S T A T E O F N E W Y O R K

3440

2009-2010 Regular Sessions

I N S E N A T E

March 19, 2009

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:

Section 1. Paragraphs (a) and (b) of subdivision 30 of section 305 of the education law, paragraph (a), the opening paragraph and subparagraph (i) of paragraph (b) as amended by chapter 630 of the laws of 2006 and paragraph (b) as added by chapter 180 of the laws of 2000, are amended to read as follows:

(a) The commissioner, in cooperation with the division of criminal justice services and in accordance with all applicable provisions of law, shall promulgate rules and regulations to require the fingerprinting of prospective employees, as defined in section eleven hundred twenty-five of this chapter, of school districts, charter schools [and], boards of cooperative educational services AND SPECIAL EDUCATION SCHOOLS, and authorizing the fingerprinting of prospective employees of nonpublic and private elementary and secondary schools, and for the use of information derived from searches of the records of the division of criminal justice services and the federal bureau of investigation based on the use of such fingerprints. The commissioner shall also develop a form for use by school districts, charter schools, boards of cooperative educational services, [and] nonpublic and private elementary and secondary schools AND SPECIAL EDUCATION SCHOOLS, in connection with the submission of fingerprints that contains the specific job title sought and any other information that may be relevant to consideration of the applicant. The commissioner shall also establish a form for the recordation 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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required pursuant to section eleven hundred twenty-six of this chapter. No person who has been fingerprinted pursuant to section three thousand four-b of this chapter or pursuant to section five hundred nine-cc or twelve hundred twenty-nine-d of the vehicle and traffic law and whose fingerprints remain on file with the division of criminal justice services shall be required to undergo fingerprinting for purposes of a new criminal history record check. This subdivision and the rules and regulations promulgated pursuant thereto shall not apply to a school district within a city with a population of one million or more, OR TO SPECIAL EDUCATION SCHOOLS LOCATED WITHIN SUCH CITY.

(b) The commissioner, in cooperation with the division of criminal justice services, shall promulgate a form to be provided to all such prospective employees of school districts, charter schools, boards of cooperative educational services, SPECIAL EDUCATION SCHOOLS and nonpublic and private elementary and secondary schools that elect to fingerprint and seek clearance for prospective employees that shall:

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

(ii) inform the prospective employee that he or she has the right to obtain, review and seek correction of his or her criminal history information pursuant to regulations and procedures established by the division of criminal justice services.

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

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

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

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

S 4. Subdivision 30 of section 305 of the education law is amended by 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

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

(b) Conditional clearance. When the commissioner receives a request for a determination on the conditional clearance of a prospective employee, the commissioner, after receipt of a criminal history record from the division of criminal justice services, shall promptly notify the prospective employee and the appropriate school district, charter school, board of cooperative educational services, SPECIAL EDUCATION SCHOOL or nonpublic or private elementary or secondary school that the prospective employee to which such report relates is conditionally cleared for employment based upon his or her criminal history or that more time is needed to make the determination. If the commissioner determines that more time is needed, the notification shall include a good faith estimate of the amount of additional time needed. Such notification shall be made within fifteen business days after the commissioner receives the prospective employee's fingerprints. All determinations to grant or deny conditional 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.

3-a. Upon request from a prospective employee who has been cleared by the commissioner for employment and/or certification, the commissioner shall have the authority to forward a copy of such criminal history record to the city school district of the city of New York by the most expeditious means available. Furthermore, upon notification that such prospective employee is employed by the city school district of the city of New York OR IS EMPLOYED BY A SPECIAL EDUCATION SCHOOL THAT CONTRACTS WITH THE CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK, the division of criminal justice services shall have the authority to provide subsequent criminal history notifications directly to the city school district of the city of New York. Upon request from a prospective employee who has been cleared for licensure and/or employment by the city school district of the city of New York OR HAS BEEN CLEARED BY THE CITY OF NEW YORK FOR EMPLOYMENT BY A SPECIAL EDUCATION SCHOOL THAT IS LOCATED OUTSIDE OF THE CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK, such school district OR CITY shall have the authority to forward a copy of the prospective employee's criminal history record to the commissioner, by the most expeditious means available, for the purposes of this section. Furthermore, upon notification that such prospective employee is employed by a school district outside the city of New York OR BY A SPECIAL EDUCATION SCHOOL THAT IS LOCATED OUTSIDE OF THE CITY OF NEW YORK, the division of criminal justice services shall have the authority to provide subsequent criminal history notifications directly to the commissioner.

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

(i) consistent with appropriate collective bargaining agreements and applicable provisions of the civil service law, the review and evaluation of the backgrounds of and the information supplied by any person applying to be an employee, a volunteer or consultant, which 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, and relevant experiential and educational information, [and] sign a sworn statement indicating whether the applicant, to the best of his or her knowledge, has ever been convicted of a crime in this state or any other jurisdiction AND, IN THE CASE OF A PROSPEC-

TIVE EMPLOYEE, BE FINGERPRINTED FOR PURPOSES OF A CRIMINAL HISTORY BACKGROUND CHECK PURSUANT TO SUBDIVISION (D) OF THIS SECTION;

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

(D) (I) THE SCHOOL SHALL REQUIRE, FOR PURPOSES OF A CRIMINAL HISTORY RECORD CHECK, THE FINGERPRINTING OF ALL PROSPECTIVE EMPLOYEES OF THE SCHOOL PURSUANT TO SUBDIVISION THIRTY OF SECTION THREE HUNDRED FIVE AND SECTION THREE THOUSAND THIRTY-FIVE OF THIS CHAPTER, EXCEPT WHERE SUCH PROSPECTIVE EMPLOYEES HOLD VALID CLEARANCE PURSUANT TO SUCH SECTION THREE THOUSAND THIRTY-FIVE OR PURSUANT TO SECTION THREE THOUSAND FOUR-B OF THIS CHAPTER OR SECTION FIVE HUNDRED NINE-CC OR TWELVE HUNDRED TWENTY-NINE-D OF THE VEHICLE AND TRAFFIC LAW, OR VALID CLEARANCE ISSUED BY THE CITY OF NEW YORK PURSUANT TO LOCAL LAW. PRIOR TO INITIATING THE FINGERPRINTING PROCESS, THE SCHOOL SHALL FURNISH THE PROSPECTIVE EMPLOYEE WITH THE FORM DESCRIBED IN PARAGRAPH (C) OF SUBDIVISION THIRTY OF SECTION THREE HUNDRED FIVE OF THIS CHAPTER AND SHALL OBTAIN THE APPLICANT'S CONSENT TO THE CRIMINAL HISTORY RECORDS SEARCH. EVERY SET OF FINGERPRINTS TAKEN PURSUANT TO THIS SUBDIVISION SHALL BE PROMPTLY SUBMITTED TO THE COMMISSIONER FOR PURPOSES OF CLEARANCE FOR EMPLOYMENT. NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, THE COMMISSIONER SHALL BE AUTHORIZED TO PROVIDE SUBSEQUENT CRIMINAL HISTORY NOTIFICATIONS TO THE SCHOOL FOR ITS EMPLOYEES.

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

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

(i) consistent with appropriate collective agreements and applicable provisions of the civil service law, the review and evaluation of the backgrounds of and the information supplied by any person applying to be an employee, a volunteer or consultant, which 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, and relevant experiential and educational information, [and] sign a sworn statement indicating whether the applicant, to the best of his or her knowledge, has ever been convicted of a crime in this state or any other jurisdiction AND, IN THE CASE OF A PROSPECTIVE EMPLOYEE, BE FINGERPRINTED FOR PURPOSES OF A CRIMINAL HISTORY BACKGROUND CHECK PURSUANT TO SUBDIVISION (D) OF THIS SECTION;

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

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

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

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

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

(i) consistent with appropriate collective bargaining agreements and applicable provisions of the civil service law, the review and evaluation of the backgrounds of and the information supplied by any person applying to be an employee, a volunteer or consultant, which 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 and relevant experiential and educational information, [and] sign a sworn statement indicating whether the applicant, to the best of his or her knowledge, has ever been convicted of a crime in this state or any other jurisdiction AND, IN THE CASE OF A PROSPECTIVE EMPLOYEE, BE FINGERPRINTED FOR PURPOSES OF A CRIMINAL HISTORY BACKGROUND CHECK PURSUANT TO SUBDIVISION (D) OF THIS SECTION;

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

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

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

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

(a) consistent with appropriate collective bargaining agreements and applicable provisions of the civil service law, the review and evaluation of the backgrounds of and the information supplied by any person applying to be an employee, a volunteer or consultant, which 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, and relevant experiential and educational qualifications [and], sign a sworn statement indicating whether the applicant, to the best of his or her knowledge has ever been convicted of a crime in this state or any other jurisdiction AND, IN THE CASE OF A PROSPECTIVE EMPLOYEE, BE FINGERPRINTED FOR PURPOSES OF A CRIMINAL HISTORY BACKGROUND CHECK PURSUANT TO SUBDIVISION TWENTY-ONE OF THIS SECTION;

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

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

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

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

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

SHALL FURNISH ITS PROSPECTIVE EMPLOYEE WITH THE FORM DESCRIBED IN PARAGRAPH (C) OF SUBDIVISION THIRTY OF SECTION THREE HUNDRED FIVE OF THIS CHAPTER AND SHALL OBTAIN THE APPLICANT'S CONSENT TO THE CRIMINAL HISTORY RECORDS SEARCH. EVERY SET OF FINGERPRINTS TAKEN PURSUANT TO THIS SUBDIVISION SHALL BE PROMPTLY SUBMITTED TO THE COMMISSIONER FOR PURPOSES OF CLEARANCE FOR EMPLOYMENT. NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, THE COMMISSIONER SHALL BE AUTHORIZED TO PROVIDE SUBSEQUENT CRIMINAL HISTORY NOTIFICATIONS TO APPROVED PROVIDERS FOR THEIR EMPLOYEES. IN THE CASE OF A PROSPECTIVE EMPLOYEE WHO IS EMPLOYED BY THE CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK, THE COMMISSIONER SHALL BE AUTHORIZED TO PROVIDE SUBSEQUENT CRIMINAL HISTORY NOTIFICATIONS DIRECTLY TO THE CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK.

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

C. NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, THE COMMISSIONER MAY ESTABLISH PROCEDURES FOR THE CONDITIONAL APPOINTMENT OR EMERGENCY CONDITIONAL APPOINTMENT OF INDIVIDUALS WHO PROVIDE RELATED SERVICES PURSUANT TO THIS SECTION TO THE SAME EXTENT AND UNDER THE SAME CONDITIONS AS A BOARD OF EDUCATION OF A UNION FREE SCHOOL DISTRICT PURSUANT TO SUBDIVISION THIRTY-NINE OF SECTION SEVENTEEN HUNDRED NINE OF THIS CHAPTER. NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, THE COMMISSIONER SHALL PROVIDE EACH MUNICIPALITY OR BOARD IN WHICH SUCH INDIVIDUAL SEEKS TO BE INCLUDED ON A LIST OF RELATED SERVICES OR SPECIAL EDUCATION ITINERANT SERVICES PROVIDERS WITH A COPY OF SUCH INDIVIDUAL'S CRIMINAL CLEARANCE OR DENIAL OF CRIMINAL CLEARANCE, AND IN THE EVENT OF A DENIAL OF CLEARANCE, SUCH MUNICIPALITY OR BOARD SHALL REMOVE THE INDIVIDUAL FROM SUCH LIST UNLESS CRIMINAL CLEARANCE IS SUBSEQUENTLY ISSUED BY THE COMMISSIONER. NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, THE COMMISSIONER SHALL BE AUTHORIZED TO PROVIDE SUBSEQUENT CRIMINAL HISTORY NOTIFICATIONS TO EACH MUNICIPALITY OR BOARD IN WHICH SUCH INDIVIDUAL IS INCLUDED ON A LIST OF RELATED SERVICE PROVIDERS.

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

3. "Employee" shall mean any person receiving compensation from a school district, A SPECIAL EDUCATION SCHOOL DISTRICT AS DEFINED IN PARAGRAPH (F) OF SUBDIVISION THIRTY OF SECTION THREE HUNDRED FIVE OF THIS CHAPTER 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.

5. "Educational setting" shall mean the building and grounds of a public school district, A SPECIAL EDUCATION SCHOOL DISTRICT AS DEFINED IN PARAGRAPH (F) OF SUBDIVISION THIRTY OF SECTION THREE HUNDRED FIVE OF THIS CHAPTER, the vehicles provided by the school district OR SPECIAL EDUCATION SCHOOL 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.

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

3. 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 subdivision 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 opposition to such determination in accordance with the regulations of the commissioner.

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

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

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

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

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