

## **FBI CHECKS FOR SES PROVIDERS**

In 2006, Section 111 of the Pennsylvania School Code was amended to require FBI checks for all prospective school employees who have direct contact with children. In recent weeks, the Department has received questions concerning the applicability of Section 111 to SES providers. This document is intended to clarify a few points.

### **Does section 111 apply to SES providers and their tutors?**

Section 111 applies to SES providers in that they are contractors of school districts that are covered by the law, but SES providers are also subject to requirements developed pursuant to federal law. The No Child Left Behind Act requires the Department to establish criteria for the approval of providers. These criteria always have included criminal background checks and child abuse clearances. For the 2007-08 school year, FBI checks will also be required.

### **School employees who were employed prior to April 1, 2007 are not required to obtain FBI checks. Must SES employees obtain FBI checks even if they were employed prior to April 1, 2007?**

The general rule is yes, but there is an exception for LEAs that operate their own SES programs. If a tutor in a LEA's program is also employed by the LEA as a professional or temporary professional employee and was hired by the LEA before April 1, 2007, the LEA does not have to obtain an FBI check for that individual. In such circumstances, the LEA will be required to provide a letter from the superintendent verifying that the individual(s) was (were) employed prior to April 1, 2007. A copy of the letter **must** be held in a file maintained by the LEA provider. The letter **must** be presented upon request during monitoring visits.

All other employees of SES providers will be required to obtain FBI checks. Section 111 clearly states that the requirements apply to all "*prospective employes*" including "*independent contractors and their employees.*" SES providers are independent contractors and, even if they have provided services to the same school districts in the past, they sign new contracts each year. The employment relationship does not commence until at least one parent has selected that provider for his/her child and the provider signs a new contract. Thus, any provider or tutor seeking to provide services during the 2007-08 school year is a *prospective provider* and will be a prospective provider until a contract is in place.

### **Must SES providers and tutors obtain FBI checks before they begin working with children or is there a grace period?**

Although section 111 of the School Code permits the administrator of a school district to hire employees on a provisional basis for a period of ninety days, while clearances are pending, the law does not require this accommodation. In the case of an SES program, offering this accommodation will not be feasible in most instances because the school

administrator who seeks to hire a provisional employee must agree to several conditions, which are set forth in section 111. The required conditions include the following:

*The administrator requires that the applicant not be permitted to work alone with children and that the applicant work in the immediate vicinity of a permanent employe[e].*

Because SES services are not offered during school hours and may be offered at a site that is not on the premises of a school district, it is unreasonable to assume that a school administrator can comply with this requirement. Therefore, the Department will approve a provider for a provisional period only if the following events occur:

- (1) A school district informs the Department, in a letter, signed by the superintendent, of its interest in allowing a specified provider to use a specified tutor(s) on a provisional basis, to provide services in its district;
- (2) The letter must be mailed to the following address and postmarked by \_\_\_\_\_.
- (3) The letter must identify the administrator who will comply with each of the requirements in 24 P.S. § 1-111(i)(1)-(5) and that administrator must provide the written affirmations required under the statute;
- (4) The letter must specify precisely how the administrator will satisfy the requirement set forth in 24 P.S. § 1-111(i)(5); and
- (5) The Department notifies the district in writing that it has approved the provider/tutor on a provisional basis.

Because of the unique structure and relative independence of SES programs, SES employees will not have grace periods under any other circumstances. Thus, the provider is expected to obtain the appropriate clearances prior to the development of the list of approved providers, which is distributed prior to the beginning of the school year. Because providers are approved months before the new school year commences, it is anticipated that providers will be able to meet this requirement without difficulty.

**If, during the school year, the provider finds it necessary to hire additional tutors, what requirements apply?**

The tutor may not work with children until he/she has received the appropriate clearances (unless the above requirements are followed). Once the clearances are obtained, the provider should submit them to the Department's contractor, Intermediate Unit 4. The original will then be returned to the provider, who should maintain a copy for its files before returning the original to the tutor.

**Which employees of a provider require FBI checks?**

Everyone who has contact with children, even if the person does not actually provide tutoring. All persons responsible for the management and supervision of SES programs and staff must obtain FBI checks.