

3440

2009-2010 Regular Sessions

I N   S E N A T E

March 19, 2009

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Introduced by Sens. SALAND, OPPENHEIMER -- read twice and ordered printed, and when printed to be committed to the Committee on Education

AN ACT to amend the education law, in relation to requiring the fingerprinting of prospective employees of public or publicly-funded special education schools for the purpose of conducting criminal history record checks

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

1     Section 1. Paragraphs (a) and (b) of subdivision 30 of section 305 of  
2 the education law, paragraph (a), the opening paragraph and subparagraph  
3 (i) of paragraph (b) as amended by chapter 630 of the laws of 2006 and  
4 paragraph (b) as added by chapter 180 of the laws of 2000, are amended  
5 to read as follows:  
6     (a) The commissioner, in cooperation with the division of criminal  
7 justice services and in accordance with all applicable provisions of  
8 law, shall promulgate rules and regulations to require the fingerprint-  
9 ing of prospective employees, as defined in section eleven hundred twenty-  
10 ty-five of this chapter, of school districts, charter schools [and],  
11 boards of cooperative educational services AND SPECIAL EDUCATION  
12 SCHOOLS, and authorizing the fingerprinting of prospective employees of  
13 nonpublic and private elementary and secondary schools, and for the use  
14 of information derived from searches of the records of the division of  
15 criminal justice services and the federal bureau of investigation based  
16 on the use of such fingerprints. The commissioner shall also develop a  
17 form for use by school districts, charter schools, boards of cooperative  
18 educational services, [and] nonpublic and private elementary and second-  
19 ary schools AND SPECIAL EDUCATION SCHOOLS, in connection with the  
20 submission of fingerprints that contains the specific job title sought  
21 and any other information that may be relevant to consideration of the  
22 applicant. The commissioner shall also establish a form for the recorda-  
23 tion of allegations of child abuse in an educational setting, as

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

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

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

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

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

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

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

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

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

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

(F) AS USED IN THIS SECTION AND SECTION THREE THOUSAND THIRTY-FIVE OF THIS CHAPTER, "SPECIAL EDUCATION SCHOOL" SHALL MEAN A STATE SCHOOL OPERATED 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. Subdivision 1 of section 3035 of the education law, as amended by chapter 630 of the laws of 2006, is amended to read as follows:

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

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

3. (a) Clearance. After receipt of a criminal history record from the division of criminal justice services and the federal bureau of investigation the commissioner shall promptly notify the appropriate school district, charter school, board of cooperative educational services, SPECIAL EDUCATION SCHOOL or nonpublic or private elementary or secondary school whether the prospective employee to which such report relates is cleared for employment based upon his or her criminal history. All determinations to grant or deny clearance for employment pursuant to this paragraph shall be performed in accordance with subdivision sixteen of section two hundred ninety-six of the executive law and article twenty-three-A of the correction law. When the commissioner denies a prospective employee clearance for employment, such prospective employee shall be afforded notice and the right to be heard and offer proof in

1 opposition to such determination in accordance with the regulations of  
2 the commissioner.

3 (b) Conditional clearance. When the commissioner receives a request  
4 for a determination on the conditional clearance of a prospective  
5 employee, the commissioner, after receipt of a criminal history record  
6 from the division of criminal justice services, shall promptly notify  
7 the prospective employee and the appropriate school district, charter  
8 school, board of cooperative educational services, SPECIAL EDUCATION  
9 SCHOOL or nonpublic or private elementary or secondary school that the  
10 prospective employee to which such report relates is conditionally  
11 cleared for employment based upon his or her criminal history or that  
12 more time is needed to make the determination. If the commissioner  
13 determines that more time is needed, the notification shall include a  
14 good faith estimate of the amount of additional time needed. Such  
15 notification shall be made within fifteen business days after the  
16 commissioner receives the prospective employee's fingerprints. All  
17 determinations to grant or deny conditional clearance for employment  
18 pursuant to this paragraph shall be performed in accordance with subdi-  
19 vision sixteen of section two hundred ninety-six of the executive law  
20 and article twenty-three-A of the correction law.

21 3-a. Upon request from a prospective employee who has been cleared by  
22 the commissioner for employment and/or certification, the commissioner  
23 shall have the authority to forward a copy of such criminal history  
24 record to the city school district of the city of New York by the most  
25 expeditious means available. Furthermore, upon notification that such  
26 prospective employee is employed by the city school district of the city  
27 of New York OR IS EMPLOYED BY A SPECIAL EDUCATION SCHOOL THAT CONTRACTS  
28 WITH THE CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK, the division of  
29 criminal justice services shall have the authority to provide subsequent  
30 criminal history notifications directly to the city school district of  
31 the city of New York. Upon request from a prospective employee who has  
32 been cleared for licensure and/or employment by the city school district  
33 of the city of New York OR HAS BEEN CLEARED BY THE CITY OF NEW YORK FOR  
34 EMPLOYMENT BY A SPECIAL EDUCATION SCHOOL THAT IS LOCATED OUTSIDE OF THE  
35 CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK, such school district OR  
36 CITY shall have the authority to forward a copy of the prospective  
37 employee's criminal history record to the commissioner, by the most  
38 expeditious means available, for the purposes of this section. Further-  
39 more, upon notification that such prospective employee is employed by a  
40 school district outside the city of New York OR BY A SPECIAL EDUCATION  
41 SCHOOL THAT IS LOCATED OUTSIDE OF THE CITY OF NEW YORK, the division of  
42 criminal justice services shall have the authority to provide subsequent  
43 criminal history notifications directly to the commissioner.

44 S 7. Paragraph (i) of subdivision (a) of section 4212 of the education  
45 law, as amended by chapter 32 of the laws of 1992, is amended to read as  
46 follows:

47 (i) consistent with appropriate collective bargaining agreements and  
48 applicable provisions of the civil service law, the review and evalu-  
49 ation of the backgrounds of and the information supplied by any person  
50 applying to be an employee, a volunteer or consultant, which shall  
51 include but not be limited to the following requirements: that the  
52 applicant set forth his or her employment history, provide personal and  
53 employment references, and relevant experiential and educational infor-  
54 mation, [and] sign a sworn statement indicating whether the applicant,  
55 to the best of his or her knowledge, has ever been convicted of a crime  
56 in this state or any other jurisdiction AND, IN THE CASE OF A PROSPEC-

1 TIVE EMPLOYEE, BE FINGERPRINTED FOR PURPOSES OF A CRIMINAL HISTORY BACK-  
2 GROUND CHECK PURSUANT TO SUBDIVISION (D) OF THIS SECTION;

3 S 8. Section 4212 of the education law is amended by adding a new  
4 subdivision (d) to read as follows:

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

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

29 S 9. Paragraph (i) of subdivision (a) of section 4314 of the education  
30 law, as amended by chapter 32 of the laws of 1992, is amended to read as  
31 follows:

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

44 S 10. Section 4314 of the education law is amended by adding a new  
45 subdivision (d) to read as follows:

46 (D)(I) THE DEPARTMENT SHALL REQUIRE, FOR PURPOSES OF A CRIMINAL HISTO-  
47 RY RECORD CHECK, THE FINGERPRINTING OF ALL PROSPECTIVE EMPLOYEES OF THE  
48 SCHOOL PURSUANT TO SUBDIVISION THIRTY OF SECTION THREE HUNDRED FIVE AND  
49 SECTION THREE THOUSAND THIRTY-FIVE OF THIS CHAPTER, WHO DO NOT HOLD  
50 VALID CLEARANCE PURSUANT TO SUCH SECTION THREE THOUSAND THIRTY-FIVE OR  
51 PURSUANT TO SECTION THREE THOUSAND FOUR-B OF THIS CHAPTER OR SECTION  
52 FIVE HUNDRED NINE-CC OR TWELVE HUNDRED TWENTY-NINE-D OF THE VEHICLE AND  
53 TRAFFIC LAW, OR VALID CLEARANCE ISSUED BY THE CITY OF NEW YORK PURSUANT  
54 TO LOCAL LAW. PRIOR TO INITIATING THE FINGERPRINTING PROCESS, THE  
55 DEPARTMENT SHALL FURNISH THE PROSPECTIVE EMPLOYEE WITH THE FORM  
56 DESCRIBED IN PARAGRAPH (C) OF SUBDIVISION THIRTY OF SECTION THREE

1 HUNDRED FIVE OF THIS CHAPTER AND SHALL OBTAIN THE APPLICANT'S CONSENT TO  
2 THE CRIMINAL HISTORY RECORDS SEARCH. EVERY SET OF FINGERPRINTS TAKEN  
3 PURSUANT TO THIS SUBDIVISION SHALL BE PROMPTLY SUBMITTED TO THE COMMIS-  
4 SIONER FOR PURPOSES OF CLEARANCE FOR EMPLOYMENT.

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

11 S 11. Paragraph (i) of subdivision (a) of section 4358 of the educa-  
12 tion law, as amended by chapter 32 of the laws of 1992, is amended to  
13 read as follows:

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

26 S 12. Section 4358 of the education law is amended by adding a new  
27 subdivision (d) to read as follows:

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

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

49 S 13. Paragraph (a) of subdivision 11 of section 4403 of the education  
50 law, as amended by chapter 32 of the laws of 1992, is amended to read as  
51 follows:

52 (a) consistent with appropriate collective bargaining agreements and  
53 applicable provisions of the civil service law, the review and evalu-  
54 ation of the backgrounds of and the information supplied by any person  
55 applying to be an employee, a volunteer or consultant, which shall  
56 include but not be limited to the following requirements: that the

1 applicant set forth his or her employment history, provide personal and  
2 employment references, and relevant experiential and educational quali-  
3 fications [and], sign a sworn statement indicating whether the appli-  
4 cant, to the best of his or her knowledge has ever been convicted of a  
5 crime in this state or any other jurisdiction AND, IN THE CASE OF A  
6 PROSPECTIVE EMPLOYEE, BE FINGERPRINTED FOR PURPOSES OF A CRIMINAL HISTO-  
7 RY BACKGROUND CHECK PURSUANT TO SUBDIVISION TWENTY-ONE OF THIS SECTION;

8 S 14. Section 4403 of the education law is amended by adding a new  
9 subdivision 21 to read as follows:

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

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

38 S 15. Section 4410 of the education law is amended by adding a new  
39 subdivision 9-e to read as follows:

40 9-E. A. THE COMMISSIONER SHALL REQUIRE, FOR PURPOSES OF A CRIMINAL  
41 HISTORY RECORD CHECK, THE FINGERPRINTING OF ALL PROSPECTIVE EMPLOYEES OF  
42 APPROVED PROVIDERS OF SPECIAL SERVICES OR PROGRAMS THAT ARE LOCATED  
43 WITHIN THE STATE PURSUANT TO SUBDIVISION THIRTY OF SECTION THREE HUNDRED  
44 FIVE AND SECTION THREE THOUSAND THIRTY-FIVE OF THIS CHAPTER, EXCEPT  
45 WHERE SUCH PROSPECTIVE EMPLOYEES HOLD VALID CLEARANCE PURSUANT TO SUCH  
46 SECTION THREE THOUSAND THIRTY-FIVE OR PURSUANT TO SECTION THREE THOUSAND  
47 FOUR-B OF THIS CHAPTER OR SECTION FIVE HUNDRED NINE-CC OR TWELVE HUNDRED  
48 TWENTY-NINE-D OF THE VEHICLE AND TRAFFIC LAW OR A VALID CLEARANCE ISSUED  
49 BY THE CITY OF NEW YORK PURSUANT TO LOCAL LAW. AN INDIVIDUAL WHO  
50 PROVIDES RELATED SERVICES PURSUANT TO THIS SECTION SHALL BE DEEMED A  
51 PROSPECTIVE EMPLOYEE FOR PURPOSES OF THIS SUBDIVISION AND SHALL BE  
52 RESPONSIBLE FOR SUBMITTING HIS OR HER FINGERPRINTS TO THE COMMISSIONER  
53 FOR PURPOSES OF RECEIVING CLEARANCE FOR EMPLOYMENT PRIOR TO HIS OR HER  
54 INCLUSION ON A LIST OF RELATED SERVICE PROVIDERS MAINTAINED BY THE MUNI-  
55 CIPALITY OR BOARD PURSUANT TO PARAGRAPH C OF SUBDIVISION NINE OF THIS  
56 SECTION. PRIOR TO INITIATING THE FINGERPRINTING PROCESS, THE PROVIDER

1 SHALL FURNISH ITS PROSPECTIVE EMPLOYEE WITH THE FORM DESCRIBED IN PARA-  
2 GRAPH (C) OF SUBDIVISION THIRTY OF SECTION THREE HUNDRED FIVE OF THIS  
3 CHAPTER AND SHALL OBTAIN THE APPLICANT'S CONSENT TO THE CRIMINAL HISTORY  
4 RECORDS SEARCH. EVERY SET OF FINGERPRINTS TAKEN PURSUANT TO THIS SUBDI-  
5 VISION SHALL BE PROMPTLY SUBMITTED TO THE COMMISSIONER FOR PURPOSES OF  
6 CLEARANCE FOR EMPLOYMENT. NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO  
7 THE CONTRARY, THE COMMISSIONER SHALL BE AUTHORIZED TO PROVIDE SUBSEQUENT  
8 CRIMINAL HISTORY NOTIFICATIONS TO APPROVED PROVIDERS FOR THEIR EMPLOY-  
9 EES. IN THE CASE OF A PROSPECTIVE EMPLOYEE WHO IS EMPLOYED BY THE CITY  
10 SCHOOL DISTRICT OF THE CITY OF NEW YORK, THE COMMISSIONER SHALL BE  
11 AUTHORIZED TO PROVIDE SUBSEQUENT CRIMINAL HISTORY NOTIFICATIONS DIRECTLY  
12 TO THE CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK.

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

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

37 S 16. Subdivisions 3 and 5 of section 1125 of the education law, as  
38 added by chapter 180 of the laws of 2000, are amended to read as  
39 follows:

40 3. "Employee" shall mean any person receiving compensation from a  
41 school district, A SPECIAL EDUCATION SCHOOL DISTRICT AS DEFINED IN PARA-  
42 GRAPH (F) OF SUBDIVISION THIRTY OF SECTION THREE HUNDRED FIVE OF THIS  
43 CHAPTER or employee of a contracted service provider or worker placed  
44 within the school under a public assistance employment program, pursuant  
45 to title nine-B of article five of the social services law, and consist-  
46 ent with the provisions of such title for the provision of services to  
47 such district, its students or employees, directly or through contract,  
48 whereby such services performed by such person involve direct student  
49 contact.

50 5. "Educational setting" shall mean the building and grounds of a  
51 public school district, A SPECIAL EDUCATION SCHOOL DISTRICT AS DEFINED  
52 IN PARAGRAPH (F) OF SUBDIVISION THIRTY OF SECTION THREE HUNDRED FIVE OF  
53 THIS CHAPTER, the vehicles provided by the school district OR SPECIAL  
54 EDUCATION SCHOOL for the transportation of students to and from school  
55 buildings, field trips, co-curricular and extra-curricular activities  
56 both on and off school district grounds, all co-curricular and extra-



1 curricular activity sites, and any other location where direct contact  
2 between an employee or volunteer and a child has allegedly occurred.

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

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

21 S 18. This act shall take effect on the one hundred eightieth day  
22 after it shall have become a law; provided that:

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

27 (b) the provisions of this act shall apply to prospective employees of  
28 special education schools who are appointed on or after such effective  
29 date and to individual providers of preschool related services who are  
30 placed on lists maintained by the municipality pursuant to subdivision 9  
31 of section 4410 of the education law on and after such effective date;

32 (c) the amendment to paragraph (d) of subdivision 30 of section 305 of  
33 the education law made by section three of this act shall not affect the  
34 repeal of such paragraph and shall be deemed repealed therewith; and

35 (d) the amendments to subdivision 3 of section 3035 of the education  
36 law, made by section six of this act, shall be subject to the expiration  
37 and reversion of such subdivision pursuant to section 12 of chapter 147  
38 of the laws of 2001, as amended, when upon such date the provisions of  
39 section seventeen of this act shall take effect.