

10256

I N   A S S E M B L Y

March 12, 2010

---

Introduced by M. of A. GUNTHER -- read once and referred to the Committee on Children and Families

AN ACT to amend the social services law, in relation to requiring filing with the office of children and family services by nursery school operators and authorizing certain nursery schools to submit fingerprints of applicants for the purpose of a search of criminal history records of the division of criminal justice services

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

1     Section 1. Section 390 of the social services law, as added by chapter  
2     750 of the laws of 1990, paragraphs (d) and (e) of subdivision 1 and  
3     paragraph (b) of subdivision 12 as amended by chapter 587 of the laws of  
4     1997, subparagraphs (i) and (ii) of paragraph (d) of subdivision 2,  
5     paragraphs (a), (c) and (d) of subdivision 3, paragraph (a) of subdivi-  
6     sion 4, subdivision 10, paragraphs (a) and (b) of subdivision 11 as  
7     amended, paragraphs (e) and (f) of subdivision 3 as relettered, subdivi-  
8     sion 2-a and paragraphs (c) and (d) of subdivision 11 as added by chap-  
9     ter 416 of the laws of 2000, paragraph (a) of subdivision 7 and subdivi-  
10    sion 13 as amended by chapter 160 of the laws of 2003, paragraph (c) of  
11    subdivision 12 as added by chapter 319 of the laws of 2006, and subdivi-  
12    sion 8-a, as added by chapter 354 of the laws of 2009, is amended to  
13    read as follows:

14    S 390. Child day care AND NURSERY SCHOOLS; license [or], registration  
15    OR FILING required. 1. Definitions. (a) (i) "Child day care" shall mean  
16    care for a child on a regular basis provided away from the child's resi-  
17    dence for less than twenty-four hours per day by someone other than the  
18    parent, step-parent, guardian, or relative within the third degree of  
19    consanguinity of the parents or step-parents of such child.

20    (ii) Child day care shall not refer to care provided in:

21    (A) a day camp, as defined in the state sanitary code;

22    (B) an after-school program operated for the purpose of religious  
23    education, sports, or recreation;

24    (C) a facility:

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

LBD10741-02-0

1 (1) providing day services under an operating certificate issued by  
2 the [department] OFFICE;

3 (2) providing day treatment under an operating certificate issued by  
4 the office of mental health or office of mental retardation and develop-  
5 mental disabilities; or

6 (D) a kindergarten, pre-kindergarten, [or nursery school for children  
7 three years of age or older,] or after-school program for children oper-  
8 ated by a public school district or by a private school or academy which  
9 is providing elementary or secondary education or both, in accordance  
10 with the compulsory education requirements of the education law,  
11 provided that the kindergarten, pre-kindergarten, [nursery school,] or  
12 after school program is located on the premises or campus where the  
13 elementary or secondary education is provided.

14 (b) "Child day care provider" shall mean any individual, association,  
15 corporation, partnership, institution or agency whose activities include  
16 providing child day care or operating a home or facility where child day  
17 care is provided.

18 (c) "Child day care center" shall mean any program or facility caring  
19 for children for more than three hours per day per child in which child  
20 day care is provided by a child day care provider except those programs  
21 operating as a group family day care home as such term is defined in  
22 paragraph (d) of this subdivision, a family day care home, as such term  
23 is defined in paragraph (e) of this subdivision, and a school-age child  
24 care program, as such term is defined in paragraph (f) of this subdivi-  
25 sion.

26 (d) "Group family day care home" shall mean a program caring for chil-  
27 dren for more than three hours per day per child in which child day care  
28 is provided in a family home for seven to ten children of all ages, or  
29 up to twelve children where all of such children are over two years of  
30 age, except for those programs operating as a family day care home, as  
31 such term is defined in paragraph (e) of this subdivision, which care  
32 for seven or eight children. A group family day care provider may  
33 provide child day care services to two additional children if such addi-  
34 tional children are of school age and such children receive services  
35 only before or after the period such children are ordinarily in school  
36 or during school lunch periods, or school holidays, or during those  
37 periods of the year in which school is not in session. There shall be  
38 one caregiver for every two children under two years of age in the group  
39 family home. A group family day care home must have at least one assist-  
40 ant to the operator present when child day care is being provided to  
41 seven or more children. This assistant shall be selected by the group  
42 family day care operator and shall meet the qualifications established  
43 for such position by the regulations of the [department] OFFICE.

44 (e) "Family day care home" shall mean a program caring for children  
45 for more than three hours per day per child in which child day care is  
46 provided in a family home for three to six children. A family day care  
47 provider may, however, care for seven or eight children at any one time  
48 if no more than six of the children are less than school age and the  
49 school-aged children receive care primarily before or after the period  
50 such children are ordinarily in school, during school lunch periods, on  
51 school holidays, or during those periods of the year in which school is  
52 not in session in accordance with the regulations of the [department]  
53 OFFICE and the [department] OFFICE inspects such home to determine  
54 whether the provider can care adequately for seven or eight children.

55 (f) "School age child care" shall mean a program caring for more than  
56 six school-aged children who are under thirteen years of age or who are

incapable of caring for themselves. Such programs shall be in operation consistent with the local school calendar. School age child care programs shall offer care during the school year to an enrolled group of children at a permanent site before or after the period children enrolled in such program are ordinarily in school or during school lunch periods and may also provide such care on school holidays and those periods of the year in which school is not in session.

(G) "NURSERY SCHOOL" SHALL MEAN ANY PROGRAM OR FACILITY OPERATED BY AN INDIVIDUAL, ASSOCIATION, CORPORATION, PARTNERSHIP, INSTITUTION, OR AGENCY, NOT INCLUDING THE PARENT, STEPPARENT, GUARDIAN, OR RELATIVE WITHIN THE THIRD DEGREE OF CONSANGUINITY, WHICH PROVIDES EARLY CARE AND/OR EDUCATION TO THREE OR MORE PRESCHOOL CHILDREN FOR THREE OR LESS HOURS PER DAY PER CHILD. MORE THAN ONE ADULT SHALL BE AVAILABLE AT ALL TIMES WHEN CHILDREN ARE PRESENT AT A NURSERY SCHOOL PROGRAM.

(H) "PRESCHOOL CHILD" SHALL MEAN A CHILD OF FIVE YEARS OF AGE OR LESS.

(I) "OFFICE" SHALL MEAN THE OFFICE OF CHILDREN AND FAMILY SERVICES.

2. (a) Child day care centers caring for seven or more children and group family day care programs, as defined in subdivision one of this section, shall obtain a license from the [department] OFFICE and shall operate in accordance with the terms of such license and the regulations of the [department] OFFICE.

(b) Family day care homes, child day care centers caring for at least three but fewer than seven children, and school-age child care programs shall register with the [department] OFFICE and shall operate in compliance with the regulations of the [department] OFFICE.

(B-1) NURSERY SCHOOLS CARING FOR AT LEAST THREE CHILDREN SHALL FILE WITH THE OFFICE AND SHALL OPERATE IN COMPLIANCE WITH THE REGULATIONS OF THE OFFICE.

(c) Any child day care provider not required to obtain a license pursuant to paragraph (a) of this subdivision or to register with the [department] OFFICE pursuant to paragraph (b) of this subdivision may register with the [department] OFFICE.

(d) (i) The office [of children and family services] shall promulgate regulations for licensure and for registration of child day care AND FILING FOR NURSERY SCHOOLS pursuant to this section. Procedures for obtaining a license or registration or renewing a license shall include a satisfactory inspection of the facility by the office [of children and family services] prior to issuance of the license or registration or renewal of the license.

(ii) (A) Registration shall be valid for a period of up to two years, so long as the provider remains in compliance with applicable law and regulations during such period.

(B) After initial registration by the child day care provider, the office [of children and family services] shall not accept any subsequent registration by such provider, unless:

(1) such provider has met the training requirements set forth in section three hundred ninety-a of this title;

(2) such provider has met the requirements of section three hundred ninety-b of this title relating to criminal history screening;

(3) such provider has complied with the requirements of section four hundred twenty-four-a of this article; and

(4) the office [of children and family services] has received no complaints about the home, center, or program alleging statutory or regulatory violations, or, having received such complaints, the office [of children and family services] has determined, after inspection pursuant to paragraph (a) of subdivision three of this section, that the

home, center, or program is operated in compliance with applicable statutory and regulatory requirements.

(C) Where the office [of children and family services] has determined that a registration should not be continued because the requirements of clause (B) of this subparagraph have not been satisfied, the office [of children and family services] may terminate the registration. If the office [of children and family services] does not terminate the registration, the office [of children and family services] shall inspect the home or program before acknowledging any subsequent registration. Where the home or program has failed to meet the requirements of this section, the office [of children and family services] may reject any subsequent registration of a provider. Nothing herein shall prohibit the office [of children and family services] from terminating or suspending registration pursuant to subdivision ten of this section where the office [of children and family services] determines that termination or suspension is necessary.

(iv) Child day care providers who have been issued a license OR NURSERY SCHOOL OPERATORS WHO HAVE FILED WITH THE OFFICE shall openly display such license OR OFFICE VERIFICATION OF THE FILING in the facility or home for which the license OR FILING is issued. Child day care providers who have registered OR FILED with the [department] OFFICE shall provide proof of registration OR FILING upon request.

(e) Notwithstanding any other provision of this section, where a child is cared for by a parent, guardian or relative within the third degree of consanguinity of the parent of such child and such person simultaneously provides child day care for other children, only the other children shall be considered in determining whether such person must be registered, FILED or licensed, provided that such person is not caring, in total, for more than eight children.

2-a. (a) The office [of children and family services] shall promulgate regulations which establish minimum quality program requirements for licensed and registered child day care homes, programs and facilities. Such requirements shall include but not be limited to (i) the need for age appropriate activities, materials and equipment to promote cognitive, educational, social, cultural, physical, emotional, language and recreational development of children in care in a safe, healthy and caring environment (ii) principles of childhood development (iii) appropriate staff/child ratios for family day care homes, group family day care homes, school age day care programs and day care centers, provided however that such staff/child ratios shall not be less stringent than applicable staff/child ratios as set forth in part four hundred fourteen, four hundred sixteen, four hundred seventeen or four hundred eighteen of title eighteen of the New York code of rules and regulations as of January first, two thousand (iv) appropriate levels of supervision of children in care (v) minimum standards for sanitation, health, infection control, nutrition, buildings and equipment, safety, security procedures, first aid, fire prevention, fire safety, evacuation plans and drills, prevention of child abuse and maltreatment, staff qualifications and training, record keeping, and child behavior management.

(b) The use of electronic monitors as a sole means of supervision of children in day care shall be prohibited, except that electronic monitors may be used in family day care homes and group family day care homes as an indirect means of supervision where the parents of any child to be supervised have agreed in advance to the use of such monitors as an indirect means of supervision and the use of such monitors is restricted to situations where the children so supervised are sleeping.

1 (c) No child less than six weeks of age may be cared for by a licensed  
2 or registered day care provider, except in extenuating circumstances  
3 where prior approval for care of such children has been given by the  
4 office [of children and family services]. Extenuating circumstances for  
5 the purposes of this section shall include but not be limited to the  
6 medical or health needs of the parent or child, or the economic hardship  
7 of the parent.

8 3. (a) The office [of children and family services] may make announced  
9 or unannounced inspections of the records and premises of any child day  
10 care provider, whether or not such provider has a license from, or is  
11 registered with, the office [of children and family services]. The  
12 office [of children and family services] shall make unannounced  
13 inspections of the records and premises of any child day care provider  
14 OR NURSERY SCHOOL OPERATOR within fifteen days after the office [of  
15 children and family services] receives a complaint that, if true, would  
16 indicate such provider OR OPERATOR does not comply with the regulations  
17 of the office [of children and family services] or with statutory  
18 requirements. If the complaint indicates that there may be imminent  
19 danger to the children, the office [of children and family services]  
20 shall investigate the complaint no later than the next day of operation  
21 of the provider OR OPERATOR. The office [of children and family  
22 services] may provide for inspections through the purchase of services.

23 (b) Where inspections have been made and violations of applicable  
24 statutes or regulations have been found, the [department] OFFICE shall  
25 advise the child day care provider OR OPERATOR in writing, within ten  
26 days, of the violations and require the provider to correct such  
27 violations. If the child day care provider OR NURSERY SCHOOL OPERATOR  
28 fails to correct such violations within thirty days after notice, the  
29 [department] OFFICE may act pursuant to subdivisions ten and eleven of  
30 this section.

31 (c) (i) The office [of children and family services] shall establish a  
32 toll-free statewide telephone number to receive inquiries about child  
33 day care homes, programs and facilities and complaints of violations of  
34 the requirements of this section or regulations promulgated under this  
35 section. The office [of children and family services] shall develop a  
36 system for investigation, which shall include inspection, of such  
37 complaints. The office [of children and family services] may provide for  
38 such investigations through purchase of services. The office [of chil-  
39 dren and family services] shall develop a process for publicizing such  
40 toll-free telephone number to the public for making inquiries or  
41 complaints about child day care homes, programs or facilities.

42 (ii) Information to be maintained and available to the public through  
43 such toll-free telephone number shall include, but not be limited to:

44 (A) current license and registration status of child day care homes,  
45 programs and facilities including whether a license or registration is  
46 in effect or has been revoked or suspended; and

47 (B) child care resource and referral programs providing services  
48 pursuant to title five-B of this article and other resources known to  
49 the office [of children and family services] which relate to child day  
50 care homes, programs and facilities in the state.

51 (iii) Upon written request identifying a particular child day care  
52 home, program or facility, the office [of children and family services]  
53 shall provide the information set forth below. The office [of children  
54 and family services] may charge reasonable fees for copies of documents  
55 provided, consistent with the provisions of article six of the public

1 officers law. The information available pursuant to this clause shall  
2 be:

3 (A) the results of the most recent inspection for licensure or regis-  
4 tration and any subsequent inspections by the office [of children and  
5 family services];

6 (B) complaints filed against child day care homes, programs or facili-  
7 ties which describes the nature of the complaint and states how the  
8 complaint was resolved, including the status of the office [of children  
9 and family services] investigation, the steps taken to rectify the  
10 complaint, and the penalty, if any, imposed; and

11 (C) child day care homes, programs or facilities which have requested  
12 or received a waiver from any applicable rule or regulation, and the  
13 regulatory requirement which was waived.

14 (iv) Nothing in this paragraph shall be construed to require or permit  
15 the disclosure either orally or in writing of any information that is  
16 confidential pursuant to law.

17 (d) Where investigation or inspection reveals that a child day care  
18 provider which must be licensed or registered is not, the office [of  
19 children and family services] shall advise the child day care provider  
20 in writing that the provider is in violation of the licensing or regis-  
21 tration requirements and shall take such further action as is necessary  
22 to cause the provider to comply with the law, including directing an  
23 unlicensed or unregistered provider to cease operation. In addition, the  
24 office [of children and family services] shall require the provider to  
25 notify the parents or guardians of children receiving care from the  
26 provider that the provider is in violation of the licensing or registra-  
27 tion requirements and shall require the provider to notify the office  
28 [of children and family services] that the provider has done so. Any  
29 provider who is directed to cease operations pursuant to this paragraph  
30 shall be entitled to a hearing before the office [of children and family  
31 services]. If the provider requests a hearing to contest the directive  
32 to cease operations, such hearing must be scheduled to commence as soon  
33 as possible but in no event later than thirty days after the receipt of  
34 the request by the office [of children and family services]. The provid-  
35 er may not operate the center, home or program after being directed to  
36 cease operations, regardless of whether a hearing is requested. If the  
37 provider does not cease operations, the office [of children and family  
38 services] may impose a civil penalty pursuant to subdivision eleven of  
39 this section, seek an injunction pursuant to section three hundred nine-  
40 ty-one of this title, or both.

41 (e) (i) Where an authorized agency is subsidizing child day care  
42 pursuant to any provision of this chapter, the authorized agency may  
43 submit to the [department] OFFICE justification for a need to impose  
44 additional requirements upon child day care providers and a plan to  
45 monitor compliance with such additional requirements. No such additional  
46 requirements or monitoring may be imposed without the written approval  
47 of the [department] OFFICE.

48 (ii) An authorized agency may refuse to allow a child day care provid-  
49 er who is not in compliance with this section and regulations issued  
50 hereunder or any approved additional requirements of the authorized  
51 agency to provide child day care to the child. In accordance with the  
52 plan approved by the [department] OFFICE, an authorized agency shall  
53 have the right to make announced or unannounced inspections of the  
54 records and premises of any provider who provides care for such chil-  
55 dren, including the right to make inspections prior to subsidized chil-  
56 dren receiving care in a home where the inspection is for the purpose of

determining whether the child day care provider is in compliance with applicable law and regulations and any additional requirements imposed upon such provider by the authorized agency. Where an authorized agency makes such inspections, the authorized agency shall notify the [department] OFFICE immediately of any violations of this section or regulations promulgated hereunder, and shall provide the [department] OFFICE with an inspection report whether or not violations were found, documenting the results of such inspection.

(iii) Nothing contained in this paragraph shall diminish the authority of the [department] OFFICE to conduct inspections or provide for inspections through purchase of services as otherwise provided for in this section. Nothing contained in this paragraph shall obligate the [department] OFFICE to take any action to enforce any additional requirements imposed on child day care providers by an authorized agency.

(E-1) (I) WHERE A COMPLAINT IS RECEIVED ALLEGING THAT A NURSERY SCHOOL OPERATOR WHO IS REQUIRED TO FILE HAS NOT DONE SO, THE OFFICE, WITHIN TEN DAYS OF RECEIPT OF THE COMPLAINT, SHALL ADVISE IN WRITING THE NURSERY SCHOOL OPERATOR OF THE COMPLAINT, OF THE FILING STANDARDS AND REQUIREMENTS, AND OF THE OPERATOR'S OBLIGATION TO FILE IF SUCH PERSON IS SUBJECT TO FILING. THE OFFICE SHALL FURTHER DIRECT THE ALLEGED NURSERY SCHOOL OPERATOR TO RESPOND WITHIN THIRTY DAYS OF RECEIPT OF THE OFFICE'S LETTER. UNLESS SUCH NURSERY SCHOOL OPERATOR FILES, SUCH RESPONSE SHALL STATE WHY THE ALLEGED OPERATOR IS NOT SUBJECT TO THE FILING REQUIREMENTS OF THIS SECTION.

(II) SHOULD A NURSERY SCHOOL OPERATOR FAIL TO FILE OR SUBMIT THE RESPONSE REQUIRED BY SUBPARAGRAPH (I) OF THIS PARAGRAPH WITHIN THE TIME LIMIT THEREIN SPECIFIED, THE OFFICE SHALL TAKE SUCH FURTHER ACTION AS IS NECESSARY TO CAUSE THE OPERATOR TO COMPLY WITH THE LAW.

(f) Individual local social services districts may alter their participation in activities related to arranging for, subsidizing, delivering and monitoring the provision of subsidized child day care provided, however, that the total participation of an individual district in all activities related to the provision of subsidized child day care shall be no less than the participation level engaged in by such individual district on the effective date of this section.

4. (a) The office [of children and family services] on an annual basis shall inspect at least twenty percent of all registered family day care homes, registered child day care centers, NURSERY SCHOOLS FILED WITH THE OFFICE and registered school age child care programs to determine whether such homes, centers and programs are operating in compliance with applicable statutes and regulations. The office [of children and family services] shall increase the percentage of family day care homes, child day care centers and school age child care programs which are inspected pursuant to this subdivision as follows: to at least thirty percent by the thirty-first of December two thousand; and to at least fifty percent by the thirty-first of December two thousand one. The office [of children and family services] may provide for such inspections through purchase of services. Priority shall be given to family day care homes which have never been licensed or certified prior to initial registration.

(b) Any family day care home or school-age child care program licensed, registered, or certified by the [department] OFFICE or by any authorized agency on the effective date of this section shall be deemed registered until the expiration of its then-current license or certificate unless such license or certificate is suspended or revoked pursu-

ant to subdivision ten of this section. Family day care homes and school-age child care programs not licensed, registered, or certified on the effective date of this section shall register pursuant to subdivision two of this section.

5. Child day care providers required to have a license from the [department] OFFICE or to be registered with the [department] OFFICE pursuant to this section shall not be exempt from such requirement through registration with another state agency, or certification, registration, or licensure by any local governmental agency or any authorized agency.

6. Unless otherwise limited by law, a parent with legal custody or a legal guardian of any child in a child day care program OR NURSERY SCHOOL shall have unlimited and on demand access to such child or ward. Such parent or guardian unless otherwise limited by law, also shall have the right to inspect on demand during its hours of operation any area of a child day care center, group family day care home, school-age child care program, or family day care home to which the child or ward of such parent or guardian has access or which could present a hazard to the health and safety of the child or ward.

7. (a) The [department] OFFICE shall implement on a statewide basis programs to educate parents and other potential consumers of child day care programs AND NURSERY SCHOOLS about their selection and use. The [department] OFFICE may provide for such implementation through the purchase of services. Such education shall include, but not be limited to, the following topics:

- (i) types of child day care programs;
- (ii) factors to be considered in selecting and evaluating child day care programs;
- (iii) regulations of the [department] OFFICE governing the operation of different types of programs;
- (iv) rights of parents or guardians in relation to access to children and inspection of child day care programs;
- (v) information concerning the availability of child day care subsidies;
- (vi) information about licensing [and], registration AND FILING requirements;
- (vii) prevention of child abuse and maltreatment in child day care programs, including screening of child day care providers and employees;
- (viii) tax information; and
- (ix) factors to be considered in selecting and evaluating child day care programs when a child needs administration of medications during the time enrolled.

(b) The [department] OFFICE shall implement a statewide campaign to educate the public as to the legal requirements for registration of family day care and school-age child care, THE FILING OF NURSERY SCHOOLS, and the benefits of such [registration] PROCEDURES. The [department] OFFICE may provide for such implementation through the purchase of services. The campaign shall:

- (i) use various types of media;
- (ii) include the development of public educational materials for families, [family day care providers,] employers and community agencies;
- (iii) explain the role and functions of child care resource and referral programs, as such term is used in title five-B of this article;
- (iv) explain the role and functions of the [department] OFFICE in regard to registered LICENSED AND FILED programs; and



1 (v) publicize the [department's] OFFICE'S toll-free telephone number  
2 for making complaints of violations of [child day care] requirements  
3 related to programs which are required to be licensed [or], registered  
4 OR FILED.

5 8. The [department] OFFICE shall establish and maintain a list of all  
6 current FILED, registered and licensed [child day care] programs and a  
7 list of all programs whose license [or], registration OR FILING has been  
8 revoked, rejected, terminated, or suspended. Such information shall be  
9 available to the public, pursuant to procedures developed by the  
10 [department] OFFICE.

11 8-a. The office [of children and family services] shall not make  
12 available to the public online any group family day care home provider's  
13 or family day care provider's home street address or map showing the  
14 location of such provider's home where such provider has requested to  
15 opt out of the online availability of this information. The office shall  
16 provide a written form informing a provider of their right to opt out of  
17 providing information online, and shall also permit a provider to  
18 request to opt out through the office's website.

19 9. The [department] OFFICE shall make available, directly or through  
20 purchase of services, to registered [child day care] providers informa-  
21 tion concerning:

22 (a) liability insurance;  
23 (b) start-up grants;  
24 (c) United States department of agriculture food programs;  
25 (d) subsidies available for child day care;  
26 (e) tax information; and  
27 (f) support services required to be provided by child care resource  
28 and referral programs as set forth in subdivision three of section four  
29 hundred ten-r of this article.

30 10. Any home or facility providing child day care shall be operated in  
31 accordance with applicable statutes and regulations. Any violation of  
32 applicable statutes or regulations shall be a basis to deny, limit,  
33 suspend, revoke, or terminate a license or registration. Consistent with  
34 articles twenty-three and twenty-three-A of the correction law, and  
35 guidelines referenced in subdivision two of section four hundred twen-  
36 ty-five of this article, if the office [of children and family services]  
37 is made aware of the existence of a criminal conviction or pending crim-  
38 inal charge concerning an operator of a family day care home, group  
39 family day care home, school-age child care program, or child day care  
40 center or concerning any assistant, employee or volunteer in such homes,  
41 programs or centers, or any persons age eighteen or over who reside in  
42 such homes, such conviction or charge may be a basis to deny, limit,  
43 suspend, revoke, reject, or terminate a license or registration. Before  
44 any license issued pursuant to the provisions of this section is  
45 suspended or revoked, before registration pursuant to this section is  
46 suspended or terminated, or when an application for such license is  
47 denied or registration rejected, the applicant for or holder of such  
48 registration or license is entitled, pursuant to section twenty-two of  
49 this chapter and the regulations of the office [of children and family  
50 services], to a hearing before the office [of children and family  
51 services]. However, a license or registration shall be temporarily  
52 suspended or limited without a hearing upon written notice to the opera-  
53 tor of the facility following a finding that the public health, or an  
54 individual's safety or welfare, [are] IS in imminent danger. The holder  
55 of a license or registrant is entitled to a hearing before the office  
56 [of children and family services] to contest the temporary suspension or

1 limitation. If the holder of a license or registrant requests a hearing  
2 to contest the temporary suspension or limitation, such hearing must be  
3 scheduled to commence as soon as possible but in no event later than  
4 thirty days after the receipt of the request by the office [of children  
5 and family services]. Suspension shall continue until the condition  
6 requiring suspension or limitation is corrected or until a hearing deci-  
7 sion has been issued. If the office [of children and family services]  
8 determines after a hearing that the temporary suspension or limitation  
9 was proper, such suspension or limitation shall be extended until the  
10 condition requiring suspension or limitation has been corrected or until  
11 the license or registration has been revoked.

12 11. (a) (i) (A) The office [of children and family services] shall  
13 adopt regulations establishing civil penalties of no more than five  
14 hundred dollars per day to be assessed against child day care centers,  
15 school age child care programs, group family day care homes or family  
16 day care homes for violations of this section, sections three hundred  
17 ninety-a and three hundred ninety-b of this title and any regulations  
18 promulgated thereunder. The regulations establishing civil penalties  
19 shall specify the violations subject to penalty.

20 (B) THE OFFICE SHALL ALSO ADOPT REGULATIONS ESTABLISHING CIVIL PENAL-  
21 TIES OF NO MORE THAN TWO HUNDRED FIFTY DOLLARS PER DAY TO BE ASSESSED  
22 AGAINST NURSERY SCHOOL OPERATORS WHO OPERATE NURSERY SCHOOLS WITHOUT  
23 HAVING MADE THE FILING REQUIRED BY THIS SECTION.

24 (ii) The office [of children and family services] shall adopt regu-  
25 lations establishing civil penalties of no more than five hundred  
26 dollars per day to be assessed against child day care providers who  
27 operate child day care centers or group family day care homes without a  
28 license or who operate family day care homes, school-age child care  
29 programs, or child day care centers required to be registered without  
30 obtaining such registration.

31 (iii) In addition to any other civil or criminal penalty provided by  
32 law, the office [of children and family services] shall have the power  
33 to assess civil penalties in accordance with its regulations adopted  
34 pursuant to this subdivision after a hearing conducted in accordance  
35 with procedures established by regulations of the office [of children  
36 and family services]. Such procedures shall require that notice of the  
37 time and place of the hearing, together with a statement of charges of  
38 violations, shall be served in person or by certified mail addressed to  
39 the school age child care program, group family day care home, family  
40 day care home, NURSERY SCHOOL OPERATOR or child day care center at least  
41 thirty days prior to the date of the hearing. The statement of charges  
42 shall set forth the existence of the violation or violations, the amount  
43 of penalty for which the program may become liable, the steps which must  
44 be taken to rectify the violation, and where applicable, a statement  
45 that a penalty may be imposed regardless of rectification. A written  
46 answer to the charges of violations shall be filed with the office [of  
47 children and family services] not less than ten days prior to the date  
48 of hearing with respect to each of the charges and shall include all  
49 material and relevant matters which, if not disclosed in the answer,  
50 would not likely be known to the office [of children and family  
51 services].

52 (iv) The hearing shall be held by the commissioner of the office [of  
53 children and family services] or the commissioner's designee. The burden  
54 of proof at such hearing shall be on the office [of children and family  
55 services] to show that the charges are supported by a preponderance of  
56 the evidence. The commissioner of the office [of children and family

services] or the commissioner's designee, in his or her discretion, may allow the child day care center operator or provider to attempt to prove by a preponderance of the evidence any matter not included in the answer. Where the child day care provider satisfactorily demonstrates that it has rectified the violations in accordance with the requirements of paragraph (c) of this subdivision, no penalty shall be imposed except as provided in paragraph (c) of this subdivision.

(b)(i) In assessing penalties pursuant to this subdivision, the office [of children and family services] may consider the completeness of any rectification made and the specific circumstances of such violations as mitigating factors.

(ii) Upon the request of the office [of children and family services], the attorney general shall commence an action in any court of competent jurisdiction against any child day care program subject to the provisions of this subdivision and against any person, entity or corporation operating such center or school age child care program, group family day care home or family day care home for the recovery of any penalty assessed by the office [of children and family services] in accordance with the provisions of this subdivision.

(iii) Any such penalty assessed by the office [of children and family services] may be released or compromised by the office [of children and family services] before the matter has been referred to the attorney general; when such matter has been referred to the attorney general, such penalty may be released or compromised and any action commenced to recover the same may be settled and discontinued by the attorney general with the consent of the office [of children and family services].

(c)(i) Except as provided for in this paragraph, a child day care provider may avoid payment of a penalty imposed pursuant to this subdivision where the provider has rectified the condition resulting in the imposition of the penalty within thirty days of notification of the imposition of the penalty.

(ii) [Clause] SUBPARAGRAPH (i) of this paragraph notwithstanding, rectification shall not preclude the imposition of a penalty pursuant to this subdivision where:

(A) the child day care provider has operated a child day care center or group family day care home without a license, has refused to seek a license for the operation of such a center or home, or has continued to operate such a center or home after denial of a license application, revocation of an existing license or suspension of an existing license;

(B) the child day care provider has operated a family day care home, school-age child care program or child day care center required to be registered without being registered, has refused to seek registration for the operation of such home, program or center or has continued to operate such a home, program or center after denial of a registration application, revocation of an existing registration or suspension of an existing registration;

(C) there has been a total or substantial failure of the facility's fire detection or prevention systems or emergency evacuation procedures;

(D) the child day care provider or an assistant, employee or volunteer OR NURSERY SCHOOL has failed to provide adequate and competent supervision;

(E) the child day care provider or an assistant, employee or volunteer OR NURSERY SCHOOL has failed to provide adequate sanitation;

(F) the child day care provider or an assistant, employee or volunteer OR NURSERY SCHOOL has abused or maltreated a child in care; or

1 (G) the child day care provider OR NURSERY SCHOOL has violated the  
2 same statutory or regulatory standard more than once within a six month  
3 period.

4 (d) Any civil penalty received by the office [of children and family  
5 services] pursuant to this subdivision shall be deposited to the credit  
6 of the "quality child care and protection fund" established pursuant to  
7 section ninety-seven-ww of the state finance law, AS ADDED BY CHAPTER  
8 FOUR HUNDRED SIXTEEN OF THE LAWS OF TWO THOUSAND.

9 (E) RECTIFICATION SHALL NOT PRECLUDE THE ASSESSMENT OF A PENALTY WHERE  
10 THE OFFICE, AFTER A HEARING, DETERMINES THAT A NURSERY SCHOOL OPERATOR  
11 HAS OPERATED A NURSERY SCHOOL WITHOUT HAVING MADE THE FILING REQUIRED BY  
12 THIS SECTION, OR CONTINUED TO OPERATE SUCH NURSERY SCHOOL AFTER DENIAL  
13 OF A FILING OR REVOCATION OR SUSPENSION OF AN EXISTING FILING WITHOUT  
14 REGARD TO ANY FINDING OF HARM TO OR ENDANGERMENT OF A CHILD IN CARE.  
15 RECTIFICATION SHALL NOT PRECLUDE THE ASSESSMENT OF A PENALTY WHERE THE  
16 OFFICE, AFTER A HEARING, DETERMINES THAT A NURSERY SCHOOL OPERATOR HAS  
17 OPERATED A NURSERY SCHOOL, REQUIRED TO FILE WITHOUT HAVING FILED, AND  
18 HAS REFUSED TO FILE OR CONTINUED TO OPERATE SUCH NURSERY SCHOOL AFTER  
19 DENIAL OF FILING OR REVOCATION OR SUSPENSION OF AN EXISTING FILING WITH-  
20 OUT REGARD TO ANY FINDING OF HARM TO OR ENDANGERMENT OF A CHILD IN CARE.

21 12.(a) Notwithstanding any other provision of law, except as may be  
22 required as a condition of licensure [or], registration OR FILING by  
23 regulations promulgated pursuant to this section, no village, town  
24 (outside the area of any incorporated village), city or county shall  
25 adopt or enact any law, ordinance, rule or regulation which would  
26 impose, mandate or otherwise enforce standards for sanitation, health,  
27 fire safety or building construction on a one or two family dwelling or  
28 multiple dwelling used to provide group family day care or family day  
29 care than would be applicable were such child day care not provided on  
30 the premises. Nothing in this paragraph shall preclude local authorities  
31 with enforcement jurisdiction of the applicable sanitation, health, fire  
32 safety or building construction code from making appropriate inspections  
33 to assure compliance with such standards. The [department of social  
34 services] OFFICE shall provide to the secretary of state on a monthly  
35 basis, a list of child day care registrants.

36 (b) Notwithstanding any other provision of law: for the purposes of  
37 this subdivision, no local government may prohibit use of a single fami-  
38 ly dwelling for family day care or group family day care where a permit  
39 for such use has been issued in accordance with regulations issued  
40 pursuant to this section; nor may any local government prohibit use for  
41 family day care or group family day care, of a multiple dwelling classi-  
42 fied as fireproof or prohibit use for family day care or group family  
43 day care, of a dwelling unit located on the ground floor of a multiple  
44 dwelling not classified as fireproof, where in either case a registra-  
45 tion or license for such use has been issued in accordance with regu-  
46 lations adopted pursuant to this section and such use is otherwise  
47 permitted under state fire and safety standards (the state code) and  
48 under any other existing standard for permitted uses of the multiple  
49 dwelling.

50 (c) Notwithstanding any other provision of law, but pursuant to  
51 section five hundred eighty-one-b of the real property tax law, no  
52 assessing unit, as defined in subdivision one of section one hundred two  
53 of the real property tax law, in the assessment of the value of any  
54 parcel used for residential purposes and registered as a family day care  
55 home pursuant to this section, shall consider the use or registration of  
56 such parcel as a family day care home.

13. Notwithstanding any other provision of law, this section[, except for paragraph (a-1) of subdivision two-a of this section,] shall not apply to child day care centers in the city of New York, OR ANY NURSERY SCHOOL WHICH IS ASSOCIATED WITH A SCHOOL DISTRICT, THAT ALREADY IMPLEMENTS A FINGERPRINTING PROCESS.

S 2. The section heading and subdivisions 1 and 2 of section 390-a of the social services law, the section heading as amended by chapter 750 of the laws of 1990, subdivisions 1 and 2 as amended by chapter 416 of the laws of 2000, paragraph (e) of subdivision 2 as added by chapter 230 of the laws of 2001, are amended to read as follows:

Standards and training for child day care AND NURSERY SCHOOLS. 1. All office of children and family services and municipal staff employed to accept registrations AND FILINGS, issue licenses or conduct inspections of child day care homes, programs or facilities, subject to the amounts appropriated therefor, shall receive training in at least the following: regulations promulgated by the office of children and family services pursuant to section three hundred ninety of this title; child abuse prevention and identification; safety and security procedures in child day care settings; the principles of childhood development, and the laws, regulations and procedures governing the protection of children from abuse or maltreatment.

2. No license or registration shall be issued to, OR FILING ACCEPTED FROM a family day care home, group family day care home, school age child care program [or], child day care center OR NURSERY SCHOOL OPERATOR and no such registration, FILING or license shall be renewed until it can be demonstrated by the employer or licensing agency that there is a procedure developed and implemented, in accordance with section three hundred ninety-b of this title and pursuant to regulations of the office of children and family services, to:

(a) review and evaluate the backgrounds of and information supplied by any person applying to be a child day care center or school-age child care program employee or volunteer or group family day care assistant, a provider of family day care or group family day care, or a director of a child day care center, head start day care center, NURSERY SCHOOL or school-age child care program. Such procedures shall include but not be limited to the following requirements: that the applicant set forth his or her employment history, provide personal and employment references; submit such information as is required for screening with the statewide central register of child abuse and maltreatment in accordance with the provisions of section four hundred twenty-four-a of this article; sign a sworn statement indicating whether, to the best of his or her knowledge, he or she has ever been convicted of a crime in this state or any other jurisdiction; and provide his or her fingerprints for submission to the division of criminal justice services in accordance with the provisions of section three hundred ninety-b of this title;

(b) establish relevant minimal experiential and educational qualifications for employees and directors of child day care centers or head start day care center programs;

(c) assure adequate and appropriate supervision of employees and volunteers of group family day care homes, family day care homes, child day care centers, NURSERY SCHOOLS and school-age child care programs; [and]

(d) demonstrate, in the case of child day care centers, group family day care homes, family day care homes, NURSERY SCHOOLS and school-age child care programs the existence of specific procedures which will assure the safety of a child who is reported to the state central regis-

1 ter of child abuse and maltreatment as well as other children provided  
2 care by such homes, centers or programs, immediately upon notification  
3 that a report has been made with respect to a child named in such report  
4 while the child was in attendance at such homes, centers or programs[.];  
5 AND

6 (e) establish necessary rules to provide for uniform visitor control  
7 procedures, including visitor identification.

8 S 3. Paragraph (a) of subdivision 1 of section 424-a of the social  
9 services law, as amended by chapter 634 of the laws of 1988, is amended  
10 to read as follows:

11 (a) A licensing agency shall inquire of the [department] OFFICE OF  
12 CHILDREN AND FAMILY SERVICES and the [department] OFFICE OF CHILDREN AND  
13 FAMILY SERVICES shall, subject to the provisions of paragraph (e) of  
14 this subdivision, inform such agency and the subject of the inquiry  
15 whether an applicant for a certificate, license or permit, assistants to  
16 group family day care providers, the director of a camp subject to the  
17 provisions of article thirteen-A[, ] OR thirteen-B [or thirteen-C] of the  
18 public health law, and any person over the age of eighteen who resides  
19 in the home of a person who has applied to become an adoptive parent or  
20 a foster parent or to operate a family day care home, NURSERY SCHOOL or  
21 group family day care home has been or is currently the subject of an  
22 indicated child abuse and maltreatment report on file with the statewide  
23 central register of child abuse and maltreatment.

24 S 4. Section 390-b of the social services law, as added by chapter  
25 416 of the laws of 2000, is amended to read as follows:

26 S 390-b. Criminal history review of child care providers, generally.  
27 1. (a) Notwithstanding any other provision of law to the contrary, and  
28 subject to rules and regulations of the division of criminal justice  
29 services, the office of children and family services shall perform a  
30 criminal history record check with the division of criminal justice  
31 services regarding any operator, employee or volunteer of a child day  
32 care center or school age child care provider, as defined in paragraphs  
33 (c) and (f) of subdivision one of section three hundred ninety of this  
34 title. Child day care center operators, school age child care operators  
35 and any employees or volunteers, who previously did not have a criminal  
36 history record check performed in accordance with this subdivision shall  
37 have such a criminal history record check performed when the child day  
38 care center or school age child care provider applies for license or  
39 registration renewal. Child day care centers which are not subject to  
40 the provisions of section three hundred ninety of this title, shall not  
41 be subject to the provisions of this section. The provisions of this  
42 section shall apply to a volunteer only where the volunteer has the  
43 potential for regular and substantial contact with children enrolled in  
44 the program.

45 (b) Notwithstanding any other provision of law to the contrary, and  
46 subject to rules and regulations of the division of criminal justice  
47 services, the office of children and family services shall perform a  
48 criminal history record check with the division of criminal justice  
49 services regarding the operator, any assistants, employees or volunteers  
50 of a group family day care home [or], family day care home OR NURSERY  
51 SCHOOL, as defined in paragraphs (d) [and], (e) AND (G) of subdivision  
52 one of section three hundred ninety of this title, and any person age  
53 eighteen or over residing on the premises of the group family day care  
54 home [or], family day care home OR NURSERY SCHOOL which is to be  
55 licensed [or], registered OR FOR WHICH A FILING MUST BE MADE in accord-  
56 ance with section three hundred ninety of this title. Group family day

1 care home operators, family day care home operators, NURSERY SCHOOL  
2 OPERATORS, any assistants, employees or volunteers, and persons who are  
3 age eighteen or over residing on the premises of a licensed group family  
4 day care home [or], registered family day care home OR NURSERY SCHOOL  
5 who previously did not have a criminal history record check performed in  
6 accordance with this subdivision shall have such a criminal history  
7 record check performed when the group family day care home [or], family  
8 day care home OR NURSERY SCHOOL applies for renewal of the home's  
9 license [or], registration OR FILING. The provisions of this section  
10 shall apply to a volunteer only where the volunteer has the potential  
11 for regular and substantial contact with children enrolled in the  
12 program.

13 2. (a) As part of the provider's application for, or renewal of, a  
14 child day care center or school age child care license or registration,  
15 the provider shall furnish the office of children and family services  
16 with fingerprint cards of any operator of a child day care center or  
17 school age child care program, and any employee or volunteer, who previ-  
18 ously did not have a criminal history record check performed in accord-  
19 ance with this section, together with such other information as is  
20 required by the office of children and family services and the division  
21 of criminal justice services.

22 (b) Every child day care center or school age child care provider  
23 shall obtain a set of fingerprints for each prospective employee or  
24 volunteer and such other information as is required by the office of  
25 children and family services and the division of criminal justice  
26 services. The child day care center or school age child care program  
27 shall furnish to the applicant blank fingerprint cards and a description  
28 of how the completed fingerprint cards will be used. The child day care  
29 center or school age child care program shall promptly transmit such  
30 fingerprint cards to the office of children and family services.

31 (c) As part of the provider's application for, or renewal of, a group  
32 family day care home license or family day care home registration, the  
33 provider shall furnish the office of children and family services with  
34 fingerprint cards of any operator of a group family day care home or  
35 family day care home, and any assistant, employee or volunteer, and any  
36 person age eighteen or over residing on the premises of the group family  
37 day care home or family day care home, who previously did not have a  
38 criminal history record check performed in accordance with this section,  
39 together with such other information as is required by the office of  
40 children and family services and the division of criminal justice  
41 services.

42 (d) Every group family day care home or family day care home provider  
43 shall obtain a set of fingerprints for each prospective assistant,  
44 employee, volunteer and any person age eighteen or over who will be  
45 residing on the premises of the group family day care home or family day  
46 care home, and such other information as is required by the office of  
47 children and family services and the division of criminal justice  
48 services. The group family day care home or family day care home provid-  
49 er shall furnish to the applicant blank fingerprint cards and a  
50 description of how the completed fingerprint cards will be used. The  
51 group family day care home or family day care home provider shall  
52 promptly transmit such fingerprint cards to the office of children and  
53 family services.

54 (e) AS PART OF THE PROVIDER'S APPLICATION FOR, OR RENEWAL OF, A NURS-  
55 ERY SCHOOL FILING, THE PROVIDER SHALL FURNISH THE OFFICE OF CHILDREN AND  
56 FAMILY SERVICES WITH FINGERPRINT CARDS OF ANY OPERATOR OF A NURSERY

SCHOOL, AND ANY EMPLOYEE OR VOLUNTEER, WHO PREVIOUSLY DID NOT HAVE A CRIMINAL HISTORY RECORD CHECK PERFORMED IN ACCORDANCE WITH THIS SECTION, TOGETHER WITH SUCH OTHER INFORMATION AS IS REQUIRED BY THE OFFICE OF CHILDREN AND FAMILY SERVICES AND THE DIVISION OF CRIMINAL JUSTICE SERVICES.

(F) EVERY NURSERY SCHOOL PROVIDER SHALL OBTAIN A SET OF FINGERPRINTS FOR EACH PROSPECTIVE EMPLOYEE OR VOLUNTEER AND SUCH OTHER INFORMATION AS IS REQUIRED BY THE OFFICE OF CHILDREN AND FAMILY SERVICES AND THE DIVISION OF CRIMINAL JUSTICE SERVICES. THE NURSERY SCHOOL PROGRAM SHALL FURNISH TO THE APPLICANT BLANK FINGERPRINT CARDS AND A DESCRIPTION OF HOW THE COMPLETED FINGERPRINT CARDS WILL BE USED. THE NURSERY SCHOOL PROGRAM SHALL PROMPTLY TRANSMIT SUCH FINGERPRINT CARDS TO THE OFFICE OF CHILDREN AND FAMILY SERVICES.

(G) The office of children and family services shall pay the processing fee imposed pursuant to subdivision eight-a of section eight hundred thirty-seven of the executive law. The office of children and family services shall promptly submit the fingerprint cards and the processing fee to the division of criminal justice services for its full search and retain processing.

[(f)] (H) A licensed or registered child day care center, school-age child care program, group family day care home or family day care home may temporarily approve an applicant to be an employee, assistant or volunteer for such provider while the results of the criminal history record check are pending, but shall not allow such person to have unsupervised contact with children during such time.

3. Notwithstanding any other provision of law to the contrary, after reviewing any criminal history record information provided by the division of criminal justice services, of an individual who is subject to a criminal history record check pursuant to this section, the office of children and family services and the provider shall take the following actions:

(a) (i) Where the criminal history record of an applicant to be an operator of a child day care center, school age child care program, group family day care home, family day care home, NURSERY SCHOOL, or any person over the age of eighteen residing in such a home OR SCHOOL, reveals a felony conviction at any time for a sex offense, crime against a child, or a crime involving violence, or a felony conviction within the past five years for a drug-related offense, the office of children and family services shall deny the application OR FILING unless the office determines, in its discretion, that approval of the application OR FILING will not in any way jeopardize the health, safety or welfare of the children in the center, program or home; or

(ii) Where the criminal history record of an applicant to be an operator of a child day care center, school age child care program, group family day care home, family day care home, NURSERY SCHOOL, or any person over the age of eighteen residing in such a home OR SCHOOL, reveals a conviction for a crime other than one set forth in subparagraph (i) of this paragraph, the office of children and family services may deny the application OR FILING, consistent with article twenty-three-A of the correction law; or

(iii) Where the criminal history record of an applicant to be an operator of a child day care center, school age child care program, group family day care home, family day care home, NURSERY SCHOOL, or any other person over the age of eighteen residing in such a home, reveals a charge for any crime, the office of children and family services shall



1 hold the application OR FILING in abeyance until the charge is finally  
2 resolved.

3 (b) (i) Where the criminal history record of a current operator of a  
4 child day care center, school age child care program, group family day  
5 care home, family day care home, NURSERY SCHOOL, or any other person  
6 over the age of eighteen residing in such a home OR SCHOOL, reveals a  
7 conviction for a crime set forth in subparagraph (i) of paragraph (a) of  
8 this subdivision, the office of children and family services shall  
9 conduct a safety assessment of the program and take all appropriate  
10 steps to protect the health and safety of the children in the program.  
11 The office of children and family services shall deny, limit, suspend,  
12 revoke, reject or terminate a license [or], registration OR FILING based  
13 on such a conviction, unless the office determines, in its discretion,  
14 that continued operation of the center, program [or], home OR SCHOOL  
15 will not in any way jeopardize the health, safety or welfare of the  
16 children in the center, program [or], home OR SCHOOL;

17 (ii) Where the criminal history record of a current operator of a  
18 child day care center, school age child care program, group family day  
19 care home, family day care home, NURSERY SCHOOL, or any other person  
20 over the age of eighteen residing in such a home OR SCHOOL, reveals a  
21 conviction for a crime other than one set forth in subparagraph (i) of  
22 paragraph (a) of this subdivision, the office of children and family  
23 services shall conduct a safety assessment of the program and take all  
24 appropriate steps to protect the health and safety of the children in  
25 the program. The office may deny, limit, suspend, revoke, reject or  
26 terminate a license [or], registration OR FILING based on such a  
27 conviction, consistent with article twenty-three-A of the correction  
28 law;

29 (iii) Where the criminal history record of a current operator of a  
30 child day care center, school age child care program, group family day  
31 care home, family day care home, NURSERY SCHOOL, or any other person  
32 over the age of eighteen residing in such a home OR SCHOOL, reveals a  
33 charge for any crime, the office of children and family services shall  
34 conduct a safety assessment of the program and take all appropriate  
35 steps to protect the health and safety of the children in the program.  
36 The office may suspend a license [or], registration OR FILING based on  
37 such a charge where necessary to protect the health and safety of the  
38 children in the program.

39 (c) (i) Where the criminal history record of an applicant to be an  
40 employee or volunteer at a child day care center [or], school age child  
41 care program OR NURSERY SCHOOL reveals a conviction for a crime set  
42 forth in subparagraph (i) of paragraph (a) of this subdivision, the  
43 office of children and family services shall direct the provider to deny  
44 the application unless the office determines, in its discretion, that  
45 approval of the application will not in any way jeopardize the health,  
46 safety or welfare of the children in the center or program;

47 (ii) Where the criminal history record of an applicant to be an  
48 employee or volunteer at a child day care center [or], school age child  
49 care program OR NURSERY SCHOOL reveals a conviction for a crime other  
50 than one set forth in subparagraph (i) of paragraph (a) of this subdivi-  
51 sion, the office of children and family services may, consistent with  
52 article twenty-three-A of the correction law, direct the provider to  
53 deny the application;

54 (iii) Where the criminal history record of an applicant to be an  
55 employee or volunteer at a child day care center [or], school age child  
56 care program OR NURSERY SCHOOL reveals a charge for any crime, the

1 office of children and family services shall hold the application in  
2 abeyance until the charge is finally resolved.

3 (d) (i) Where the criminal history record of a current employee or  
4 volunteer at a child day care center [or], school age child care program  
5 OR NURSERY SCHOOL reveals a conviction for a crime set forth in subpara-  
6 graph (i) of paragraph (a) of this subdivision, the office of children  
7 and family services shall conduct a safety assessment of the program and  
8 take all appropriate steps to protect the health and safety of the chil-  
9 dren in the program. The office shall direct the provider to terminate  
10 the employee or volunteer based on such a conviction, unless the office  
11 determines, in its discretion, that the continued presence of the  
12 employee or volunteer in the center or program will not in any way jeop-  
13 ardize the health, safety or welfare of the children in the center or  
14 program;

15 (ii) Where the criminal history record of a current employee or volun-  
16 teer at a child day care center [or], school age child care program OR  
17 NURSERY SCHOOL reveals a conviction for a crime other than one set forth  
18 in subparagraph (i) of paragraph (a) of this subdivision, the office of  
19 children and family services shall conduct a safety assessment of the  
20 program and take all appropriate steps to protect the health and safety  
21 of the children in the program. The office may direct the provider to  
22 terminate the employee or volunteer based on such a conviction, consist-  
23 ent with article twenty-three-A of the correction law;

24 (iii) Where the criminal history record of a current employee or  
25 volunteer at a child day care center [or], school age child care program  
26 OR NURSERY SCHOOL reveals a charge for any crime, the office of children  
27 and family services shall conduct a safety assessment of the program and  
28 take all appropriate steps to protect the health and safety of the chil-  
29 dren in the program.

30 (e) (i) Where the criminal history record of an applicant to be an  
31 employee, assistant or volunteer at a group family day care home or  
32 family day care home reveals a conviction for a crime set forth in  
33 subparagraph (i) of paragraph (a) of this subdivision, the office of  
34 children and family services shall direct the provider to deny the  
35 application unless the office determines, in its discretion, that  
36 approval of the application will not in any way jeopardize the health,  
37 safety or welfare of the children in the home;

38 (ii) Where the criminal history record of an applicant to be an  
39 employee, assistant or volunteer at a group family day care home or  
40 family day care home reveals a conviction for a crime other than one set  
41 forth in subparagraph (i) of paragraph (a) of this subdivision, the  
42 office of children and family services may, consistent with article  
43 twenty-three-A of the correction law, direct the provider to deny the  
44 application;

45 (iii) Where the criminal history record of an applicant to be an  
46 employee, assistant or volunteer at a group family day care home or  
47 family day care home reveals a charge for any crime, the office of chil-  
48 dren and family services shall hold the application in abeyance until  
49 the charge is finally resolved.

50 (f) (i) Where the criminal history record of a current employee,  
51 assistant or volunteer at a group family day care home or family day  
52 care home reveals a conviction for a crime set forth in subparagraph (i)  
53 of paragraph (a) of this subdivision, the office of children and family  
54 services shall conduct a safety assessment of the program and take all  
55 appropriate steps to protect the health and safety of the children in  
56 the home. The office of children and family services shall direct the

1 provider to terminate the employee, assistant or volunteer based on such  
2 a conviction, unless the office determines, in its discretion, that the  
3 continued presence of the employee, assistant or volunteer in the home  
4 will not in any way jeopardize the health, safety or welfare of the  
5 children in the home;

6 (ii) Where the criminal history record of a current employee, assist-  
7 ant or volunteer at a group family day care home or family day care home  
8 reveals a conviction for a crime other than one set forth in subpara-  
9 graph (i) of paragraph (a) of this subdivision, the office of children  
10 and family services shall conduct a safety assessment of the home and  
11 take all appropriate steps to protect the health and safety of the chil-  
12 dren in the home. The office may direct the provider to terminate the  
13 employee, assistant or volunteer based on such a conviction, consistent  
14 with article twenty-three-A of the correction law;

15 (iii) Where the criminal history record of a current employee, assist-  
16 ant or volunteer at a group family day care home or family day care home  
17 reveals a charge for any crime, the office of children and family  
18 services shall conduct a safety assessment of the home and take all  
19 appropriate steps to protect the health and safety of the children in  
20 the home.

21 (g) Advise the provider that the individual has no criminal history  
22 record.

23 4. Prior to making a determination to deny an application pursuant to  
24 subdivision three of this section, the office of children and family  
25 services shall afford the applicant an opportunity to explain, in writ-  
26 ing, why the application should not be denied.

27 5. Notwithstanding any other provision of law to the contrary, the  
28 office of children and family services, upon receipt of a criminal  
29 history record from the division of criminal justice services, may  
30 request, and is entitled to receive, information pertaining to any crime  
31 contained in such criminal history record from any state or local law  
32 enforcement agency, district attorney, parole officer, probation officer  
33 or court for the purposes of determining whether any ground relating to  
34 such criminal conviction or pending criminal charge exists for denying a  
35 license, registration, FILING, application or employment.

36 6. The notification by the office of children and family services to  
37 the child day care provider pursuant to this section shall include a  
38 summary of the criminal history record, if any, provided by the division  
39 of criminal justice services.

40 7. Where the office of children and family services directs a child  
41 day care provider to deny an application based on the criminal history  
42 record, the provider must notify the applicant that such record is the  
43 basis of the denial.

44 8. Any safety assessment required pursuant to this section shall  
45 include a review of the duties of the individual, the extent to which  
46 such individual may have contact with children in the program or house-  
47 hold and the status and nature of the criminal charge or conviction.  
48 Where the office of children and family services performs the safety  
49 assessment, it shall thereafter take all appropriate steps to protect  
50 the health and safety of children receiving care in the child day care  
51 center, school age child care program, family day care home [or], group  
52 family day care home OR NURSERY SCHOOL.

53 9. Any criminal history record provided by the division of criminal  
54 justice services, and any summary of the criminal history record  
55 provided by the office of children and family services to a child day  
56 care provider pursuant to this section, is confidential and shall not be

1 available for public inspection; provided, however, nothing herein shall  
2 prevent a child day care provider or the office of children and family  
3 services from disclosing criminal history information at any administra-  
4 tive or judicial proceeding relating to the denial or revocation of an  
5 application, employment, license [or], registration OR FILING. The  
6 subject of a criminal history review conducted pursuant to this section  
7 shall be entitled to receive, upon written request, a copy of the summa-  
8 ry of the criminal history record provided by the office of children and  
9 family services to the child day care provider. Unauthorized disclosure  
10 of such records or reports shall subject the provider to civil penalties  
11 in accordance with the provisions of subdivision eleven of section three  
12 hundred ninety of this title.

13 10. A child day care provider shall advise the office of children and  
14 family services when an individual who is subject to criminal history  
15 record review in accordance with subdivision one or two of this section  
16 is no longer subject to such review. The office of children and family  
17 services shall inform the division of criminal justice services when an  
18 individual who is subject to criminal history review is no longer  
19 subject to such review so that the division of criminal justice services  
20 may terminate its retain processing with regard to such person. At least  
21 once a year, the office of children and family services will be required  
22 to conduct a validation of the records maintained by the division of  
23 criminal justice services.

24 S 5. This act shall take effect on the one hundred eightieth day after  
25 it shall have become a law, provided, however, that any rules or regu-  
26 lations necessary to implement the provisions of this act on its effec-  
27 tive date shall be promulgated on or before such date.