



Updated ASBCS Guidance on FCC Requirements

In its [December 2021 newsletter](#), ASBCS offered guidance on fingerprint clearance card (“FCC”) requirements, advising that “all . . . contractors and subcontractors” must have FCCs, and specifically calling out “night janitors” as an example. After receiving questions on this guidance from several clients and because the guidance seemed to conflict with statutory language that allows schools to “exempt a person from the [FCC] requirements of this subsection if the person’s normal job duties are not likely to result in independent access to or unsupervised contact with pupils,” [A.R.S. § 15-512\(H\)](#), we reached out to ASBCS for clarification.

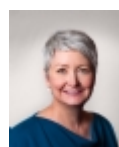
ASBCS has acknowledged the potential statutory exemption, indicating that the statute requires two things for schools to avail themselves of the exemption: (1) the governing board has adopted a policy to exempt a person from the FCC requirement, and (2) the person’s job duties are not likely to result in independent access or unsupervised contact with students. Although it is not clear that the statute requires **charter school** governing boards to adopt a policy (the statute refers only to “a school district governing board”), ASBCS has interpreted that portion of the statute as also applying to charter schools’ governing boards. Regarding the night janitor example included in their previous guidance, ASBCS has indicated that “[a] night janitor would be exempt from the FCC requirement only if the two previously outlined conditions are met.”

Therefore, if you currently rely on this statutory provision as the basis for not requiring an FCC for contractors or vendors whose job duties are not likely to result in independent access or unsupervised contact with students and you do not already have a policy in place, you should adopt one immediately.

Here is some policy language that your governing board may wish to consider:

A person, including a contractor, subcontractor or vendor or any employee of these entities, is exempt from the requirements of A.R.S. § 15-512 if their normal job duties are not likely to result in independent access to or unsupervised contact with pupils. The School’s [FILL IN APPROPRIATE TITLE—Executive Director, Head of School, Principal,

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other] shall have the authority to make an exemption determination based on an analysis of the person's job duties.

Of course, you should consult with your school's legal counsel if you work with someone other than our firm about actual policy language for your board to consider. And if we are your legal counsel, you should contact us with any specific questions or concerns regarding the required policy, its language or its adoption.

ASBCS has indicated that they will be clarifying their previous guidance in a future communication with charter holders.

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