

6369

2009-2010 Regular Sessions

I N A S S E M B L Y

March 2, 2009

Introduced by M. of A. NOLAN -- (at request of the State Education Department) -- read once and referred to the Committee on Education

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

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

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

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

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

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

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

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

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

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

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

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

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

54 (F) AS USED IN THIS SECTION AND SECTION THREE THOUSAND THIRTY-FIVE OF
55 THIS CHAPTER, "SPECIAL EDUCATION SCHOOL" SHALL MEAN A STATE SCHOOL OPER-
56 ATED PURSUANT TO ARTICLE EIGHTY-SEVEN OR EIGHTY-EIGHT OF THIS CHAPTER, A

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

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

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

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

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

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

10. "NON-RESIDENTIAL SPECIAL EDUCATION SCHOOL OR PROGRAM" SHALL MEAN A STATE SUPPORTED SCHOOL OPERATED PURSUANT TO ARTICLE EIGHTY-FIVE OF THIS CHAPTER THAT DOES NOT HAVE A RESIDENTIAL COMPONENT, AN APPROVED PRIVATE NON-RESIDENTIAL SCHOOL FOR THE EDUCATION OF STUDENTS WITH DISABILITIES THAT IS LOCATED WITHIN THE STATE, OR AN APPROVED PROVIDER OF PRESCHOOL SPECIAL EDUCATION SERVICES OR PROGRAMS THAT IS LOCATED WITHIN THE STATE; PROVIDED THAT SUCH TERM SHALL ALSO APPLY TO AN APPROVED PRIVATE RESIDENTIAL SCHOOL OR APPROVED PROVIDER OF PRESCHOOL SPECIAL EDUCATION THAT PROVIDES A RESIDENTIAL PROGRAM THAT ALSO PROVIDES A DAY PROGRAM OR OTHER NON-RESIDENTIAL PROGRAM IF THE STUDENTS IN SUCH NON-RESIDENTIAL PROGRAM ARE NOT "CHILDREN IN RESIDENTIAL CARE," AS DEFINED IN SUBDIVISION SEVEN OF SECTION FOUR HUNDRED TWELVE OF THE SOCIAL SERVICES LAW, FOR WHOM ALLEGATIONS OF ABUSE OF A CHILD IN RESIDENTIAL CARE OR NEGLECT OF A

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

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

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

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

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

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

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

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

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

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

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

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

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

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

46 3-a. Upon request from a prospective employee who has been cleared by
47 the commissioner for employment and/or certification, the commissioner
48 shall have the authority to forward a copy of such criminal history
49 record to the city school district of the city of New York by the most
50 expeditious means available. Furthermore, upon notification that such
51 prospective employee is employed by the city school district of the city
52 of New York OR IS EMPLOYED BY A SPECIAL EDUCATION SCHOOL THAT CONTRACTS
53 WITH THE CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK, the division of
54 criminal justice services shall have the authority to provide subsequent
55 criminal history notifications directly to the city school district of
56 the city of New York. Upon request from a prospective employee who has

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

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

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

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

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

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

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

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

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

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

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

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

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

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

54 S 16. Paragraph (i) of subdivision (a) of section 4358 of the educa-
55 tion law, as amended by chapter 32 of the laws of 1992, is amended to
56 read as 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 informa-
8 tion, [and] sign a sworn statement indicating whether the applicant, to
9 the best of his or her knowledge, has ever been convicted of a crime in
10 this state or any other jurisdiction AND, IN THE CASE OF A PROSPECTIVE
11 EMPLOYEE, BE FINGERPRINTED FOR PURPOSES OF A CRIMINAL HISTORY BACKGROUND
12 CHECK PURSUANT TO SUBDIVISION (D) OF THIS SECTION;

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

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

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

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

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

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

53 21. A. THE COMMISSIONER SHALL REQUIRE, FOR PURPOSES OF A CRIMINAL
54 HISTORY RECORD CHECK, THE FINGERPRINTING OF ALL PROSPECTIVE EMPLOYEES OF
55 APPROVED PRIVATE RESIDENTIAL AND NON-RESIDENTIAL SCHOOLS WHICH ARE
56 LOCATED WITHIN THE STATE BY SUCH SCHOOLS PURSUANT TO SUBDIVISION THIRTY

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

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

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

27 9-E. CRIMINAL HISTORY RECORD CHECK. A. THE COMMISSIONER SHALL
28 REQUIRE, FOR PURPOSES OF A CRIMINAL HISTORY RECORD CHECK, THE FINGER-
29 PRINTING OF ALL PROSPECTIVE EMPLOYEES OF APPROVED PROVIDERS OF SPECIAL
30 SERVICES OR PROGRAMS THAT ARE LOCATED WITHIN THE STATE PURSUANT TO
31 SUBDIVISION THIRTY OF SECTION THREE HUNDRED FIVE AND SECTION THREE THOU-
32 SAND THIRTY-FIVE OF THIS CHAPTER, EXCEPT WHERE SUCH PROSPECTIVE EMPLOY-
33 EES HOLD VALID CLEARANCE PURSUANT TO SECTION THREE THOUSAND THIRTY-FIVE
34 OR THREE THOUSAND FOUR-B OF THIS CHAPTER OR SECTION FIVE HUNDRED NINE-CC
35 OR TWELVE HUNDRED TWENTY-NINE-D OF THE VEHICLE AND TRAFFIC LAW OR A
36 VALID CLEARANCE ISSUED BY THE CITY OF NEW YORK PURSUANT TO LOCAL LAW. AN
37 INDIVIDUAL WHO PROVIDES RELATED SERVICES PURSUANT TO THIS SECTION SHALL
38 BE DEEMED A PROSPECTIVE EMPLOYEE FOR PURPOSES OF THIS SUBDIVISION AND
39 SHALL BE RESPONSIBLE FOR SUBMITTING HIS OR HER FINGERPRINTS TO THE
40 COMMISSIONER FOR PURPOSES OF RECEIVING CLEARANCE FOR EMPLOYMENT PRIOR TO
41 HIS OR HER INCLUSION ON A LIST OF RELATED SERVICE PROVIDERS MAINTAINED
42 BY THE MUNICIPALITY OR BOARD PURSUANT TO PARAGRAPH C OF SUBDIVISION NINE
43 OF THIS SECTION. PRIOR TO INITIATING THE FINGERPRINTING PROCESS, THE
44 PROVIDER SHALL FURNISH ITS PROSPECTIVE EMPLOYEE WITH THE FORM DESCRIBED
45 IN PARAGRAPH (C) OF SUBDIVISION THIRTY OF SECTION THREE HUNDRED FIVE OF
46 THIS CHAPTER AND SHALL OBTAIN THE APPLICANT'S CONSENT TO THE CRIMINAL
47 HISTORY RECORDS SEARCH. EVERY SET OF FINGERPRINTS TAKEN PURSUANT TO THIS
48 SUBDIVISION SHALL BE PROMPTLY SUBMITTED TO THE COMMISSIONER FOR PURPOSES
49 OF CLEARANCE FOR EMPLOYMENT. NOTWITHSTANDING ANY OTHER PROVISION OF LAW
50 TO THE CONTRARY, THE COMMISSIONER SHALL BE AUTHORIZED TO PROVIDE SUBSE-
51 QUENT CRIMINAL HISTORY NOTIFICATIONS TO APPROVED PROVIDERS FOR THEIR
52 EMPLOYEES. IN THE CASE OF A PROSPECTIVE EMPLOYEE WHO IS EMPLOYED BY THE
53 CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK, THE COMMISSIONER SHALL BE
54 AUTHORIZED TO PROVIDE SUBSEQUENT CRIMINAL HISTORY NOTIFICATIONS DIRECTLY
55 TO THE CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK.

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

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

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

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

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

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

37 C. "EMPLOYEE" SHALL MEAN:

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

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

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

50 D. "OFFICE OF CULTURAL EDUCATION" MEANS THE DIVISION OF THE DEPART-
51 MENT, HEADED BY A DEPUTY COMMISSIONER, THAT HAS ADMINISTRATIVE RESPONSIBI-
52 BILITY OVER THE STATE MUSEUM, STATE LIBRARY, STATE ARCHIVES AND THE
53 STATE SCIENCE SERVICE, OR ANY SUCCESSOR DIVISION OF THE DEPARTMENT THAT
54 HAS ADMINISTRATIVE RESPONSIBILITY OVER ONE OR MORE OF SUCH OFFICES.

55 E. "PROSPECTIVE EMPLOYEE" MEANS A CANDIDATE FOR EMPLOYMENT WHO WILL BE
56 HIRED ON OR AFTER THE EFFECTIVE DATE OF THIS SECTION, OR AN EMPLOYEE WHO

1 IS TRANSFERRED OR FIRST ASSIGNED ON OR AFTER THE EFFECTIVE DATE OF THIS
2 SECTION TO WORK OR PROVIDE SERVICES IN THE OFFICE OF CULTURAL EDUCATION
3 OR A FACILITY HOUSING A PART OF SUCH OFFICE.

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

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

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

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

48 4. AFTER REVIEW OF A CRIMINAL HISTORY RECORD FROM THE DIVISION OF
49 CRIMINAL JUSTICE SERVICES AND THE FEDERAL BUREAU OF INVESTIGATION, THE
50 COMMISSIONER SHALL PROMPTLY DETERMINE WHETHER THE PROSPECTIVE EMPLOYEE
51 OR VOLUNTEER TO WHICH SUCH REPORT RELATES IS CLEARED TO PROVIDE SERVICES
52 IN THE OFFICE OF CULTURAL EDUCATION BASED UPON HIS OR HER CRIMINAL
53 HISTORY. ALL DETERMINATIONS TO GRANT OR DENY CLEARANCE PURSUANT TO THIS
54 SUBDIVISION SHALL BE PERFORMED IN ACCORDANCE WITH SUBDIVISION SIXTEEN OF
55 SECTION TWO HUNDRED NINETY-SIX OF THE EXECUTIVE LAW AND ARTICLE TWENTY-
56 THREE-A OF THE CORRECTION LAW. WHEN THE COMMISSIONER DENIES A PROSPEC-

1 TIVE EMPLOYEE CLEARANCE FOR EMPLOYMENT, SUCH PROSPECTIVE EMPLOYEE OR
2 VOLUNTEER SHALL BE AFFORDED NOTICE AND THE RIGHT TO BE HEARD AND OFFER
3 PROOF IN OPPOSITION TO SUCH DETERMINATION IN ACCORDANCE WITH THE REGU-
4 LATIONS OF THE COMMISSIONER, WHICH SHALL BE CONSISTENT WITH THE DUE
5 PROCESS PROCEDURES ESTABLISHED BY THE COMMISSIONER PURSUANT TO SECTION
6 FIFTY OF THE CIVIL SERVICE LAW.

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

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

42 7. THE COMMISSIONER SHALL:

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

50 B. INFORM THE PROSPECTIVE EMPLOYEE OR VOLUNTEER THAT HE OR SHE HAS THE
51 RIGHT TO OBTAIN, REVIEW AND SEEK CORRECTION OF HIS OR HER CRIMINAL
52 HISTORY RECORD PURSUANT TO REGULATIONS AND PROCEDURES ESTABLISHED BY THE
53 DIVISION OF CRIMINAL JUSTICE SERVICES; AND

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

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

3 (II) BEEN INFORMED OF THE REASON FOR THE REQUEST FOR HIS OR HER CRIMI-
4 NAL HISTORY RECORD;

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

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

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

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

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

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

29 S 23. This act shall take effect on the one hundred eightieth day
30 after it shall have become a law; provided that section twenty-two of
31 this act shall take effect immediately; provided further, that the
32 commissioner of education is authorized to promulgate any and all rules
33 and regulations and take any other measures necessary to implement the
34 provisions of this act on its effective date on or before such date;
35 provided further that the provisions of sections one, two, three, four,
36 nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seven-
37 teen, eighteen, nineteen, twenty and twenty-two of this act shall apply
38 to prospective employees of special education schools who are appointed
39 on or after such effective date, to individual providers of preschool
40 related services who are placed on lists maintained by the municipality
41 pursuant to subdivision 9 of section 4410 of the education law on and
42 after such effective date; provided further that the provisions of
43 section twenty-one of this act shall apply to prospective employees and
44 volunteers working in the office of cultural education who are appointed
45 on or after such effective date; provided further that the amendment to
46 paragraph (d) of subdivision 30 of section 305 of the education law made
47 by section three of this act shall not affect the repeal of such para-
48 graph and shall be deemed repealed therewith; and provided further that
49 the amendments to subdivision 3 of section 3035 of the education law,
50 made by section ten of this act, shall be subject to the expiration and
51 reversion of such subdivision pursuant to section 12 of chapter 147 of
52 the laws of 2001, as amended, when upon such date the provisions of
53 section eleven of this act shall take effect.