

2420

2011-2012 Regular Sessions

I N S E N A T E

January 20, 2011

Introduced by Sen. SALAND -- 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 for the purpose of conducting criminal history record checks

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 and subparagraph
3 (i) of paragraph (b) as amended by chapter 630 of the laws of 2006 and
4 paragraph (b) as added by chapter 180 of the laws of 2000, are amended
5 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 twenty-
10 five of this [chapter] TITLE, of school districts, charter schools
11 [and], boards of cooperative educational services AND SPECIAL EDUCATION
12 SCHOOLS, and authorizing the fingerprinting of prospective employees of
13 nonpublic and private elementary and secondary schools, and for the use
14 of information derived from searches of the records of the division of
15 criminal justice services and the federal bureau of investigation based
16 on the use of such fingerprints. The commissioner shall also develop a
17 form for use by school districts, charter schools, boards of cooperative
18 educational services, [and] nonpublic and private elementary and second-
19 ary schools AND SPECIAL EDUCATION SCHOOLS, in connection with the
20 submission of fingerprints that contains the specific job title sought
21 and any other information that may be relevant to consideration of the
22 applicant. The commissioner shall also establish a form for the recorda-
23 tion of allegations of child abuse in an educational setting, as

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

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1 required pursuant to section eleven hundred twenty-six of this [chapter]
2 TITLE. No person who has been fingerprinted pursuant to section three
3 thousand four-b of this chapter or pursuant to section five hundred
4 nine-cc or twelve hundred twenty-nine-d of the vehicle and traffic law
5 and whose fingerprints remain on file with the division of criminal
6 justice services shall be required to undergo fingerprinting for
7 purposes of a new criminal history record check. This subdivision and
8 the rules and regulations promulgated pursuant thereto shall not apply
9 to a school district within a city with a population of one million or
10 more, OR TO SPECIAL EDUCATION SCHOOLS LOCATED WITHIN SUCH CITY.

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

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

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

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

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

45 S 3. Subdivision 30 of section 305 of the education law is amended by
46 adding a new paragraph (d) to read as follows:

47 (D) AS USED IN THIS SECTION AND SECTION THREE THOUSAND THIRTY-FIVE OF
48 THIS CHAPTER, "SPECIAL EDUCATION SCHOOL" SHALL MEAN A STATE SCHOOL OPER-
49 ATED PURSUANT TO ARTICLE EIGHTY-SEVEN OR EIGHTY-EIGHT OF THIS CHAPTER, A
50 STATE-SUPPORTED SCHOOL OPERATED PURSUANT TO ARTICLE EIGHTY-FIVE OF THIS
51 CHAPTER, AN APPROVED PRIVATE NON-RESIDENTIAL OR RESIDENTIAL SCHOOL FOR
52 THE EDUCATION OF STUDENTS WITH DISABILITIES THAT IS LOCATED WITHIN THE
53 STATE, OR AN APPROVED PROVIDER OF PRESCHOOL SPECIAL EDUCATION SERVICES
54 OR PROGRAMS THAT IS LOCATED WITHIN THE STATE; PROVIDED THAT SUCH TERM
55 SHALL NOT APPLY TO A SCHOOL OR FACILITY OPERATED OR LICENSED BY A STATE
56 AGENCY OTHER THAN THE DEPARTMENT, UNLESS SUCH SCHOOL OR FACILITY IS ALSO

1 AN APPROVED PRIVATE SCHOOL FOR STUDENTS WITH DISABILITIES OR AN APPROVED
2 PROVIDER UNDER SECTION FORTY-FOUR HUNDRED TEN OF THIS CHAPTER.

3 S 4. Subdivision 1 of section 3035 of the education law, as amended by
4 chapter 630 of the laws of 2006, is amended to read as follows:

5 1. The commissioner shall submit to the division of criminal justice
6 services two sets of fingerprints of prospective employees as defined in
7 subdivision three of section eleven hundred twenty-five of this chapter
8 received from a school district, charter school or board of cooperative
9 educational services and of prospective employees received from nonpub-
10 lic and private elementary and secondary schools pursuant to title two
11 of this chapter OR A SPECIAL EDUCATION SCHOOL, AS DEFINED IN PARAGRAPH
12 (D) OF SUBDIVISION THIRTY OF SECTION THREE HUNDRED FIVE OF THIS CHAPTER,
13 PURSUANT TO TITLE SIX OF THIS CHAPTER, OTHER THAN A SPECIAL EDUCATION
14 SCHOOL LOCATED IN THE CITY OF NEW YORK, and the division of criminal
15 justice services processing fee imposed pursuant to subdivision eight-a
16 of section eight hundred thirty-seven of the executive law and any fee
17 imposed by the federal bureau of investigation. The division of criminal
18 justice services and the federal bureau of investigation shall forward
19 such criminal history record to the commissioner in a timely manner. For
20 the purposes of this section, the term "criminal history record" shall
21 mean a record of all convictions of crimes and any pending criminal
22 charges maintained on an individual by the division of criminal justice
23 services and the federal bureau of investigation. All such criminal
24 history records sent to the commissioner pursuant to this subdivision
25 shall be confidential pursuant to the applicable federal and state laws,
26 rules and regulations, and shall not be published or in any way
27 disclosed to persons other than the commissioner, unless otherwise
28 authorized by law.

29 S 5. Subdivision 3-a of section 3035 of the education law, as added by
30 chapter 380 of the laws of 2001, is amended to read as follows:

31 3-a. Upon request from a prospective employee who has been cleared by
32 the commissioner for employment and/or certification, the commissioner
33 shall have the authority to forward a copy of such criminal history
34 record to the city school district of the city of New York by the most
35 expeditious means available. Furthermore, upon notification that such
36 prospective employee is employed by the city school district of the city
37 of New York OR IS EMPLOYED BY A SPECIAL EDUCATION SCHOOL THAT CONTRACTS
38 WITH THE CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK, the division of
39 criminal justice services shall have the authority to provide subsequent
40 criminal history notifications directly to the city school district of
41 the city of New York. Upon request from a prospective employee who has
42 been cleared for licensure and/or employment by the city school district
43 of the city of New York OR HAS BEEN CLEARED BY THE CITY OF NEW YORK FOR
44 EMPLOYMENT BY A SPECIAL EDUCATION SCHOOL THAT IS LOCATED OUTSIDE OF THE
45 CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK, such school district OR
46 CITY shall have the authority to forward a copy of the prospective
47 employee's criminal history record to the commissioner, by the most
48 expeditious means available, for the purposes of this section. Further-
49 more, upon notification that such prospective employee is employed by a
50 school district outside the city of New York OR BY A SPECIAL EDUCATION
51 SCHOOL THAT IS LOCATED OUTSIDE OF THE CITY OF NEW YORK, the division of
52 criminal justice services shall have the authority to provide subsequent
53 criminal history notifications directly to the commissioner.

54 S 6. Paragraph (i) of subdivision (a) of section 4212 of the education
55 law, as amended by chapter 32 of the laws of 1992, is amended to read as
56 follows:

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

13 S 7. Section 4212 of the education law is amended by adding a new
14 subdivision (d) to read as follows:

15 (D) (I) THE SCHOOL SHALL REQUIRE, FOR PURPOSES OF A CRIMINAL HISTORY
16 RECORD CHECK, THE FINGERPRINTING OF ALL PROSPECTIVE EMPLOYEES OF THE
17 SCHOOL PURSUANT TO SUBDIVISION THIRTY OF SECTION THREE HUNDRED FIVE AND
18 SECTION THREE THOUSAND THIRTY-FIVE OF THIS CHAPTER, EXCEPT WHERE SUCH
19 PROSPECTIVE EMPLOYEES HOLD VALID CLEARANCE PURSUANT TO SUCH SECTION
20 THREE THOUSAND THIRTY-FIVE OR PURSUANT TO SECTION THREE THOUSAND FOUR-B
21 OF THIS CHAPTER OR SECTION FIVE HUNDRED NINE-CC OR TWELVE HUNDRED TWEN-
22 TY-NINE-D OF THE VEHICLE AND TRAFFIC LAW, OR VALID CLEARANCE ISSUED BY
23 THE CITY OF NEW YORK PURSUANT TO LOCAL LAW. PRIOR TO INITIATING THE
24 FINGERPRINTING PROCESS, THE SCHOOL SHALL FURNISH THE PROSPECTIVE EMPLOY-
25 EE WITH THE FORM DESCRIBED IN PARAGRAPH (C) OF SUBDIVISION THIRTY OF
26 SECTION THREE HUNDRED FIVE OF THIS CHAPTER AND SHALL OBTAIN THE APPLI-
27 CANT'S CONSENT TO THE CRIMINAL HISTORY RECORDS SEARCH. EVERY SET OF
28 FINGERPRINTS TAKEN PURSUANT TO THIS SUBDIVISION SHALL BE PROMPTLY
29 SUBMITTED TO THE COMMISSIONER FOR PURPOSES OF CLEARANCE FOR EMPLOYMENT.
30 NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, THE COMMIS-
31 SIONER SHALL BE AUTHORIZED TO PROVIDE SUBSEQUENT CRIMINAL HISTORY
32 NOTIFICATIONS TO THE SCHOOL FOR ITS EMPLOYEES.

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

39 S 8. Paragraph (i) of subdivision (a) of section 4314 of the education
40 law, as amended by chapter 32 of the laws of 1992, is amended to read as
41 follows:

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

54 S 9. Section 4314 of the education law is amended by adding a new
55 subdivision (d) to read as follows:

1 (D)(I) THE DEPARTMENT SHALL REQUIRE, FOR PURPOSES OF A CRIMINAL HISTO-
2 RY RECORD CHECK, THE FINGERPRINTING OF ALL PROSPECTIVE EMPLOYEES OF THE
3 SCHOOL PURSUANT TO SUBDIVISION THIRTY OF SECTION THREE HUNDRED FIVE AND
4 SECTION THREE THOUSAND THIRTY-FIVE OF THIS CHAPTER, WHO DO NOT HOLD
5 VALID CLEARANCE PURSUANT TO SUCH SECTION THREE THOUSAND THIRTY-FIVE OR
6 PURSUANT TO SECTION THREE THOUSAND FOUR-B OF THIS CHAPTER OR SECTION
7 FIVE HUNDRED NINE-CC OR TWELVE HUNDRED TWENTY-NINE-D OF THE VEHICLE AND
8 TRAFFIC LAW, OR VALID CLEARANCE ISSUED BY THE CITY OF NEW YORK PURSUANT
9 TO LOCAL LAW. PRIOR TO INITIATING THE FINGERPRINTING PROCESS, THE
10 DEPARTMENT SHALL FURNISH THE PROSPECTIVE EMPLOYEE WITH THE FORM
11 DESCRIBED IN PARAGRAPH (C) OF SUBDIVISION THIRTY OF SECTION THREE
12 HUNDRED FIVE OF THIS CHAPTER AND SHALL OBTAIN THE APPLICANT'S CONSENT TO
13 THE CRIMINAL HISTORY RECORDS SEARCH. EVERY SET OF FINGERPRINTS TAKEN
14 PURSUANT TO THIS SUBDIVISION SHALL BE PROMPTLY SUBMITTED TO THE COMMIS-
15 SIONER FOR PURPOSES OF CLEARANCE FOR EMPLOYMENT.

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

22 S 10. Paragraph (i) of subdivision (a) of section 4358 of the educa-
23 tion law, as amended by chapter 32 of the laws of 1992, is amended to
24 read as follows:

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

37 S 11. Section 4358 of the education law is amended by adding a new
38 subdivision (d) to read as follows:

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

54 (II) NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, THE
55 COMMISSIONER MAY ESTABLISH PROCEDURES FOR THE CONDITIONAL APPOINTMENT OR
56 EMERGENCY CONDITIONAL APPOINTMENT OF PROSPECTIVE EMPLOYEES OF THE SCHOOL

1 BY THE DEPARTMENT TO THE SAME EXTENT AND UNDER THE SAME CONDITIONS AS A
2 BOARD OF EDUCATION OF A UNION FREE SCHOOL DISTRICT PURSUANT TO SUBDIVI-
3 SION THIRTY-NINE OF SECTION SEVENTEEN HUNDRED NINE OF THIS CHAPTER.

4 S 12. Paragraph (a) of subdivision 11 of section 4403 of the education
5 law, as amended by chapter 32 of the laws of 1992, is amended to read as
6 follows:

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

19 S 13. Section 4403 of the education law is amended by adding a new
20 subdivision 21 to read as follows:

21 21. A. THE COMMISSIONER SHALL REQUIRE, FOR PURPOSES OF A CRIMINAL
22 HISTORY RECORD CHECK, THE FINGERPRINTING OF ALL PROSPECTIVE EMPLOYEES OF
23 APPROVED PRIVATE RESIDENTIAL AND NON-RESIDENTIAL SCHOOLS WHICH ARE
24 LOCATED WITHIN THE STATE BY SUCH SCHOOLS PURSUANT TO SUBDIVISION THIRTY
25 OF SECTION THREE HUNDRED FIVE AND SECTION THREE THOUSAND THIRTY-FIVE OF
26 THIS CHAPTER, EXCEPT WHERE SUCH PROSPECTIVE EMPLOYEES HOLD VALID CLEAR-
27 ANCE PURSUANT TO SUCH SECTION THREE THOUSAND THIRTY-FIVE OR PURSUANT TO
28 SECTION THREE THOUSAND FOUR-B OF THIS CHAPTER OR SECTION FIVE HUNDRED
29 NINE-CC OR TWELVE HUNDRED TWENTY-NINE-D OF THE VEHICLE AND TRAFFIC LAW,
30 OR VALID CLEARANCE ISSUED BY THE CITY OF NEW YORK PURSUANT TO LOCAL LAW.
31 THE PROVISIONS OF THIS SUBDIVISION SHALL NOT APPLY TO PROGRAMS OPERATED
32 PURSUANT TO SECTION FORTY-FOUR HUNDRED EIGHT OF THIS ARTICLE BY A SCHOOL
33 DISTRICT OR BOARD OF COOPERATIVE EDUCATIONAL SERVICES. PRIOR TO INITIAT-
34 ING THE FINGERPRINTING PROCESS, THE SCHOOL SHALL FURNISH THE PROSPECTIVE
35 EMPLOYEE WITH THE FORM DESCRIBED IN PARAGRAPH (C) OF SUBDIVISION THIRTY
36 OF SECTION THREE HUNDRED FIVE OF THIS CHAPTER AND SHALL OBTAIN THE
37 APPLICANT'S CONSENT TO THE CRIMINAL HISTORY RECORDS SEARCH. EVERY SET OF
38 FINGERPRINTS TAKEN PURSUANT TO THIS SUBDIVISION SHALL BE PROMPTLY
39 SUBMITTED TO THE COMMISSIONER FOR PURPOSES OF CLEARANCE FOR EMPLOYMENT.
40 NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, THE COMMIS-
41 SIONER SHALL BE AUTHORIZED TO PROVIDE SUBSEQUENT CRIMINAL HISTORY
42 NOTIFICATIONS TO APPROVED PRIVATE SCHOOLS FOR THEIR EMPLOYEES.

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

49 S 14. Section 4410 of the education law is amended by adding a new
50 subdivision 9-e to read as follows:

51 9-E. FINGERPRINTING OF PROSPECTIVE EMPLOYEES. A. THE COMMISSIONER
52 SHALL REQUIRE, FOR PURPOSES OF A CRIMINAL HISTORY RECORD CHECK, THE
53 FINGERPRINTING OF ALL PROSPECTIVE EMPLOYEES OF APPROVED PROVIDERS OF
54 SPECIAL SERVICES OR PROGRAMS THAT ARE LOCATED WITHIN THE STATE PURSUANT
55 TO SUBDIVISION THIRTY OF SECTION THREE HUNDRED FIVE AND SECTION THREE
56 THOUSAND THIRTY-FIVE OF THIS CHAPTER, EXCEPT WHERE SUCH PROSPECTIVE

1 EMPLOYEES HOLD VALID CLEARANCE PURSUANT TO SUCH SECTION THREE THOUSAND
2 THIRTY-FIVE OR PURSUANT TO SECTION THREE THOUSAND FOUR-B OF THIS CHAPTER
3 OR SECTION FIVE HUNDRED NINE-CC OR TWELVE HUNDRED TWENTY-NINE-D OF THE
4 VEHICLE AND TRAFFIC LAW OR A VALID CLEARANCE ISSUED BY THE CITY OF NEW
5 YORK PURSUANT TO LOCAL LAW. AN INDIVIDUAL WHO PROVIDES RELATED SERVICES
6 PURSUANT TO THIS SECTION SHALL BE DEEMED A PROSPECTIVE EMPLOYEE FOR
7 PURPOSES OF THIS SUBDIVISION AND SHALL BE RESPONSIBLE FOR SUBMITTING HIS
8 OR HER FINGERPRINTS TO THE COMMISSIONER FOR PURPOSES OF RECEIVING CLEAR-
9 ANCE FOR EMPLOYMENT PRIOR TO HIS OR HER INCLUSION ON A LIST OF RELATED
10 SERVICE PROVIDERS MAINTAINED BY THE MUNICIPALITY OR BOARD PURSUANT TO
11 PARAGRAPH C OF SUBDIVISION NINE OF THIS SECTION. PRIOR TO INITIATING THE
12 FINGERPRINTING PROCESS, THE PROVIDER SHALL FURNISH ITS PROSPECTIVE
13 EMPLOYEE WITH THE FORM DESCRIBED IN PARAGRAPH (C) OF SUBDIVISION THIRTY
14 OF SECTION THREE HUNDRED FIVE OF THIS CHAPTER AND SHALL OBTAIN THE
15 APPLICANT'S CONSENT TO THE CRIMINAL HISTORY RECORDS SEARCH. EVERY SET OF
16 FINGERPRINTS TAKEN PURSUANT TO THIS SUBDIVISION SHALL BE PROMPTLY
17 SUBMITTED TO THE COMMISSIONER FOR PURPOSES OF CLEARANCE FOR EMPLOYMENT.
18 NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, THE COMMIS-
19 SIONER SHALL BE AUTHORIZED TO PROVIDE SUBSEQUENT CRIMINAL HISTORY
20 NOTIFICATIONS TO APPROVED PROVIDERS FOR THEIR EMPLOYEES. IN THE CASE OF
21 A PROSPECTIVE EMPLOYEE WHO IS EMPLOYED BY THE CITY SCHOOL DISTRICT OF
22 THE CITY OF NEW YORK, THE COMMISSIONER SHALL BE AUTHORIZED TO PROVIDE
23 SUBSEQUENT CRIMINAL HISTORY NOTIFICATIONS DIRECTLY TO THE CITY SCHOOL
24 DISTRICT OF THE CITY OF NEW YORK.

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

31 C. NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, THE
32 COMMISSIONER MAY ESTABLISH PROCEDURES FOR THE CONDITIONAL APPOINTMENT OR
33 EMERGENCY CONDITIONAL APPOINTMENT OF INDIVIDUALS WHO PROVIDE RELATED
34 SERVICES PURSUANT TO THIS SECTION TO THE SAME EXTENT AND UNDER THE SAME
35 CONDITIONS AS A BOARD OF EDUCATION OF A UNION FREE SCHOOL DISTRICT
36 PURSUANT TO SUBDIVISION THIRTY-NINE OF SECTION SEVENTEEN HUNDRED NINE OF
37 THIS CHAPTER. NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRA-
38 RY, THE COMMISSIONER SHALL PROVIDE EACH MUNICIPALITY OR BOARD IN WHICH
39 SUCH INDIVIDUAL SEEKS TO BE INCLUDED ON A LIST OF RELATED SERVICES OR
40 SPECIAL EDUCATION ITINERANT SERVICES PROVIDERS WITH A COPY OF SUCH INDI-
41 VIDUAL'S CRIMINAL CLEARANCE OR DENIAL OF CRIMINAL CLEARANCE, AND IN THE
42 EVENT OF A DENIAL OF CLEARANCE, SUCH MUNICIPALITY OR BOARD SHALL REMOVE
43 THE INDIVIDUAL FROM SUCH LIST UNLESS CRIMINAL CLEARANCE IS SUBSEQUENTLY
44 ISSUED BY THE COMMISSIONER. NOTWITHSTANDING ANY OTHER PROVISION OF LAW
45 TO THE CONTRARY, THE COMMISSIONER SHALL BE AUTHORIZED TO PROVIDE SUBSE-
46 QUENT CRIMINAL HISTORY NOTIFICATIONS TO EACH MUNICIPALITY OR BOARD IN
47 WHICH SUCH INDIVIDUAL IS INCLUDED ON A LIST OF RELATED SERVICE PROVID-
48 ERS.

49 S 15. Subdivisions 3 and 5 of section 1125 of the education law, as
50 added by chapter 180 of the laws of 2000, are amended to read as
51 follows:

52 3. "Employee" shall mean any person receiving compensation from a
53 school district, A SPECIAL EDUCATION SCHOOL DISTRICT AS DEFINED IN PARA-
54 GRAPH (D) OF SUBDIVISION THIRTY OF SECTION THREE HUNDRED FIVE OF THIS
55 CHAPTER or employee of a contracted service provider or worker placed
56 within the school under a public assistance employment program, pursuant

1 to title nine-B of article five of the social services law, and consist-
2 ent with the provisions of such title for the provision of services to
3 such district, its students or employees, directly or through contract,
4 whereby such services performed by such person involve direct student
5 contact.

6 5. "Educational setting" shall mean the building and grounds of a
7 public school district, A SPECIAL EDUCATION SCHOOL DISTRICT AS DEFINED
8 IN PARAGRAPH (D) OF SUBDIVISION THIRTY OF SECTION THREE HUNDRED FIVE OF
9 THIS CHAPTER, the vehicles provided by the school district OR SPECIAL
10 EDUCATION SCHOOL for the transportation of students to and from school
11 buildings, field trips, co-curricular and extra-curricular activities
12 both on and off school district grounds, all co-curricular and extra-
13 curricular activity sites, and any other location where direct contact
14 between an employee or volunteer and a child has allegedly occurred.

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

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

33 S 17. This act shall take effect on the one hundred eightieth day
34 after it shall have become a law; provided that:

35 (a) the commissioner of education is authorized to promulgate any and
36 all rules and regulations and take any other measures necessary to
37 implement the provisions of this act on its effective date on or before
38 such date;

39 (b) the provisions of this act shall apply to prospective employees of
40 special education schools who are appointed on or after such effective
41 date and to individual providers of preschool related services who are
42 placed on lists maintained by the municipality pursuant to subdivision 9
43 of section 4410 of the education law on and after such effective date.