissioner of Education shall convene a study committee to make recommendations on measures to protect children through record checks of elementary and secondary education employees and applicants for employment. The study committee consists of representatives from the Maine Education Association, the Maine School Management Association, the Department of the Attorney General, the Department of Education, the Bureau of State Police, and other groups designated by the commissioner.

The study committee shall consider the following issues:

1. Requiring federal record checks for employees or applicants for employment who are seeking certification, authorization or renewal;

2. Requiring federal and state record checks for employees or applicants for employment who have contact with children but whose positions do not require certification, authorization or renewal;

3. Whether the state record checks required in subsection 2 must be conducted at the state or local level; and

4. Whether allegation information concerning employees or applicants for employment may be shared and by whom.

The study committee shall present its report and any recommendations to the joint standing committee of the Legislature having jurisdiction over education and cultural affairs by December 15, 1996.

APPENDIX C

Relevant Department of Education Rule Information.

Under Department of Education rule, Chapter 115, Part I, Section 1.4(M), certificate means "a license to serve as a teacher, administrator or educational specialist in the public and approved private schools of Maine".

Department of Education rule, Chapter 115, Part I, Section 14.9(C), entitled "Initial approval", states: "A person may apply for authorization as an Educational Technician I, II or III at any time . . ."

Under Department of Education rule, Chapter 115, Part I, Section 14.10, under Note, Auxiliary Personnel (Educational Technicians I, II or III formerly called teacher aides, assistants, or associates) are not certified by the Commissioner and will not be issued certification cards. . . auxiliary personnel will be issued letters of authorization.

APPENDIX D

Copies of pertinent Department of Education Rules

Chapter 115, Part I, Section 6, entitled Denial, renewal, revocation and suspension of certificates.

Chapter 115, Part I, Section 14.10, entitled Qualifications; department approval.

Chapter 115, Part I, Section 14.11, entitled Revocation and suspension of approval.

6. DENIAL, NONRENEWAL, REVOCATION AND SUSPENSION OF CERTIFICATES

6.1 Grounds for Revocation and Suspension

Certificates, approvals and authorizations issued pursuant to authority of 20-A MRSA Chapter 502 and this Chapter may be revoked or suspended by the Administrative Court or by the Commissioner in the circumstances permitted in 5 MRSA #10004. The following shall be grounds for revocation or suspension:

- A. Immoral conduct - Evidence that a certificate holder has injured the health or welfare of a child through physical or sexual abuse or exploitation shall be grounds for revocation or suspension of a certificate. Notwithstanding the provisions of Title 5, Chapter 341, a certified court record that a certificate holder was convicted in any state or federal court of a criminal offense involving the physical or sexual abuse or exploitation of a child within the previous five years shall be sufficient grounds for revocation or suspension of that person's certificate.
- B. Criminal convictions - Subject to the limitations of Title 5, Chapter 341, conviction of a crime which involves dishonesty or false statement or which relates directly to the services rendered within the scope of the certificate or conviction of any crime for which incarceration for one year or more may be imposed is grounds for revocation or suspension of a certificate.
- C. Fraud - The practice of fraud, deceit or misrepresentation in obtaining a certificate from the Commissioner or in connection with any services rendered within the scope of the certificate shall be grounds for revocation or suspension of the certificate.
- D. Gross incompetence - Gross incompetence shall be grounds for revocation or suspension of a certificate. Gross incompetence includes the following:
 - (1) Conduct which evidences a clear and substantial lack of knowledge, ability or fitness to perform the services rendered within the scope of the certificate.
 - (2) Conduct which evidences a negligent disregard for the mental or physical health, safety or

welfare of children or which creates a substantial risk of injury as a result of physical or sexual abuse or exploitation.

- (3) Negligent or fraudulent completion or filing of any reports required pursuant to the provisions of Title 20-A or other applicable state or federal laws.
- (4) A mental or physical condition, as diagnosed by a physician or other professional competent to make such a diagnosis, which has resulted in the certificate holder performing his duties in a manner which endangers the health, safety, or welfare of children, or in the holder's inability to perform the services rendered within the scope of the certificate.
- (5) Refusal to perform or repeated negligent disregard of duties required to be performed by the provisions of Title 20-A or other applicable state or federal laws.
- (6) Habitual intemperance in the use of alcohol or habitual use of narcotic or hypnotic or other substances, the use of which has resulted in the certificate holder performing his duties in a manner which endangers the health, safety or welfare of students or in the holder's inability to satisfactorily perform the services rendered within the scope of the certificate.
- (7) Harassment on the basis of sex. This shall include unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature in the following situations:
 - (a) Submission to such conduct is made either explicitly or implicitly a term or condition of a student's educational benefits;
 - (b) Submission to or rejection of such conduct by a student is used as the basis for decisions on educational benefits; or
 - (c) Such conduct has the purpose or effect of substantially interfering with an individual's academic performance or creating an intimidating, hostile or offensive educational environment.

- E. Suspension or revocation of certificate in another jurisdiction or by a professional board - Where a Maine certificate has been issued upon the basis of a recognized agreement with another government, or based on the issuance of a license or certificate by a professional board, the Maine certificate may be revoked or suspended upon evidence, in the form of a certified copy, that the authority issuing the certificate or license which provided the basis for reciprocal licensing or professional licensing in Maine has revoked or suspended the certificate or license.
- F. Breach of superintendent's duty - The certificate of a superintendent of schools may be suspended or revoked for the knowing employment of uncertified personnel or the assignment of certified educational personnel to duties for which they do not possess appropriate certification.
- G. Violation of code of ethics and practice standards - Violation of the code of ethics and practice standards by a school psychological service provider shall be grounds for the revocation or suspension of a certificate.

Note: The practice standards for the school psychological service provider are guidelines and, as such, may assist in the interpretation and application of the code of ethics for the school psychological service provider.

6.2 Procedures for Revocation and Suspension Action
Except as set forth in paragraphs(G) and (H), the procedures set forth in this section shall govern the Commissioner's investigation and disposition of matters which may result in the revocation or suspension of any certificate issued under this Chapter:

- A. Preliminary Inquiry - Upon receipt of a written complaint or upon his or her own motion, the Commissioner may initiate a preliminary inquiry concerning allegations which could lead to revocation or suspension of a certificate.

If preliminary inquiry indicates that the allegations are unfounded or that the factual basis of the allegations may be true but is not of sufficient gravity to warrant certification action, the Commissioner shall notify the certificate holder of the substance of the complaint and any findings. The certificate holder shall be afforded an opportunity to respond

in writing to the commissioner's findings.

- B. Notice of Charges - If preliminary inquiry indicates that allegations may be true and are of sufficient gravity to warrant certification action, the Commissioner shall notify the certificate holder that the department will conduct an investigation which could lead to certification action. The notice shall contain a general summary of the allegations.
- C. Delay of Certification Action - The Commissioner may elect to delay certification action pending completion of any related criminal proceeding and may rely on a criminal conviction to support certification action prior to resolution of any appeals. For the purposes of this chapter, conviction based on a plea of nolo contendere will have the same effect as a guilty plea.
- D. Determination of Grounds for Certification Action - If the Commissioner determines that there is reason to believe that the factual basis of a complaint or allegation is true and that grounds exist for certification action, the certificate holder shall be notified of the substance of the complaint or allegations and the specific grounds for certification action. The holder shall have 30 days to respond in writing.
- E. Informal Conference - The Commissioner may request an informal conference with the holder. If so, the certificate holder shall be given adequate notice of the conference and of the issues to be discussed. The holder may be represented by counsel at the informal conference.
- F. Disposition - If after reviewing all available information, including any information provided by the certificate holder, the Commissioner finds that the factual basis of the complaint is true and that grounds exist for certification action, the Commissioner may:
- (1) Enter into a consent agreement with the certificate holder which provides for the surrender, revocation or suspension of the certificate. The agreement may contain reasonable conditions for the health, safety and welfare of children including, but not limited to, restrictions of grade levels or subjects taught, restriction of school-related extra-curricular activities, provisions for the education, professional improvement or rehabilitation of the

certificate holder and terms designating conditions for reinstatement or identifying evidence of professional improvement or rehabilitation to be considered by the Commission on an application for reinstatement.

A consent agreement may be used to terminate a complaint investigation. A consent agreement or consent decree may also be used to terminate a proceeding in the Administrative Court if entered into by the certificate holder and the Attorney General with the approval of the Court.

- (2) Refer the matter to the Attorney General with a request that a complaint seeking suspension or revocation be filed in Administrative Court.
- G. Revocation or Suspension by the Commissioner - The Commissioner may suspend or revoke a certificate in the circumstances permitted by 5 MRSA §10004 without first following the provisions of paragraphs (A)-(F).
- H. The procedures set forth in this section shall govern the Commissioner's investigation of alleged violations of the code of ethics or practice standards for school psychological service providers which may result in the revocation or suspension of the school psychological service provider's certificate:
- (1) Written complaints alleging violations of the code of ethics or practice standards will be referred by the Commissioner (or his/her designee) to the ethics/complaints consultant of the Advisory Committee of School Psychological Service Providers. The ethics/complaints consultant must be a member of the Advisory Committee of School Psychological Service Providers and must be a licensed psychologist or certified school psychological service provider.
 - (2) The ethics/complaints consultant of the Advisory Committee of the School Psychological Service Providers shall review the written complaint. If it is determined that the alleged misconduct, even if true, would not constitute an actual violation of the Code of Ethics, the ethics/complaints consultant shall notify the complainant and the Commissioner's designee of this point.

Then the Commissioner's designee shall notify the individual of the alleged violation of the Code of Ethics and the Commissioner's finding that the alleged violation of the Code of Ethics was not warranted.

- (3) If the ethics/complaints consultant determines the information provided by the complainant is insufficient to make a determination regarding the alleged misconduct, then the ethics/complaints consultant may send a written request to the complainant, while copying the Commissioner's designee, requesting clarification or additional information.
- (4) If it is determined that the alleged misconduct, if substantiated, would constitute an actual violation of the Code of Ethics and could warrant certification action, then the ethics/complaints consultant will send a letter to the complainant notifying the complainant (and the Commissioner's designee) that the allegation tentatively will be investigated by the ethics/complaints consultant. The complainant shall be asked to sign a release authorizing that his/her name be revealed to the respondent, the individual against whom the complaint was made.
- (5) If the complainant does not execute the release form, the ethics/complaints consultant will consult with the Commissioner's designee, and a decision will be made by the Commissioner regarding whether or not to further proceed.
- (6) The ethics/complaints consultant will, in writing, within 15 days of the receipt of the signed release form, notify the respondent of the complaint as well as copy the Commissioner's designee. The letter shall describe the nature of the complaint as well as indicate the principle(s) that appear to have been violated, and request the respondent's cooperation in obtaining a complete picture of the circumstances which led to the allegations. In the letter, the respondent shall be notified of the investigation which could lead to certification action and the respondent shall be asked to provide, within 30 days of the date of the letter, a written statement outlining his/her view of the situation. If

approval shall apply no later than February 1 of the year the existing authorization expires.

- (2) In the case of complete applications that are timely filed, the existing authorization shall remain in effect until the application is acted upon.
- (3) In the case of complete applications that are timely filed, a renewal of authorization subsequently issued shall be deemed effective as of the February 1 expiration date of the previous authorization.
- (4) Documentation of a minimum of 3 credit hours of approved study during the life of the authorization is required for renewal of authorization status.

Each superintendent of a school unit that permits a student teacher, intern or regular classroom volunteer to serve shall notify the Department of that fact at the time he or she authorizes the individual to serve.

14.10 Qualifications; Department Approval (Effective 2-1-95)

Auxiliary personnel shall meet the general criteria for the issuance of certificates contained in section 2.1(A) and (B). The Department may refuse to approve auxiliary personnel on any of the grounds specified in section 6.3(A), (B) or (D).

The procedure for denial or nonrenewal of certificates contained in section 6.4 shall apply to denial of auxiliary personnel approval.

For purposes of this section, the word "certificate" as used in section 6.4 shall be deemed to mean "approval."

No superintendent shall employ auxiliary personnel and no superintendent shall permit a student teacher, intern or regular classroom volunteer to serve after receiving notice from the Department that it has refused to approve that person.

NOTE: Auxiliary personnel are not certified by the Commissioner and will not be issued certification cards. Except for Maine certified teachers, educational specialists, or administrators serving as auxiliary personnel, auxiliary personnel will be issued letters of authorization.

14.11 Revocation and Suspension of Approval

- A. Grounds for Revocation or Suspension of Approval - The grounds for revocation and suspension of certificates contained in section 6.1 shall also constitute grounds for revocation and suspension of auxiliary personnel approval. For purposes of this paragraph, the word "certificate" used in section 6.1 shall be deemed to mean "approval."
- B. Procedures for Revocation or Suspension of Approval - The procedures for revocation and suspension of certificates contained in section 6.2 shall also apply to revocation and suspension of auxiliary personnel approval. For purposes of this paragraph, the word "certificate" as used in section 6.2 shall be deemed to mean "approval."

14.12 Substitute Educational Technicians

- A. Service - Substitute educational technicians may serve on a day to day basis as outlined in section 14.12(C) in elementary and secondary schools to fill short term Educational Technician I, II, or III vacancies caused by the absence, resignation, inability to employ or termination of an educational technician approved by a letter of authorization.
- B. Procedures - As of February 1, 1995, each employing superintendent initially shall seek to hire an educational technician who holds a letter of authorization and the corresponding level of classification (I, II, or III) for the position for which a substitute educational technician is needed. If such an individual is not available, the superintendent shall try to employ an educational technician who holds a letter of authorization. The superintendent, in extenuating circumstances of genuine hardship, may employ an educational technician who does not hold a letter of authorization; however, the superintendent, within 10 days of the date of employment, must submit the individual's name on Division of Certification form EF-C-300-P and the educational technician must, within 10 days of the date of initial hire, apply to the Division of Certification for authorization.
- C. Preparation
 - (1) A currently certified Maine teacher may serve as a substitute Educational Technician I, II, or III with no time limit;

written permission has been obtained from the complainant, his/her name may be disclosed to the respondent depending on the complaint. A copy of the Code of Ethics may be enclosed.

- (7) The ethics/complaint consultant shall review all available information, including any written information provided by the respondent, in the case and shall prepare a written report, attaching all available documents, for the Commissioner's designee. A copy of this confidential report shall be given to the chair of the Advisory Committee of School Psychological Service Providers. The report shall explain whether or not there appears to be a factual basis to the complaint and shall elaborate on whether or not grounds which relate to the violation of the Code of Ethics or practice standards seem to exist which would warrant certification action.
- (8) The Commissioner's designee will review all documents that are received from the ethics/complaint consultant. As necessary, consultation will occur between the ethics/complaint consultant and the Commissioner's designee. A recommendation will be made by the Commissioner's designee to the Commissioner regarding whether or not certification action is warranted against the respondent.
- (9) If the Commissioner determines that certification action is warranted, the certificate holder will be notified and the Commissioner will proceed as provided for in these rules.

I. Reinstatement of Surrendered, Suspended or Revoked Certificates

A person may apply for reinstatement of a surrendered, suspended or revoked certificate subject to the requirements of 20-A MRSA §13020(4), and to the provisions of any consent agreement, court order or administrative order pursuant to which the applicant's earlier certificate was surrendered, suspended or revoked. A reinstated certificate shall be effective upon its date of issuance or upon such other designated date which is consistent with 20-A MRSA §13020(4) and with the provisions of any consent agreement, court order or administrative order pursuant to which the applicant's earlier

certificate was surrendered, suspended or revoked.

6.3 Denial or Nonrenewal of Certificates

The Commissioner may deny an application for the initial issuance or renewal of any certificate on the following grounds:

- A. Lack of good moral character;
- B. Prior Immoral Conduct - Evidence that an applicant has injured the health or welfare of a child through physical or sexual abuse or exploitation. Notwithstanding Title 5, Chapter 341, every person, who, within five years of the application, has been convicted in any state or federal court of a criminal offense involving the physical or sexual abuse or exploitation of a child, may be presumed by the Commissioner to lack good moral character for the purposes of this chapter and Title 20 MRSA Chapter 502. This presumption shall be a rebuttable presumption. Notwithstanding Title 5, Chapter 341, the Commissioner shall be entitled to consider all records of prior criminal convictions involving child abuse or exploitation in determining an applicant's eligibility for a certificate.
- C. Program Considerations - Failure to meet certification standards as set forth in sections 8, 9, 10 and 11.
- D. Other Grounds - Any ground set forth in section 6.1 which could constitute grounds for revocation or suspension of a certificate.

6.4 Procedure for Denial of Application

Pursuant to section 2.1 of Chapter 119, Adjudicatory Proceedings on Certification Issues, the Department shall notify in writing any applicant for certification whose application was denied by the Commissioner. This denial shall be deemed tentative for purposes of Chapter 119. The notice shall state the reasons for the tentative denial and give notice of opportunity for an adjudicatory hearing as set forth in section 2.4 of Chapter 119. Except as otherwise provided by law, when an applicant has made a complete and timely application for renewal, the existing certificate shall not expire until the application has been finally determined by the Commissioner pursuant to Chapter 119. The notice shall inform the applicant of the right to contest the tentative denial by filing a petition for adjudicatory proceeding under section 3.1 of Chapter 119 within 30 days of the date of the notice. The notice shall

further inform the applicant that if a petition for adjudicatory proceeding is not timely filed, the tentative denial shall automatically become final upon expiration of the filing deadline.

In lieu of affording an applicant for recertification or renewal opportunity for an adjudicatory hearing under Chapter 119, the Commissioner may in his or her sole option file a complaint in Administrative Court to determine whether recertification or renewal may be refused.

The Commissioner may request an informal conference with the applicant. The applicant shall be given adequate notice of any conference requested and of the issues to be discussed. The holder may be represented by counsel at the informal conference.

6.5 Ineligibility to Serve in Other Capacity

No person whose certificate has been surrendered, suspended or revoked shall be approved as a visiting teacher, substitute or auxiliary personnel by the Commissioner during the period of surrender, suspension or revocation. No applicant for certification whose application has been tentatively or finally denied by the Commissioner shall be approved as a visiting teacher, substitute or auxiliary personnel by the Commissioner if the denial was based upon a ground for suspension, revocation or non-renewal set forth in section 6.1 or section 6.3.

20-A M.R.S.A. § 6101, sub-§ 1(G), is repealed.

§ 6103. Criminal history record information.

Beginning January 1, 1999, certification, authorization, approval, and renewal under Chapters 501 and 502 are subject to the provisions of this section.

1. Conviction data obtained; reliance. The Commissioner shall obtain criminal history record information containing a record of conviction data from the Maine Criminal Justice Information System for any person applying for certification, authorization, approval, or renewal. The Commissioner may rely on information provided by the Maine Criminal Justice Information System within 24 months prior to the issuance of a certificate, authorization, approval, or renewal.

1-A. Criminal history record information obtained from the FBI. The Commissioner shall obtain other state and national criminal history record information from the Federal Bureau of Investigation for any person applying for certification, authorization, approval, or renewal. The Commissioner may rely on information provided by the Federal Bureau of Investigation within 24 months prior to the issuance of a certificate, authorization, approval, or renewal.

1-B. Fingerprinting. Two fingerprint cards bearing the legible rolled and flat impression of the applicant's fingerprints prepared by a state or local public law enforcement agency shall be submitted to the Department of Education and forwarded to the Maine State Police's Bureau of Identification for the purpose of conducting state and national criminal history record checks.

1-C. State and federal criminal history record information may be a factor used for the purpose of screening educational personnel applicants by the Commissioner in order to determine whether certification, authorization, approval, or renewal of educational personnel is granted or maintained.

1-D. Applicant's access to criminal history record check. The subject of a Federal Bureau of Investigation criminal history record check may obtain a copy of a criminal history record check by following the procedures outlined in section 16.32 and section 16.33 of Title 28, CFR, Chapter 1. Section 16.34 provides for procedures for the subject to change, correct or update criminal record check information. The subject of a state criminal record check may inspect and review criminal record information pursuant to Title 16 M.R.S.A. § 620.

2. Issuance restriction. Issuance of a certificate, authorization, approval, or renewal to any person whose criminal history record information includes a criminal conviction is subject to the provisions of Title 5, Chapter 341 and section 13020.

3. Confidentiality. Any information obtained pursuant to this section is confidential. The results of criminal history record checks received by the Commissioner of the Department of Education are for official use only and cannot be disseminated outside the Department of Education.

4. Expenses. Notwithstanding Title 26, sections 594 and 629, the expense of obtaining the information required by this section must be paid by the applicant.

STATEMENT OF FACT

This bill provides for the Maine State Police Bureau of Identification's conducting state criminal history record checks and the Federal Bureau of Investigation's conducting federal and other state criminal history record checks on individuals seeking initial certification or renewal as administrators, teachers, or education specialists, individuals seeking authorization or renewal as education technicians, or other educational personnel seeking approval or renewal in Maine from the Department of Education. Individuals covered by approval include, but are not limited to, school bus drivers, custodians, coaches, secretaries, etc.; all of these individuals have or potentially have direct contact with students. The purpose of the bill is to protect the well-being of school-age students and to prevent applicants from omitting conviction information from applications, particularly when these convictions pertain to sex offenses, controlled substances, or violent crimes. The conviction data may be a factor used in considering the individual's fitness for certification, authorization, approval, or employment.

This bill limits the dissemination of criminal history record information received by the Department of Education. This bill also references the procedures that the subject of a criminal history record check may follow for access to his or her criminal record check.

20-A M.R.S.A. § 13011, is enacted to read:

§ 13011. General authorization of State Board.

2-A. Criminal history record checks. Criminal history record checks of an applicant for certification, authorization, approval, or renewal shall be conducted in accordance with this section and Title 20-A M.R.S.A. § 6103 and pursuant to rules promulgated by the State Board of Education.

§ 13011(1)(F). Prior to hire or being placed under contract by a public school or an approved private school, approval must be obtained from the Department of Education and maintained by all individuals for whom certification or authorization is not required.

STATEMENT OF FACT

The purpose of this section is to establish an approval procedure wherein not only individuals who are certified or authorized by the Department of Education but also personnel in food services, clerical services, building and grounds, bus operations, coaching, etc., would be required to undergo state and national criminal history record checks prior to hire by a Maine public school or a Maine approved private school. The aforementioned individuals have direct or potential access to children and this process would assist in further protecting children by further screening potential school employees who may interact with students. Also, if warranted, the Department of Education could revoke, suspend, or deny approval.