

3109

2009-2010 Regular Sessions

I N S E N A T E

March 11, 2009

Introduced by Sen. SKELOS -- read twice and ordered printed, and when printed to be committed to the Committee on Education

AN ACT to amend the education law, in relation to requiring nonpublic and private elementary and secondary schools to apply to the commissioner of education for criminal history record checks on prospective employees

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

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

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

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1 new criminal history record check. This subdivision and the rules and
2 regulations promulgated pursuant thereto shall not apply to a school
3 district within a city with a population of one million or more.

4 S 2. The opening paragraph and subparagraph (i) of paragraph (b) of
5 subdivision 30 of section 305 of the education law, as amended by chap-
6 ter 630 of the laws of 2006, are amended to read as follows:

7 The commissioner, in cooperation with the division of criminal justice
8 services, shall promulgate a form to be provided to all such prospective
9 employees of school districts, charter schools, boards of cooperative
10 educational services, and nonpublic and private elementary and secondary
11 schools [that elect to fingerprint and seek clearance for prospective
12 employees] that shall:

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

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

23 (d) The commissioner shall develop forms to be provided to all school
24 districts, charter schools, boards of cooperative educational services,
25 and [to] all nonpublic and private elementary and secondary schools
26 [that elect to fingerprint their prospective employees], to be completed
27 and signed by prospective employees when conditional appointment or
28 emergency conditional appointment is offered.

29 S 4. Subdivisions 1, 2 and 3 of section 3001-d of the education law,
30 as added by chapter 630 of the laws of 2006, are amended to read as
31 follows:

32 1. a. "Employee" shall mean any prospective employee of a nonpublic or
33 private elementary or secondary school [which requires the fingerprint-
34 ing of prospective employees pursuant to this section], or employee of a
35 contracted service provider or worker placed within such school under a
36 public assistance employment program, pursuant to title nine-B of arti-
37 cle five of the social services law, and consistent with the provisions
38 of such title for the provision of services to such school, its students
39 or employees, directly or through contract, whereby such services
40 performed by such person involve direct student contact. [Any] EVERY
41 nonpublic or private elementary or secondary school [which elects to]
42 SHALL submit for review criminal history information concerning prospec-
43 tive employees [must do so with respect to each such prospective employ-
44 ee], as defined in this paragraph, in accordance with this section.

45 b. "Volunteer" shall mean any person, other than an employee, who
46 provides services to a nonpublic or private elementary or secondary
47 school [which elects to require the fingerprinting of prospective
48 employees pursuant to this section], which involve direct student
49 contact.

50 2. [Any] EVERY nonpublic or private elementary or secondary school
51 [may] SHALL require, for the purposes of a criminal history record
52 check, the fingerprinting of all prospective employees pursuant to
53 section three thousand thirty-five of this article, who do not hold
54 valid clearance pursuant to such section or pursuant to section three
55 thousand four-b of this article or section five hundred nine-cc or
56 twelve hundred twenty-nine-d of the vehicle and traffic law. Prior to

1 initiating the fingerprinting process, the prospective employer shall
2 furnish the applicant with the form described in paragraph (c) of subdivi-
3 sion thirty of section three hundred five of this chapter and shall
4 obtain the applicant's consent to the criminal history record search.
5 Every set of fingerprints taken pursuant to this section shall be
6 promptly submitted to the commissioner for the purposes of clearance for
7 employment.

8 3. (a) Any nonpublic or private elementary or secondary school may
9 conditionally appoint a prospective employee. A request for conditional
10 clearance [may] SHALL be forwarded to the commissioner along with the
11 prospective employee's fingerprints. Such appointment may be delayed
12 until notification by the commissioner that the prospective employee has
13 been conditionally cleared for employment and shall terminate when the
14 prospective employer is notified of a determination by the commissioner
15 to grant or deny clearance, provided that if clearance is granted, the
16 appointment shall continue and the conditional status shall be removed.
17 Prior to commencement of such conditional appointment, the prospective
18 employer shall obtain a signed statement for conditional appointment
19 from the prospective employee, 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 outside the state.

22 (b) Any nonpublic or private elementary or secondary school may make
23 an emergency conditional appointment when an unforeseen emergency vacan-
24 cy has occurred. When such appointment is made, the process for condi-
25 tional appointment pursuant to paragraph (a) of this subdivision [may]
26 SHALL also be initiated. Emergency conditional appointment may commence
27 prior to notification from the commissioner on conditional clearance and
28 shall terminate when the prospective employer is notified by the commis-
29 sioner regarding conditional clearance, provided that if conditional
30 clearance is granted, the appointment may continue as a conditional
31 appointment. Prior to the commencement of such appointment, the
32 prospective employer must obtain a signed statement for emergency condi-
33 tional appointment from the prospective employee, indicating whether, to
34 the best of his or her knowledge, he or she has a pending criminal
35 charge or criminal conviction in any jurisdiction. An "unforeseen emer-
36 gency vacancy" shall be defined as: (i) a vacancy that occurred less
37 than ten business days before the start of any school session, including
38 summer school, or during any school session, including summer school,
39 without sufficient notice to allow for clearance or conditional clear-
40 ance; (ii) when no other qualified person is available to fill the
41 vacancy temporarily; and (iii) when emergency conditional appointment is
42 necessary to maintain services which the school is legally required to
43 provide or services necessary to protect the health, education or safety
44 of students or staff.

45 (c) Each nonpublic or private elementary or secondary school[, which
46 elects to fingerprint prospective employees pursuant to subdivision two
47 of this section,] shall develop a policy for the safety of the children
48 who have contact with an employee holding conditional appointment or
49 emergency conditional appointment.

50 S 5. This act shall take effect July 1, 2010; provided that the amend-
51 ments to paragraph (d) of subdivision 30 of section 305 of the education
52 law, made by section three of this act shall not affect the expiration
53 and repeal of such paragraph, and shall expire and be deemed repealed
54 therewith.