

3294

2009-2010 Regular Sessions

I N S E N A T E

March 13, 2009

Introduced by Sen. OPPENHEIMER -- (at request of the State Education Department) -- read twice and ordered printed, and when printed to be committed to the Committee on Education

AN ACT to amend the education law, in relation to requiring the fingerprinting of prospective employees of public or publicly-funded special education schools and prospective employees in the office of cultural education, for the purpose of conducting criminal history record checks; and making an appropriation therefor

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Paragraphs (a) and (b) of subdivision 30 of section 305 of
2 the education law, paragraph (a), the opening paragraph of paragraph (b)
3 and subparagraph (i) of paragraph (b) as amended by chapter 630 of the
4 laws of 2006 and paragraph (b) as added by chapter 180 of the laws of
5 2000, are amended to read as follows:
6 (a) The commissioner, in cooperation with the division of criminal
7 justice services and in accordance with all applicable provisions of
8 law, shall promulgate rules and regulations to require the fingerprint-
9 ing of prospective employees, as defined in section eleven hundred twen-
10 ty-five of this chapter, of school districts, charter schools and boards
11 of cooperative educational services, AND SPECIAL EDUCATION SCHOOLS, and
12 authorizing the fingerprinting of prospective employees of nonpublic and
13 private elementary and secondary schools, and for the use of information
14 derived from searches of the records of the division of criminal justice
15 services and the federal bureau of investigation based on the use of
16 such fingerprints. The commissioner shall also develop a form for use by
17 school districts, charter schools, boards of cooperative educational
18 services, SPECIAL EDUCATION SCHOOLS and nonpublic and private elementary
19 and secondary schools in connection with the submission of fingerprints
20 that contains the specific job title sought and any other information
21 that may be relevant to consideration of the applicant. The commissioner
22 shall also establish a form for the recordation of allegations of child
23 abuse in an educational setting, as required pursuant to section eleven
24 hundred twenty-six of this chapter. No person who has been fingerprinted

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 pursuant to section three thousand four-b of this chapter or pursuant to
2 section five hundred nine-cc or twelve hundred twenty-nine-d of the
3 vehicle and traffic law and whose fingerprints remain on file with the
4 division of criminal justice services shall be required to undergo fing-
5 erprinting for purposes of a new criminal history record check. This
6 subdivision and the rules and regulations promulgated pursuant thereto
7 shall not apply to a school district within a city with a population of
8 one million or more, OR TO SPECIAL EDUCATION SCHOOLS LOCATED WITHIN SUCH
9 CITY.

10 (b) The commissioner, in cooperation with the division of criminal
11 justice services, shall promulgate a form to be provided to all such
12 prospective employees of school districts, charter schools, boards of
13 cooperative educational services, SPECIAL EDUCATION SCHOOLS and nonpub-
14 lic and private elementary and secondary schools that elect to finger-
15 print and seek clearance for prospective employees that shall:

16 (i) inform the prospective employee that the commissioner is required
17 or authorized to request his or her criminal history information from
18 the division of criminal justice services and the federal bureau of
19 investigation and review such information pursuant to this section, and
20 provide a description of the manner in which his or her fingerprint
21 cards will be used upon submission to the division of criminal justice
22 services;

23 (ii) inform the prospective employee that he or she has the right to
24 obtain, review and seek correction of his or her criminal history infor-
25 mation pursuant to regulations and procedures established by the divi-
26 sion of criminal justice services.

27 S 2. Subparagraph (vii) of paragraph (c) of subdivision 30 of section
28 305 of the education law, as amended by chapter 630 of the laws of 2006,
29 is amended to read as follows:

30 (vii) been informed that in the event his or her employment is termi-
31 nated and such person has not become employed in the same or another
32 school district, charter school, board of cooperative educational
33 services, SPECIAL EDUCATION SCHOOL or nonpublic or private elementary or
34 secondary school within [twelve-months] TWELVE MONTHS of such termi-
35 nation, the commissioner shall notify the division of criminal justice
36 services of such termination, and the division of criminal justice
37 services shall destroy the fingerprints of such person. Such person may
38 request that the commissioner notify the division of criminal justice
39 services that his or her fingerprints shall be destroyed prior to the
40 expiration of such twelve month period in which case the commissioner
41 shall notify the division of criminal justice services and the division
42 shall destroy the fingerprints of such person promptly upon receipt of
43 the request; and

44 S 3. Paragraph (d) of subdivision 30 of section 305 of the education
45 law, as amended by chapter 630 of the laws of 2006, is amended to read
46 as follows:

47 (d) The commissioner shall develop forms to be provided to all school
48 districts, charter schools, boards of cooperative educational services,
49 SPECIAL EDUCATION SCHOOLS and to all nonpublic and private elementary
50 and secondary schools that elect to fingerprint their prospective
51 employees, to be completed and signed by prospective employees when
52 conditional appointment or emergency conditional appointment is offered.

53 S 4. Subdivision 30 of section 305 of the education law is amended by
54 adding a new paragraph (f) to read as follows:

55 (F) AS USED IN THIS SECTION AND SECTION THREE THOUSAND THIRTY-FIVE OF
56 THIS CHAPTER, "SPECIAL EDUCATION SCHOOL" SHALL MEAN A STATE SCHOOL OPER-

1 ATED PURSUANT TO ARTICLE EIGHTY-SEVEN OR EIGHTY-EIGHT OF THIS CHAPTER, A
2 STATE-SUPPORTED SCHOOL OPERATED PURSUANT TO ARTICLE EIGHTY-FIVE OF THIS
3 CHAPTER, AN APPROVED PRIVATE NON-RESIDENTIAL OR RESIDENTIAL SCHOOL FOR
4 THE EDUCATION OF STUDENTS WITH DISABILITIES THAT IS LOCATED WITHIN THE
5 STATE, OR AN APPROVED PROVIDER OF PRESCHOOL SPECIAL EDUCATION SERVICES
6 OR PROGRAMS THAT IS LOCATED WITHIN THE STATE; PROVIDED THAT SUCH TERM
7 SHALL NOT APPLY TO A SCHOOL OR FACILITY OPERATED OR LICENSED BY A STATE
8 AGENCY OTHER THAN THE DEPARTMENT, UNLESS SUCH SCHOOL OR FACILITY IS ALSO
9 AN APPROVED PRIVATE SCHOOL FOR STUDENTS WITH DISABILITIES OR AN APPROVED
10 PROVIDER UNDER SECTION FORTY-FOUR HUNDRED TEN OF THIS CHAPTER.

11 S 5. Subdivisions 3, 4, 5 and 6 of section 1125 of the education law,
12 as added by chapter 180 of the laws of 2000, are amended and a new
13 subdivision 10 is added to read as follows:

14 3. "Employee" shall mean any person receiving compensation from a
15 school district, NON-RESIDENTIAL SPECIAL EDUCATION SCHOOL OR PROGRAM, or
16 employee of a contracted service provider or worker placed within the
17 school under a public assistance employment program, pursuant to title
18 nine-B of article five of the social services law, and consistent with
19 the provisions of such title for the provision of services to such
20 district, its students or employees, directly or through contract,
21 whereby such services performed by such person involve direct student
22 contact.

23 4. "Volunteer" shall mean any person, other than an employee, who
24 provides services to a school or school district OR NON-RESIDENTIAL
25 SPECIAL EDUCATION SCHOOL OR PROGRAM, which involve direct student
26 contact.

27 5. "Educational setting" shall mean the building and grounds of a
28 public school district, NON-RESIDENTIAL SPECIAL EDUCATION SCHOOL OR
29 PROGRAM, the vehicles provided by the school district for the transpor-
30 tation of students to and from school buildings, field trips, co-curri-
31 cular and extra-curricular activities both on and off school district
32 grounds, all co-curricular and extra-curricular activity sites, and any
33 other location where direct contact between an employee or volunteer and
34 a child has allegedly occurred, EXCEPT THAT SUCH TERM SHALL NOT APPLY TO
35 A RESIDENTIAL SCHOOL WITH CHILDREN IN RESIDENTIAL CARE, AS DEFINED IN
36 SUBDIVISION SEVEN OF SECTION FOUR HUNDRED TWELVE OF THE SOCIAL SERVICES
37 LAW, FOR WHOM ALLEGATIONS OF ABUSE OF A CHILD IN RESIDENTIAL CARE OR
38 NEGLECT OF A CHILD IN RESIDENTIAL CARE ARE SUBJECT TO MANDATORY REPORT-
39 ING TO THE STATEWIDE CENTRAL REGISTER OF CHILD ABUSE AND MALTREATMENT
40 PURSUANT TO TITLE SIX OF ARTICLE SIX OF THE SOCIAL SERVICES LAW.

41 6. "Administrator" or "school administrator" shall mean a principal of
42 a public school, NON-RESIDENTIAL SPECIAL EDUCATION SCHOOL OR PROGRAM,
43 charter school or board of cooperative educational services, or other
44 chief school officer.

45 10. "NON-RESIDENTIAL SPECIAL EDUCATION SCHOOL OR PROGRAM" SHALL MEAN A
46 STATE SUPPORTED SCHOOL OPERATED PURSUANT TO ARTICLE EIGHTY-FIVE OF THIS
47 CHAPTER THAT DOES NOT HAVE A RESIDENTIAL COMPONENT, AN APPROVED PRIVATE
48 NON-RESIDENTIAL SCHOOL FOR THE EDUCATION OF STUDENTS WITH DISABILITIES
49 THAT IS LOCATED WITHIN THE STATE, OR AN APPROVED PROVIDER OF PRESCHOOL
50 SPECIAL EDUCATION SERVICES OR PROGRAMS THAT IS LOCATED WITHIN THE STATE;
51 PROVIDED THAT SUCH TERM SHALL ALSO APPLY TO AN APPROVED PRIVATE RESIDEN-
52 TIAL SCHOOL OR APPROVED PROVIDER OF PRESCHOOL SPECIAL EDUCATION THAT
53 PROVIDES A RESIDENTIAL PROGRAM THAT ALSO PROVIDES A DAY PROGRAM OR OTHER
54 NON-RESIDENTIAL PROGRAM IF THE STUDENTS IN SUCH NON-RESIDENTIAL PROGRAM
55 ARE NOT "CHILDREN IN RESIDENTIAL CARE," AS DEFINED IN SUBDIVISION SEVEN
56 OF SECTION FOUR HUNDRED TWELVE OF THE SOCIAL SERVICES LAW, FOR WHOM

1 ALLEGATIONS OF ABUSE OF A CHILD IN RESIDENTIAL CARE OR NEGLECT OF A
2 CHILD IN RESIDENTIAL CARE ARE SUBJECT TO MANDATORY REPORTING TO THE
3 STATEWIDE CENTRAL REGISTER OF CHILD ABUSE AND MALTREATMENT PURSUANT TO
4 TITLE SIX OF ARTICLE SIX OF THE SOCIAL SERVICES LAW.

5 S 6. Subdivision 2 of section 1126 of the education law, as added by
6 chapter 180 of the laws of 2000, is amended to read as follows:

7 2. [In] (A) EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH (B) OF THIS
8 SUBDIVISION, IN any case where it is alleged that a child was abused by
9 an employee or volunteer of a school other than a school within the
10 school district of the child's attendance, the report of such allega-
11 tions shall be promptly forwarded to the superintendent of schools of
12 the school district of the child's attendance and the school district
13 where the abuse allegedly occurred, whereupon both school superinten-
14 dents shall comply with sections eleven hundred twenty-eight and eleven
15 hundred twenty-eight-a of this article.

16 (B) IN THE CASE OF A NON-RESIDENTIAL SPECIAL EDUCATION SCHOOL, WHERE
17 IT IS ALLEGED THAT A CHILD WAS ABUSED BY AN EMPLOYEE OR VOLUNTEER OF
18 SUCH NON-RESIDENTIAL SPECIAL EDUCATION SCHOOL, THE REPORT OF SUCH ALLE-
19 GATIONS SHALL BE PROMPTLY FORWARDED TO THE ADMINISTRATOR OF SUCH SCHOOL,
20 WHO SHALL BE RESPONSIBLE FOR COMPLIANCE WITH ALL THE PROVISIONS OF THIS
21 ARTICLE THAT APPLY TO SUPERINTENDENTS OF SCHOOLS.

22 S 7. Subdivision 1 of section 1128-a of the education law, as added by
23 chapter 180 of the laws of 2000, is amended to read as follows:

24 1. Where a superintendent of schools OR SCHOOL ADMINISTRATOR forwards
25 to law enforcement a report as described in paragraph (a) of subdivision
26 one of section eleven hundred twenty-six of this article, he or she
27 shall refer such report to the commissioner where the employee or volun-
28 teer alleged to have committed an act of child abuse as defined in this
29 article holds a certification or license issued by the department.

30 S 8. Subdivision 3 of section 1133 of the education law, as added by
31 chapter 180 of the laws of 2000, is amended to read as follows:

32 3. Any superintendent of schools OR SCHOOL ADMINISTRATOR who reason-
33 ably and in good faith reports to law enforcement officials information
34 regarding allegations of child abuse or a resignation as required by
35 this article shall have immunity from any liability, civil or criminal,
36 which might otherwise result by reason of such actions.

37 S 9. Subdivision 1 of section 3035 of the education law, as amended by
38 chapter 630 of the laws of 2006, is amended to read as follows:

39 1. The commissioner shall submit to the division of criminal justice
40 services two sets of fingerprints of prospective employees as defined in
41 subdivision three of section eleven hundred twenty-five of this chapter
42 received from a school district, charter school or board of cooperative
43 educational services and of prospective employees received from nonpub-
44 lic and private elementary and secondary schools pursuant to title two
45 of this chapter OR A SPECIAL EDUCATION SCHOOL, AS DEFINED IN PARAGRAPH
46 (F) OF SUBDIVISION THIRTY OF SECTION THREE HUNDRED FIVE OF THIS CHAPTER,
47 PURSUANT TO TITLE SIX OF ARTICLE SIX OF THE SOCIAL SERVICES LAW, OTHER
48 THAN A SPECIAL EDUCATION SCHOOL LOCATED IN THE CITY OF NEW YORK, and the
49 division of criminal justice services processing fee imposed pursuant to
50 subdivision eight-a of section eight hundred thirty-seven of the execu-
51 tive law and any fee imposed by the federal bureau of investigation. The
52 division of criminal justice services and the federal bureau of investi-
53 gation shall forward such criminal history record to the commissioner in
54 a timely manner. For the purposes of this section, the term "criminal
55 history record" shall mean a record of all convictions of crimes and any
56 pending criminal charges maintained on an individual by the division of

1 criminal justice services and the federal bureau of investigation. All
2 such criminal history records sent to the commissioner pursuant to this
3 subdivision shall be confidential pursuant to the applicable federal and
4 state laws, rules and regulations, and shall not be published or in any
5 way disclosed to persons other than the commissioner, unless otherwise
6 authorized by law.

7 S 10. Subdivisions 3 and 3-a of section 3035 of the education law,
8 subdivision 3 as amended by section 7 of chapter 630 of the laws of 2006
9 and subdivision 3-a as added by chapter 380 of the laws of 2001, are
10 amended to read as follows:

11 3. (a) Clearance. After receipt of a criminal history record from the
12 division of criminal justice services and the federal bureau of investi-
13 gation the commissioner shall promptly notify the appropriate school
14 district, charter school, board of cooperative educational services,
15 [or] nonpublic or private elementary or secondary school OR SPECIAL
16 EDUCATION SCHOOL whether the prospective employee to which such report
17 relates is cleared for employment based upon his or her criminal histo-
18 ry. All determinations to grant or deny clearance for employment pursu-
19 ant to this paragraph shall be performed in accordance with subdivision
20 sixteen of section two hundred ninety-six of the executive law and arti-
21 cle twenty-three-A of the correction law. When the commissioner denies a
22 prospective employee clearance for employment, such prospective employee
23 shall be afforded notice and the right to be heard and offer proof in
24 opposition to such determination in accordance with the regulations of
25 the commissioner, PROVIDED THAT IN THE CASE OF PROSPECTIVE EMPLOYEES OF
26 STATE SCHOOLS PURSUANT TO ARTICLE EIGHTY-SEVEN OR EIGHTY-EIGHT OF THIS
27 CHAPTER THE DUE PROCESS PROCEDURES ESTABLISHED BY THE COMMISSIONER
28 PURSUANT TO SECTION FIFTY OF THE CIVIL SERVICE LAW SHALL APPLY.

29 (b) Conditional clearance. When the commissioner receives a request
30 for a determination on the conditional clearance of a prospective
31 employee, the commissioner, after receipt of a criminal history record
32 from the division of criminal justice services, shall promptly notify
33 the prospective employee and the appropriate school district, charter
34 school, board of cooperative educational services, [or] nonpublic or
35 private elementary or secondary school OR SPECIAL EDUCATION SCHOOL that
36 the prospective employee to which such report relates is conditionally
37 cleared for employment based upon his or her criminal history or that
38 more time is needed to make the determination. If the commissioner
39 determines that more time is needed, the notification shall include a
40 good faith estimate of the amount of additional time needed. Such
41 notification shall be made within fifteen business days after the
42 commissioner receives the prospective employee's fingerprints. All
43 determinations to grant or deny conditional clearance for employment
44 pursuant to this paragraph shall be performed in accordance with subdi-
45 vision sixteen of section two hundred ninety-six of the executive law
46 and article twenty-three-A of the correction law.

47 3-a. Upon request from a prospective employee who has been cleared by
48 the commissioner for employment and/or certification, the commissioner
49 shall have the authority to forward a copy of such criminal history
50 record to the city school district of the city of New York by the most
51 expeditious means available. Furthermore, upon notification that such
52 prospective employee is employed by the city school district of the city
53 of New York OR IS EMPLOYED BY A SPECIAL EDUCATION SCHOOL THAT CONTRACTS
54 WITH THE CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK, the division of
55 criminal justice services shall have the authority to provide subsequent
56 criminal history notifications directly to the city school district of

1 the city of New York. Upon request from a prospective employee who has
2 been cleared for licensure and/or employment by the city school district
3 of the city of New York OR HAS BEEN CLEARED BY THE CITY OF NEW YORK FOR
4 EMPLOYMENT BY A SPECIAL EDUCATION SCHOOL THAT IS LOCATED OUTSIDE OF THE
5 CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK, such school district OR
6 CITY shall have the authority to forward a copy of the prospective
7 employee's criminal history record to the commissioner, by the most
8 expeditious means available, for the purposes of this section. Further-
9 more, upon notification that such prospective employee is employed by a
10 school district outside the city of New York OR BY A SPECIAL EDUCATION
11 SCHOOL THAT IS LOCATED OUTSIDE OF THE CITY OF NEW YORK, the division of
12 criminal justice services shall have the authority to provide subsequent
13 criminal history notifications directly to the commissioner.

14 S 11. Subdivision 3 of section 3035 of the education law, as amended
15 by section 8 of chapter 630 of the laws of 2006, is amended to read as
16 follows:

17 3. After receipt of a criminal history record from the division of
18 criminal justice services and the federal bureau of investigation the
19 commissioner shall promptly notify the appropriate school district,
20 charter school, board of cooperative educational services, SPECIAL
21 EDUCATION SCHOOL or nonpublic or private elementary or secondary school
22 whether the prospective employee to which such report relates is cleared
23 for employment based upon his or her criminal history. All determi-
24 nations to grant or deny clearance for employment pursuant to this
25 subdivision shall be performed in accordance with subdivision sixteen of
26 section two hundred ninety-six of the executive law and article twenty-
27 three-A of the correction law. When the commissioner denies a prospec-
28 tive employee clearance for employment, such prospective employee shall
29 be afforded notice and the right to be heard and offer proof in oppo-
30 sition to such determination in accordance with the regulations of the
31 commissioner.

32 S 12. Paragraph (i) of subdivision (a) of section 4212 of the educa-
33 tion law, as amended by chapter 32 of the laws of 1992, is amended to
34 read as follows:

35 (i) consistent with appropriate collective bargaining agreements and
36 applicable provisions of the civil service law, the review and evalu-
37 ation of the backgrounds of and the information supplied by any person
38 applying to be an employee, a volunteer or consultant, which shall
39 include but not be limited to the following requirements: that the
40 applicant set forth his or her employment history, provide personal and
41 employment references, and relevant experiential and educational infor-
42 mation, [and] sign a sworn statement indicating whether the applicant,
43 to the best of his or her knowledge, has ever been convicted of a crime
44 in this state or any other jurisdiction AND, IN THE CASE OF A PROSPEC-
45 TIVE EMPLOYEE, BE FINGERPRINTED FOR PURPOSES OF A CRIMINAL HISTORY BACK-
46 GROUND CHECK PURSUANT TO SUBDIVISION (D) OF THIS SECTION;

47 S 13. Section 4212 of the education law is amended by adding a new
48 subdivision (d) to read as follows:

49 (D)(I) THE SCHOOL SHALL REQUIRE, FOR PURPOSES OF A CRIMINAL HISTORY
50 RECORD CHECK, THE FINGERPRINTING OF ALL PROSPECTIVE EMPLOYEES OF THE
51 SCHOOL PURSUANT TO SUBDIVISION THIRTY OF SECTION THREE HUNDRED FIVE AND
52 SECTION THREE THOUSAND THIRTY-FIVE OF THIS CHAPTER, EXCEPT WHERE SUCH
53 PROSPECTIVE EMPLOYEES HOLD VALID CLEARANCE PURSUANT TO SECTION THREE
54 THOUSAND THIRTY-FIVE OR SECTION THREE THOUSAND FOUR-B OF THIS CHAPTER OR
55 SECTION FIVE HUNDRED NINE-CC OR TWELVE HUNDRED TWENTY-NINE-D OF THE
56 VEHICLE AND TRAFFIC LAW, OR VALID CLEARANCE ISSUED BY THE CITY OF NEW

1 YORK PURSUANT TO LOCAL LAW. PRIOR TO INITIATING THE FINGERPRINTING PROC-
2 ESS, THE SCHOOL SHALL FURNISH THE PROSPECTIVE EMPLOYEE WITH THE FORM
3 DESCRIBED IN PARAGRAPH (C) OF SUBDIVISION THIRTY OF SECTION THREE
4 HUNDRED FIVE OF THIS CHAPTER AND SHALL OBTAIN THE APPLICANT'S CONSENT TO
5 THE CRIMINAL HISTORY RECORDS SEARCH. EVERY SET OF FINGERPRINTS TAKEN
6 PURSUANT TO THIS SUBDIVISION SHALL BE PROMPTLY SUBMITTED TO THE COMMIS-
7 SIONER FOR PURPOSES OF CLEARANCE FOR EMPLOYMENT. NOTWITHSTANDING ANY
8 OTHER PROVISION OF LAW TO THE CONTRARY, THE COMMISSIONER SHALL BE
9 AUTHORIZED TO PROVIDE SUBSEQUENT CRIMINAL HISTORY NOTIFICATIONS TO THE
10 SCHOOL FOR ITS EMPLOYEES.

11 (II) NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, THE
12 SCHOOL MAY ESTABLISH PROCEDURES FOR THE CONDITIONAL APPOINTMENT OR EMER-
13 GENCY CONDITIONAL APPOINTMENT OF PROSPECTIVE EMPLOYEES OF THE SCHOOL TO
14 THE SAME EXTENT AND UNDER THE SAME CONDITIONS AS A BOARD OF EDUCATION OF
15 A UNION FREE SCHOOL DISTRICT PURSUANT TO SUBDIVISION THIRTY-NINE OF
16 SECTION SEVENTEEN HUNDRED NINE OF THIS CHAPTER.

17 S 14. Paragraph (i) of subdivision (a) of section 4314 of the educa-
18 tion law, as amended by chapter 32 of the laws of 1992, is amended to
19 read as follows:

20 (i) consistent with appropriate collective agreements and applicable
21 provisions of the civil service law, the review and evaluation of the
22 backgrounds of and the information supplied by any person applying to be
23 an employee, a volunteer or consultant, which shall include but not be
24 limited to the following requirements: that the applicant set forth his
25 or her employment history, provide personal and employment references,
26 and relevant experiential and educational information, [and] sign a
27 sworn statement indicating whether the applicant, to the best of his or
28 her knowledge, has ever been convicted of a crime in this state or any
29 other jurisdiction AND, IN THE CASE OF A PROSPECTIVE EMPLOYEE, BE FING-
30 ERPRINTED FOR PURPOSES OF A CRIMINAL HISTORY BACKGROUND CHECK PURSUANT
31 TO SUBDIVISION (D) OF THIS SECTION;

32 S 15. Section 4314 of the education law is amended by adding a new
33 subdivision (d) to read as follows:

34 (D)(I) THE DEPARTMENT SHALL REQUIRE, FOR PURPOSES OF A CRIMINAL HISTO-
35 RY RECORD CHECK, THE FINGERPRINTING OF ALL PROSPECTIVE EMPLOYEES OF THE
36 SCHOOL PURSUANT TO SUBDIVISION THIRTY OF SECTION THREE HUNDRED FIVE AND
37 SECTION THREE THOUSAND THIRTY-FIVE OF THIS CHAPTER, WHO DO NOT HOLD
38 VALID CLEARANCE PURSUANT TO SUCH SECTION THREE THOUSAND THIRTY-FIVE OR
39 PURSUANT TO SECTION THREE THOUSAND FOUR-B OF THIS CHAPTER OR SECTION
40 FIVE HUNDRED NINE-CC OR TWELVE HUNDRED TWENTY-NINE-D OF THE VEHICLE AND
41 TRAFFIC LAW, OR VALID CLEARANCE ISSUED BY THE CITY OF NEW YORK PURSUANT
42 TO LOCAL LAW. PRIOR TO INITIATING THE FINGERPRINTING PROCESS, THE
43 DEPARTMENT SHALL FURNISH THE PROSPECTIVE EMPLOYEE WITH THE FORM
44 DESCRIBED IN PARAGRAPH (C) OF SUBDIVISION THIRTY OF SECTION THREE
45 HUNDRED FIVE OF THIS CHAPTER AND SHALL OBTAIN THE APPLICANT'S CONSENT TO
46 THE CRIMINAL HISTORY RECORDS SEARCH. EVERY SET OF FINGERPRINTS TAKEN
47 PURSUANT TO THIS SUBDIVISION SHALL BE PROMPTLY SUBMITTED TO THE COMMIS-
48 SIONER FOR PURPOSES OF CLEARANCE FOR EMPLOYMENT.

49 (II) NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, THE
50 COMMISSIONER MAY ESTABLISH PROCEDURES FOR THE CONDITIONAL APPOINTMENT OR
51 EMERGENCY CONDITIONAL APPOINTMENT OF PROSPECTIVE EMPLOYEES OF THE SCHOOL
52 BY THE DEPARTMENT TO THE SAME EXTENT AND UNDER THE SAME CONDITIONS AS A
53 BOARD OF EDUCATION OF A UNION FREE SCHOOL DISTRICT PURSUANT TO SUBDIVI-
54 SION THIRTY-NINE OF SECTION SEVENTEEN HUNDRED NINE OF THIS CHAPTER.

1 S 16. Paragraph (i) of subdivision (a) of section 4358 of the educa-
2 tion law, as amended by chapter 32 of the laws of 1992, is amended to
3 read as follows:

4 (i) consistent with appropriate collective bargaining agreements and
5 applicable provisions of the civil service law, the review and evalu-
6 ation of the backgrounds of and the information supplied by any person
7 applying to be an employee, a volunteer or consultant, which shall
8 include but not be limited to the following requirements: that the
9 applicant set forth his or her employment history, provide personal and
10 employment references and relevant experiential and educational informa-
11 tion, [and] sign a sworn statement indicating whether the applicant, to
12 the best of his or her knowledge, has ever been convicted of a crime in
13 this state or any other jurisdiction AND, IN THE CASE OF A PROSPECTIVE
14 EMPLOYEE, BE FINGERPRINTED FOR PURPOSES OF A CRIMINAL HISTORY BACKGROUND
15 CHECK PURSUANT TO SUBDIVISION (D) OF THIS SECTION;

16 S 17. Section 4358 of the education law is amended by adding a new
17 subdivision (d) to read as follows:

18 (D) (I) THE DEPARTMENT SHALL REQUIRE, FOR PURPOSES OF A CRIMINAL
19 HISTORY RECORD CHECK, THE FINGERPRINTING OF ALL PROSPECTIVE EMPLOYEES OF
20 THE SCHOOL PURSUANT TO SUBDIVISION THIRTY OF SECTION THREE HUNDRED FIVE
21 AND SECTION THREE THOUSAND THIRTY-FIVE OF THIS CHAPTER, WHO DO NOT HOLD
22 VALID CLEARANCE PURSUANT TO SUCH SECTION THREE THOUSAND THIRTY-FIVE OR
23 PURSUANT TO SECTION THREE THOUSAND FOUR-B OF THIS CHAPTER OR SECTION
24 FIVE HUNDRED NINE-CC OR TWELVE HUNDRED TWENTY-NINE-D OF THE VEHICLE AND
25 TRAFFIC LAW, OR VALID CLEARANCE ISSUED BY THE CITY OF NEW YORK PURSUANT
26 TO LOCAL LAW. PRIOR TO INITIATING THE FINGERPRINTING PROCESS, THE
27 DEPARTMENT SHALL FURNISH THE PROSPECTIVE EMPLOYEE WITH THE FORM
28 DESCRIBED IN PARAGRAPH (C) OF SUBDIVISION THIRTY OF SECTION THREE
29 HUNDRED FIVE OF THIS CHAPTER AND SHALL OBTAIN THE APPLICANT'S CONSENT TO
30 THE CRIMINAL HISTORY RECORDS SEARCH. EVERY SET OF FINGERPRINTS TAKEN
31 PURSUANT TO THIS SUBDIVISION SHALL BE PROMPTLY SUBMITTED TO THE COMMIS-
32 SIONER FOR PURPOSES OF CLEARANCE FOR EMPLOYMENT.

33 (II) NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, THE
34 COMMISSIONER MAY ESTABLISH PROCEDURES FOR THE CONDITIONAL APPOINTMENT OR
35 EMERGENCY CONDITIONAL APPOINTMENT OF PROSPECTIVE EMPLOYEES OF THE SCHOOL
36 BY THE DEPARTMENT TO THE SAME EXTENT AND UNDER THE SAME CONDITIONS AS A
37 BOARD OF EDUCATION OF A UNION FREE SCHOOL DISTRICT PURSUANT TO SUBDIVI-
38 SION THIRTY-NINE OF SECTION SEVENTEEN HUNDRED NINE OF THIS CHAPTER.

39 S 18. Paragraph (a) of subdivision 11 of section 4403 of the education
40 law, as amended by chapter 32 of the laws of 1992, is amended to read as
41 follows:

42 (a) consistent with appropriate collective bargaining agreements and
43 applicable provisions of the civil service law, the review and evalu-
44 ation of the backgrounds of and the information supplied by any person
45 applying to be an employee, a volunteer or consultant, which shall
46 include but not be limited to the following requirements: that the
47 applicant set forth his or her employment history, provide personal and
48 employment references, and relevant experiential and educational quali-
49 fications [and], sign a sworn statement indicating whether the appli-
50 cant, to the best of his or her knowledge has ever been convicted of a
51 crime in this state or any other jurisdiction AND, IN THE CASE OF A
52 PROSPECTIVE EMPLOYEE, BE FINGERPRINTED FOR PURPOSES OF A CRIMINAL HISTO-
53 RY BACKGROUND CHECK PURSUANT TO SUBDIVISION TWENTY-ONE OF THIS SECTION;

54 S 19. Section 4403 of the education law is amended by adding a new
55 subdivision 21 to read as follows:

1 21. A. THE COMMISSIONER SHALL REQUIRE, FOR PURPOSES OF A CRIMINAL
2 HISTORY RECORD CHECK, THE FINGERPRINTING OF ALL PROSPECTIVE EMPLOYEES OF
3 APPROVED PRIVATE RESIDENTIAL AND NON-RESIDENTIAL SCHOOLS WHICH ARE
4 LOCATED WITHIN THE STATE BY SUCH SCHOOLS PURSUANT TO SUBDIVISION THIRTY
5 OF SECTION THREE HUNDRED FIVE AND SECTION THREE THOUSAND THIRTY-FIVE OF
6 THIS CHAPTER, EXCEPT WHERE SUCH PROSPECTIVE EMPLOYEES HOLD VALID CLEAR-
7 ANCE PURSUANT TO SUCH SECTION THREE THOUSAND THIRTY-FIVE OR PURSUANT TO
8 SECTION THREE THOUSAND FOUR-B OF THIS CHAPTER OR SECTION FIVE HUNDRED
9 NINE-CC OR TWELVE HUNDRED TWENTY-NINE-D OF THE VEHICLE AND TRAFFIC LAW,
10 OR VALID CLEARANCE ISSUED BY THE CITY OF NEW YORK PURSUANT TO LOCAL LAW.
11 THE PROVISIONS OF THIS SUBDIVISION SHALL NOT APPLY TO PROGRAMS OPERATED
12 PURSUANT TO SECTION FORTY-FOUR HUNDRED EIGHT OF THIS ARTICLE BY A SCHOOL
13 DISTRICT OR BOARD OF COOPERATIVE EDUCATIONAL SERVICES. PRIOR TO INITIAT-
14 ING THE FINGERPRINTING PROCESS, THE SCHOOL SHALL FURNISH THE PROSPECTIVE
15 EMPLOYEE WITH THE FORM DESCRIBED IN PARAGRAPH (C) OF SUBDIVISION THIRTY
16 OF SECTION THREE HUNDRED FIVE OF THIS CHAPTER AND SHALL OBTAIN THE
17 APPLICANT'S CONSENT TO THE CRIMINAL HISTORY RECORDS SEARCH. EVERY SET OF
18 FINGERPRINTS TAKEN PURSUANT TO THIS SUBDIVISION SHALL BE PROMPTLY
19 SUBMITTED TO THE COMMISSIONER FOR PURPOSES OF CLEARANCE FOR EMPLOYMENT.
20 NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, THE COMMIS-
21 SIONER SHALL BE AUTHORIZED TO PROVIDE SUBSEQUENT CRIMINAL HISTORY
22 NOTIFICATIONS TO APPROVED PRIVATE SCHOOLS FOR THEIR EMPLOYEES.

23 B. NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, THE
24 APPROVED PRIVATE SCHOOL MAY ESTABLISH PROCEDURES FOR THE CONDITIONAL
25 APPOINTMENT OR EMERGENCY CONDITIONAL APPOINTMENT OF PROSPECTIVE EMPLOY-
26 EES OF THE SCHOOL TO THE SAME EXTENT AND UNDER THE SAME CONDITIONS AS A
27 BOARD OF EDUCATION OF A UNION FREE SCHOOL DISTRICT PURSUANT TO SUBDIVI-
28 SION THIRTY-NINE OF SECTION SEVENTEEN HUNDRED NINE OF THIS CHAPTER.

29 S 20. Section 4410 of the education law is amended by adding a new
30 subdivision 9-e to read as follows:

31 9-E. CRIMINAL HISTORY RECORD CHECK. A. THE COMMISSIONER SHALL
32 REQUIRE, FOR PURPOSES OF A CRIMINAL HISTORY RECORD CHECK, THE FINGER-
33 PRINTING OF ALL PROSPECTIVE EMPLOYEES OF APPROVED PROVIDERS OF SPECIAL
34 SERVICES OR PROGRAMS THAT ARE LOCATED WITHIN THE STATE PURSUANT TO
35 SUBDIVISION THIRTY OF SECTION THREE HUNDRED FIVE AND SECTION THREE THOU-
36 SAND THIRTY-FIVE OF THIS CHAPTER, EXCEPT WHERE SUCH PROSPECTIVE EMPLOY-
37 EES HOLD VALID CLEARANCE PURSUANT TO SECTION THREE THOUSAND THIRTY-FIVE
38 OR THREE THOUSAND FOUR-B OF THIS CHAPTER OR SECTION FIVE HUNDRED NINE-CC
39 OR TWELVE HUNDRED TWENTY-NINE-D OF THE VEHICLE AND TRAFFIC LAW OR A
40 VALID CLEARANCE ISSUED BY THE CITY OF NEW YORK PURSUANT TO LOCAL LAW. AN
41 INDIVIDUAL WHO PROVIDES RELATED SERVICES PURSUANT TO THIS SECTION SHALL
42 BE DEEMED A PROSPECTIVE EMPLOYEE FOR PURPOSES OF THIS SUBDIVISION AND
43 SHALL BE RESPONSIBLE FOR SUBMITTING HIS OR HER FINGERPRINTS TO THE
44 COMMISSIONER FOR PURPOSES OF RECEIVING CLEARANCE FOR EMPLOYMENT PRIOR TO
45 HIS OR HER INCLUSION ON A LIST OF RELATED SERVICE PROVIDERS MAINTAINED
46 BY THE MUNICIPALITY OR BOARD PURSUANT TO PARAGRAPH C OF SUBDIVISION NINE
47 OF THIS SECTION. PRIOR TO INITIATING THE FINGERPRINTING PROCESS, THE
48 PROVIDER SHALL FURNISH ITS PROSPECTIVE EMPLOYEE WITH THE FORM DESCRIBED
49 IN PARAGRAPH (C) OF SUBDIVISION THIRTY OF SECTION THREE HUNDRED FIVE OF
50 THIS CHAPTER AND SHALL OBTAIN THE APPLICANT'S CONSENT TO THE CRIMINAL
51 HISTORY RECORDS SEARCH. EVERY SET OF FINGERPRINTS TAKEN PURSUANT TO THIS
52 SUBDIVISION SHALL BE PROMPTLY SUBMITTED TO THE COMMISSIONER FOR PURPOSES
53 OF CLEARANCE FOR EMPLOYMENT. NOTWITHSTANDING ANY OTHER PROVISION OF LAW
54 TO THE CONTRARY, THE COMMISSIONER SHALL BE AUTHORIZED TO PROVIDE SUBSE-
55 QUENT CRIMINAL HISTORY NOTIFICATIONS TO APPROVED PROVIDERS FOR THEIR
56 EMPLOYEES. IN THE CASE OF A PROSPECTIVE EMPLOYEE WHO IS EMPLOYED BY THE

1 CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK, THE COMMISSIONER SHALL BE
2 AUTHORIZED TO PROVIDE SUBSEQUENT CRIMINAL HISTORY NOTIFICATIONS DIRECTLY
3 TO THE CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK.

4 B. NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, THE
5 APPROVED PROVIDER MAY ESTABLISH PROCEDURES FOR THE CONDITIONAL APPOINT-
6 MENT OR EMERGENCY CONDITIONAL APPOINTMENT OF PROSPECTIVE EMPLOYEES OF
7 THE PROVIDER TO THE SAME EXTENT AND UNDER THE SAME CONDITIONS AS A BOARD
8 OF EDUCATION OF A UNION FREE SCHOOL DISTRICT PURSUANT TO SUBDIVISION
9 THIRTY-NINE OF SECTION SEVENTEEN HUNDRED NINE OF THIS CHAPTER.

10 C. NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, THE
11 COMMISSIONER MAY ESTABLISH PROCEDURES FOR THE CONDITIONAL APPOINTMENT OR
12 EMERGENCY CONDITIONAL APPOINTMENT OF INDIVIDUALS WHO PROVIDE RELATED
13 SERVICES PURSUANT TO THIS SECTION TO THE SAME EXTENT AND UNDER THE SAME
14 CONDITIONS AS A BOARD OF EDUCATION OF A UNION FREE SCHOOL DISTRICT
15 PURSUANT TO SUBDIVISION THIRTY-NINE OF SECTION SEVENTEEN HUNDRED NINE OF
16 THIS CHAPTER. NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRA-
17 RY, THE COMMISSIONER SHALL PROVIDE EACH MUNICIPALITY OR BOARD IN WHICH
18 SUCH INDIVIDUAL SEEKS TO BE INCLUDED ON A LIST OF RELATED SERVICES OR
19 SPECIAL EDUCATION ITINERANT SERVICES PROVIDERS WITH A COPY OF SUCH INDI-
20 VIDUAL'S CRIMINAL CLEARANCE OR DENIAL OF CRIMINAL CLEARANCE, AND IN THE
21 EVENT OF A DENIAL OF CLEARANCE, SUCH MUNICIPALITY OR BOARD SHALL REMOVE
22 THE INDIVIDUAL FROM SUCH LIST UNLESS CRIMINAL CLEARANCE IS SUBSEQUENTLY
23 ISSUED BY THE COMMISSIONER. NOTWITHSTANDING ANY OTHER PROVISION OF LAW
24 TO THE CONTRARY, THE COMMISSIONER SHALL BE AUTHORIZED TO PROVIDE SUBSE-
25 QUENT CRIMINAL HISTORY NOTIFICATIONS TO EACH MUNICIPALITY OR BOARD IN
26 WHICH SUCH INDIVIDUAL IS INCLUDED ON A LIST OF RELATED SERVICE PROVID-
27 ERS.

28 S 21. The education law is amended by adding a new section 276-a to
29 read as follows:

30 S 276-A. CRIMINAL HISTORY RECORD CHECKS OF PROSPECTIVE EMPLOYEES AND
31 VOLUNTEERS WORKING IN THE OFFICE OF CULTURAL EDUCATION. 1. AS USED IN
32 THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS,
33 EXCEPT WHERE THE CONTEXT INDICATES A DIFFERENT MEANING:

34 A. "CHILDREN" SHALL MEAN A MINOR OR INFANT AS DEFINED IN SUBDIVISION
35 EIGHTEEN OF SECTION TWO OF THIS TITLE.

36 B. "CRIMINAL HISTORY RECORD" SHALL MEAN A RECORD OF ALL CONVICTIONS OF
37 CRIMES AND ANY PENDING CRIMINAL CHARGES MAINTAINED ON AN INDIVIDUAL BY
38 THE DIVISION OF CRIMINAL JUSTICE SERVICES AND THE FEDERAL BUREAU OF
39 INVESTIGATION.

40 C. "EMPLOYEE" SHALL MEAN:

41 (I) ANY EMPLOYEE OF THE DEPARTMENT WHO IS OR WILL BE ASSIGNED TO WORK
42 IN THE OFFICE OF CULTURAL EDUCATION OR A FACILITY HOUSING A PART OF SUCH
43 OFFICE;

44 (II) AN EMPLOYEE OF THE UNIVERSITY OF THE STATE OF NEW YORK, ARCHIVES
45 PARTNERSHIP TRUST OR OTHER ORGANIZATION AFFILIATED WITH THE DEPARTMENT
46 WHO IS ASSIGNED TO WORK IN THE OFFICE OF CULTURAL EDUCATION OR A FACILI-
47 TY HOUSING A PART OF SUCH OFFICE WHOSE SERVICES INVOLVE UNSUPERVISED
48 DIRECT CONTACT WITH CHILDREN OR UNSUPERVISED ACCESS TO COLLECTIONS;

49 (III) A CONTRACTED SERVICE PROVIDER OR AN EMPLOYEE OF A CONTRACTED
50 SERVICE PROVIDER WHO PROVIDES SERVICES IN A FACILITY HOUSING ANY PART OF
51 THE OFFICE OF CULTURAL EDUCATION AND WHOSE SERVICES INVOLVE UNSUPERVISED
52 DIRECT CONTACT WITH CHILDREN OR UNSUPERVISED ACCESS TO COLLECTIONS.

53 D. "OFFICE OF CULTURAL EDUCATION" MEANS THE DIVISION OF THE DEPART-
54 MENT, HEADED BY A DEPUTY COMMISSIONER, THAT HAS ADMINISTRATIVE RESPONSI-
55 BILITY OVER THE STATE MUSEUM, STATE LIBRARY, STATE ARCHIVES AND THE

1 STATE SCIENCE SERVICE, OR ANY SUCCESSOR DIVISION OF THE DEPARTMENT THAT
2 HAS ADMINISTRATIVE RESPONSIBILITY OVER ONE OR MORE OF SUCH OFFICES.

3 E. "PROSPECTIVE EMPLOYEE" MEANS A CANDIDATE FOR EMPLOYMENT WHO WILL BE
4 HIRED ON OR AFTER THE EFFECTIVE DATE OF THIS SECTION, OR AN EMPLOYEE WHO
5 IS TRANSFERRED OR FIRST ASSIGNED ON OR AFTER THE EFFECTIVE DATE OF THIS
6 SECTION TO WORK OR PROVIDE SERVICES IN THE OFFICE OF CULTURAL EDUCATION
7 OR A FACILITY HOUSING A PART OF SUCH OFFICE.

8 F. "VOLUNTEER" SHALL MEAN ANY PERSON, OTHER THAN AN OFFICER OR EMPLOY-
9 EE OF THE STATE, WHO PROVIDES SERVICES TO THE OFFICE OF CULTURAL EDUCA-
10 TION OR IN A FACILITY HOUSING A PART OF SUCH OFFICE ON MORE THAN AN
11 INCIDENTAL BASIS, AS DEFINED IN THE REGULATIONS OF THE COMMISSIONER, AND
12 WHOSE SERVICES INVOLVE UNSUPERVISED DIRECT CONTACT WITH CHILDREN OR
13 UNSUPERVISED ACCESS TO COLLECTIONS.

14 2. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, RULE OR REGULATION TO
15 THE CONTRARY, THE COMMISSIONER SHALL BE AUTHORIZED, AND IT SHALL BE THE
16 COMMISSIONER'S DUTY, TO REQUIRE THE FINGERPRINTING OF PROSPECTIVE
17 EMPLOYEES AND VOLUNTEERS, FOR THE PURPOSE OF CONDUCTING A CRIMINAL
18 HISTORY RECORD CHECK PURSUANT TO THE PROVISIONS OF THIS SECTION AND THE
19 REGULATIONS OF THE COMMISSIONER ADOPTED TO IMPLEMENT THIS SECTION;
20 EXCEPT THAT AN INDIVIDUAL WHO HOLDS A VALID CLEARANCE UNDER ANY
21 PROVISION OF LAW THAT REQUIRES A CRIMINAL HISTORY RECORD CHECK THROUGH
22 THE DIVISION OF CRIMINAL JUSTICE SERVICES AND THE FEDERAL BUREAU OF
23 INVESTIGATION SHALL NOT BE REQUIRED TO UNDERGO A NEW CRIMINAL HISTORY
24 RECORD CHECK PURSUANT TO THIS SECTION, PROVIDED THAT THE DEPARTMENT HAS
25 ACCESS TO THE INDIVIDUAL'S CRIMINAL HISTORY RECORD OR DETERMINES THAT
26 SUCH ACCESS IS NOT NECESSARY BECAUSE THE POSITION THE INDIVIDUAL WOULD
27 HOLD IN THE OFFICE OF CULTURAL EDUCATION IS COMPARABLE TO THE POSITION
28 FOR WHICH THE PRIOR CRIMINAL HISTORY RECORD CHECK WAS CONDUCTED OR
29 BECAUSE SUCH PRIOR CRIMINAL HISTORY RECORD CHECK WAS CONDUCTED TO OBTAIN
30 A STATE LICENSE THAT IS ALSO REQUIRED FOR SERVICE IN THE POSITION IN THE
31 OFFICE OF CULTURAL EDUCATION.

32 3. A. TO OBTAIN A CRIMINAL HISTORY RECORD, THE COMMISSIONER SHALL
33 SUBMIT TO THE DIVISION OF CRIMINAL JUSTICE SERVICES TWO SETS OF FINGER-
34 PRINTS OF EACH PROSPECTIVE EMPLOYEE OR VOLUNTEER, AND THE DIVISION OF
35 CRIMINAL JUSTICE SERVICES PROCESSING FEE IMPOSED PURSUANT TO SUBDIVISION
36 EIGHT-A OF SECTION EIGHT HUNDRED THIRTY-SEVEN OF THE EXECUTIVE LAW AND
37 ANY FEE IMPOSED BY THE FEDERAL BUREAU OF INVESTIGATION. THE DIVISION OF
38 CRIMINAL JUSTICE SERVICES AND THE FEDERAL BUREAU OF INVESTIGATION SHALL
39 FORWARD SUCH CRIMINAL HISTORY RECORD TO THE COMMISSIONER IN A TIMELY
40 MANNER. ALL SUCH CRIMINAL HISTORY RECORDS SENT TO THE COMMISSIONER
41 PURSUANT TO THIS SECTION SHALL BE CONFIDENTIAL PURSUANT TO THE APPLICA-
42 BLE FEDERAL AND STATE LAWS, RULES AND REGULATIONS, AND SHALL NOT BE
43 PUBLISHED OR IN ANY WAY DISCLOSED TO PERSONS OTHER THAN OFFICERS OR
44 EMPLOYEES OF THE DEPARTMENT UNLESS OTHERWISE AUTHORIZED BY LAW.

45 B. NO CAUSE OF ACTION AGAINST THE COMMISSIONER, THE DEPARTMENT OR THE
46 DIVISION OF CRIMINAL JUSTICE SERVICES, OR THEIR OFFICERS OR EMPLOYEES,
47 FOR DAMAGES RELATED TO THE DISSEMINATION OF CRIMINAL HISTORY RECORDS
48 PURSUANT TO THIS SECTION SHALL EXIST WHEN THE COMMISSIONER, DEPARTMENT
49 OR DIVISION OF CRIMINAL JUSTICE SERVICES, OR OFFICER OR EMPLOYEE HAS
50 REASONABLY AND IN GOOD FAITH RELIED UPON THE ACCURACY AND COMPLETENESS
51 OF CRIMINAL HISTORY INFORMATION FURNISHED BY QUALIFIED AGENCIES.

52 4. AFTER REVIEW OF A CRIMINAL HISTORY RECORD FROM THE DIVISION OF
53 CRIMINAL JUSTICE SERVICES AND THE FEDERAL BUREAU OF INVESTIGATION, THE
54 COMMISSIONER SHALL PROMPTLY DETERMINE WHETHER THE PROSPECTIVE EMPLOYEE
55 OR VOLUNTEER TO WHICH SUCH REPORT RELATES IS CLEARED TO PROVIDE SERVICES
56 IN THE OFFICE OF CULTURAL EDUCATION BASED UPON HIS OR HER CRIMINAL

1 HISTORY. ALL DETERMINATIONS TO GRANT OR DENY CLEARANCE PURSUANT TO THIS
2 SUBDIVISION SHALL BE PERFORMED IN ACCORDANCE WITH SUBDIVISION SIXTEEN OF
3 SECTION TWO HUNDRED NINETY-SIX OF THE EXECUTIVE LAW AND ARTICLE TWENTY-
4 THREE-A OF THE CORRECTION LAW. WHEN THE COMMISSIONER DENIES A PROSPEC-
5 TIVE EMPLOYEE CLEARANCE FOR EMPLOYMENT, SUCH PROSPECTIVE EMPLOYEE OR
6 VOLUNTEER SHALL BE AFFORDED NOTICE AND THE RIGHT TO BE HEARD AND OFFER
7 PROOF IN OPPOSITION TO SUCH DETERMINATION IN ACCORDANCE WITH THE REGU-
8 LATIONS OF THE COMMISSIONER, WHICH SHALL BE CONSISTENT WITH THE DUE
9 PROCESS PROCEDURES ESTABLISHED BY THE COMMISSIONER PURSUANT TO SECTION
10 FIFTY OF THE CIVIL SERVICE LAW.

11 5. NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION TO THE CONTRA-
12 RY, WHERE A DELAY IN COMPLETING A CRIMINAL HISTORY RECORD CHECK WOULD
13 IMPAIR THE ABILITY OF THE OFFICE OF CULTURAL EDUCATION TO MAINTAIN
14 SERVICES, THE COMMISSIONER SHALL BE AUTHORIZED TO CONDITIONALLY APPOINT,
15 ASSIGN OR TRANSFER A PROSPECTIVE EMPLOYEE TO PROVIDE SERVICES IN THE
16 OFFICE OF CULTURAL EDUCATION OR TO AUTHORIZE A VOLUNTEER TO PROVIDE SUCH
17 SERVICES, UPON THE CONDITION THAT SUCH INDIVIDUAL OBTAINS FULL CLEARANCE
18 PURSUANT TO THIS SECTION. PRIOR TO MAKING SUCH CONDITIONAL APPOINTMENT,
19 ASSIGNMENT OR TRANSFER OF A PROSPECTIVE EMPLOYEE, OR AUTHORIZING SUCH A
20 VOLUNTEER TO PROVIDE SERVICES, THE COMMISSIONER SHALL SUBMIT SUCH INDIV-
21 IDUAL'S FINGERPRINTS TO THE DIVISION OF CRIMINAL JUSTICE SERVICES
22 PURSUANT TO SUBDIVISION THREE OF THIS SECTION AND SHALL OBTAIN A SIGNED
23 STATEMENT FROM THE INDIVIDUAL INDICATING WHETHER, TO THE BEST OF HIS OR
24 HER KNOWLEDGE, HE OR SHE HAS A PENDING CRIMINAL CHARGE OR CRIMINAL
25 CONVICTION IN ANY JURISDICTION. THE COMMISSIONER SHALL ESTABLISH POLI-
26 CIES AND PROCEDURES TO ASSURE THAT CHILDREN AND THE COLLECTIONS ARE
27 PROTECTED PRIOR TO THE TIME THE INDIVIDUAL RECEIVES CLEARANCE, THROUGH
28 SUCH MEANS AS PROHIBITING UNSUPERVISED CONTACT WITH CHILDREN OR THE
29 COLLECTIONS. THE CONDITIONAL APPOINTMENT, TRANSFER, ASSIGNMENT OR
30 AUTHORIZATION SHALL TERMINATE IF THE COMMISSIONER DENIES CLEARANCE TO
31 THE INDIVIDUAL, AND IF THE COMMISSIONER GRANTS CLEARANCE, THE APPOINT-
32 MENT, TRANSFER, ASSIGNMENT OR AUTHORIZATION SHALL CONTINUE, AND THE
33 CONDITIONAL STATUS SHALL BE REMOVED, PROVIDED THAT NOTHING IN THIS
34 SUBDIVISION SHALL BE CONSTRUED TO MAKE THE APPOINTMENT OR TRANSFER
35 PERMANENT TO OTHERWISE CONFER GREATER RIGHTS ON A PROSPECTIVE EMPLOYEE
36 THAN SUCH EMPLOYEE WOULD HAVE HAD IF THE EMPLOYEE HAD NOT BEEN CONDI-
37 TIONALLY APPOINTED, TRANSFERRED OR ASSIGNED.

38 6. NOTWITHSTANDING ANY LAW, RULE OR REGULATION TO THE CONTRARY, UPON
39 DENIAL OF CLEARANCE BY THE COMMISSIONER OR UPON REFUSAL TO BE FINGER-
40 PRINTED, A PROSPECTIVE EMPLOYEE SHALL BE DISQUALIFIED FOR APPOINTMENT TO
41 THE POSITION SOUGHT IN THE OFFICE OF CULTURAL EDUCATION OR, WHERE APPLI-
42 CABLE, FOR TRANSFER OR ASSIGNMENT TO SUCH POSITION IN SUCH OFFICE. UPON
43 DENIAL OF CLEARANCE TO A VOLUNTEER OR UPON THE VOLUNTEER'S REFUSAL TO BE
44 FINGERPRINTED, THE COMMISSIONER SHALL NOT ALLOW SUCH VOLUNTEER TO
45 PROVIDE SERVICES IN THE OFFICE OF CULTURAL EDUCATION.

46 7. THE COMMISSIONER SHALL:

47 A. INFORM EACH PROSPECTIVE EMPLOYEE AND VOLUNTEER THAT THE COMMISSION-
48 ER IS REQUIRED TO REQUEST HIS OR HER CRIMINAL HISTORY RECORD FROM THE
49 DIVISION OF CRIMINAL JUSTICE SERVICES AND THE FEDERAL BUREAU OF INVESTI-
50 GATION AND REVIEW SUCH INFORMATION PURSUANT TO THIS SECTION, AND SHALL
51 PROVIDE A DESCRIPTION OF THE MANNER IN WHICH HIS OR HER FINGERPRINT
52 CARDS WILL BE USED UPON SUBMISSION TO THE DIVISION OF CRIMINAL JUSTICE
53 SERVICES;

54 B. INFORM THE PROSPECTIVE EMPLOYEE OR VOLUNTEER THAT HE OR SHE HAS THE
55 RIGHT TO OBTAIN, REVIEW AND SEEK CORRECTION OF HIS OR HER CRIMINAL

HISTORY RECORD PURSUANT TO REGULATIONS AND PROCEDURES ESTABLISHED BY THE DIVISION OF CRIMINAL JUSTICE SERVICES; AND

C. OBTAIN THE SIGNED, INFORMED CONSENT OF THE PROSPECTIVE EMPLOYEE ON A FORM THAT INDICATES THAT SUCH PERSON HAS:

(I) BEEN INFORMED OF THE RIGHT AND PROCEDURES NECESSARY TO OBTAIN, REVIEW AND SEEK CORRECTION OF HIS OR HER CRIMINAL HISTORY INFORMATION;

(II) BEEN INFORMED OF THE REASON FOR THE REQUEST FOR HIS OR HER CRIMINAL HISTORY RECORD;

(III) CONSENTED TO SUCH REQUEST FOR A CRIMINAL HISTORY RECORD;

(IV) SUPPLIED ON THE FORM A CURRENT MAILING OR HOME ADDRESS FOR THE PROSPECTIVE EMPLOYEE OR VOLUNTEER;

(V) IN THE CASE OF A PROSPECTIVE EMPLOYEE, BEEN INFORMED THAT HE OR SHE MAY WITHDRAW HIS OR HER APPLICATION FOR EMPLOYMENT PURSUANT TO THIS SECTION OR A REQUEST FOR TRANSFER OR ASSIGNMENT TO THE OFFICE OF CULTURAL EDUCATION, WITHOUT PREJUDICE, AT ANY TIME BEFORE EMPLOYMENT, A TRANSFER OR ASSIGNMENT IS OFFERED OR DECLINED, REGARDLESS OF WHETHER THE PROSPECTIVE EMPLOYEE OR EMPLOYER HAS REVIEWED SUCH PROSPECTIVE EMPLOYEE'S CRIMINAL HISTORY RECORD; AND

(VI) BEEN INFORMED OF THE MANNER IN WHICH HE OR SHE MAY SUBMIT TO THE COMMISSIONER ANY INFORMATION THAT MAY BE RELEVANT TO THE CONSIDERATION OF HIS OR HER APPLICATION FOR CLEARANCE INCLUDING, WHERE APPLICABLE, INFORMATION IN REGARD TO HIS OR HER GOOD CONDUCT AND REHABILITATION.

8. THE COMMISSIONER SHALL BE AUTHORIZED TO PROMULGATE ANY REGULATIONS NECESSARY TO IMPLEMENT THE PROVISIONS OF THIS SECTION.

S 22. The sum of two hundred fifty thousand dollars (\$250,000), or so much thereof as may be necessary, is hereby appropriated to the education department out of any moneys in the state treasury in the general fund to the credit of the state operations account, not otherwise appropriated, for the purpose of carrying out the provisions of this act. Such moneys shall be payable on the audit and warrant of the state comptroller on vouchers certified or approved by the commissioner of education in the manner prescribed by law.

S 23. This act shall take effect on the one hundred eightieth day after it shall have become a law; provided that section twenty-two of this act shall take effect immediately; provided further, that the commissioner of education is authorized to promulgate any and all rules and regulations and take any other measures necessary to implement the provisions of this act on its effective date on or before such date; provided further that the provisions of sections one, two, three, four, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen, nineteen, twenty and twenty-two of this act shall apply to prospective employees of special education schools who are appointed on or after such effective date, to individual providers of preschool related services who are placed on lists maintained by the municipality pursuant to subdivision 9 of section 4410 of the education law on and after such effective date; provided further that the provisions of section twenty-one of this act shall apply to prospective employees and volunteers working in the office of cultural education who are appointed on or after such effective date; provided further that the amendment to paragraph (d) of subdivision 30 of section 305 of the education law made by section three of this act shall not affect the repeal of such paragraph and shall be deemed repealed therewith; and provided further that the amendments to subdivision 3 of section 3035 of the education law, made by section ten of this act, shall be subject to the expiration and reversion of such subdivision pursuant to section 12 of chapter 147 of

1 the laws of 2001, as amended, when upon such date the provisions of
2 section eleven of this act shall take effect.