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TO: Heads of Legal Authorities, Administrative Heads, and Education Directors of Nonpublic Schools Approved under COMAR 13A.09.09 and COMAR 13A.09.10

FROM: Sarah Spross, Chief, Nonpublic School Approval Branch

DATE: July 26, 2011

RE: Guidance Concerning Education Article §2-206.1

As you are aware, Maryland law requires nonpublic schools to obtain national and state criminal background checks for all employees on or before the first day of employment [Family Law Article §5-561(b)(7)]. In addition, State law prohibits nonpublic schools from knowingly hiring or retaining employees convicted of certain crimes and failure to do so will result in the loss of the school's Letter of Tentative Approval/Certificate of Approval (Education Article §2-206.1).

Recently, it has come to our attention that State law prohibits disclosure to a nongovernmental, private employer of the specific crime or criminal charge in the employee's FBI criminal history. (Fam. Law Art. §5-564(c); COMAR 12.15.02.07.) This has created a difficult scenario for those schools which have been informed that an employee is subject to a criminal charge per the FBI Criminal History Report, but that State law prohibits the dissemination of information regarding these charges. As such, we have developed the attached guidance for nonpublic schools to comply with Education Article §2-206.1.

Please note that the guidance is to be used as a reference but, as always, schools should seek advice from their governing bodies, legal counsel, or other advisors to assure compliance with the mandates of Education Article §2-206.1.

Enclosures: Policy Guidance to Nonpublic School in Complying with Education Article §2-206.1

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**Policy Guidance to Nonpublic Schools in Complying with
Education Article §2-206.1**

Maryland law requires nonpublic schools to obtain national and State criminal background checks for all employees on or before the first day of employment. (Md. Code, Family Law Article § 5-561(b)(7).) In addition, State law prohibits nonpublic schools from knowingly hiring or retaining employees convicted of qualifying crimes. Failure to do so will result in a loss of the school's Certificate of Approval. (Educ. Art. § 2-206.1.)

However, the information provided to nonpublic schools in a national or FBI background check is limited because State law prohibits disclosure to a nongovernmental, private employer of the specific crime or criminal charge in the employee's FBI criminal history. (Fam. Law Art. §5-564(c); COMAR 12.15.02.07.) Of the 41 crimes listed on the FBI background results, several are crimes for which an employee's conviction would disqualify the individual from working in a nonpublic school.

Consequently, nonpublic schools that choose to hire or retain these employees have an affirmative obligation to fully investigate the criminal backgrounds and confirm that the employees have not been convicted of disqualifying crimes under Maryland law.

To assist with that effort, schools should seek appropriate guidance from their governing bodies, legal counsel or other advisors to exercise due diligence in complying with the mandates of Education Article § 2-206.1. Among other things, schools may include the following steps:

1. Meet with applicant/employee to discuss:
 - a. The applicant's/employee's disclosure on sworn statement/affirmation listing criminal conviction or charges, as required by Family Law Article §5-563(a). [Note: If the individual denies or challenges the accuracy of the FBI background check, he or she may request a personal copy of the FBI criminal history, which will contain more detail than that provided to the nonpublic school. The individual will be responsible for correcting any alleged errors with the appropriate law enforcement authorities.];
 - b. Jurisdiction where the charges were filed, if known;
 - c. Date(s) the charges were filed, if known;
 - d. Under what name/alias the employee was arrested and charged, if different;
 - e. Name of the charge(s), if known; and
 - f. Any other information the school considers relevant to the investigation.
2. Obtain a written, signed statement from applicant/employee confirming known details of relevant crimes/charges.
3. Contact the court in relevant jurisdiction(s) to obtain copies of records and determine the disposition of the criminal charges.
4. Review the court documents and confirm that the applicant/employee has not been convicted of any qualifying crime under Education Article §2-206.1.
5. Place a copy of the investigation and results in the employee's personnel file.