

8992

2009-2010 Regular Sessions

I N A S S E M B L Y

June 17, 2009

Introduced by M. of A. WEISENBERG, HIKIND, ROBINSON, KOLB, LANCMAN, COOK, ERRIGO, SPANO, BURLING, SCHROEDER, McKEVITT, TOBACCO, BARRON, MARKEY -- Multi-Sponsored by -- M. of A. BARRA, GABRYSZAK, GORDON, MAISEL, PHEFFER, QUINN, SCHIMEL, TITUS, TOWNSEND -- read once and referred 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

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.

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

13 The commissioner, in cooperation with the division of criminal justice
14 services, shall promulgate a form to be provided to all such prospective
15 employees of school districts, charter schools, boards of cooperative
16 educational services, and nonpublic and private elementary and secondary
17 schools [that elect to fingerprint and seek clearance for prospective
18 employees] that shall:

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

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

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

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

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

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

1 2. [Any] EVERY nonpublic or private elementary or secondary school
2 [may] SHALL require, for the purposes of a criminal history record
3 check, the fingerprinting of all prospective employees pursuant to
4 section three thousand thirty-five of this article, who do not hold
5 valid clearance pursuant to such section or pursuant to section three
6 thousand four-b of this article or section five hundred nine-cc or
7 twelve hundred twenty-nine-d of the vehicle and traffic law. Prior to
8 initiating the fingerprinting process, the prospective employer shall
9 furnish the applicant with the form described in paragraph (c) of subdivi-
10 sion thirty of section three hundred five of this chapter and shall
11 obtain the applicant's consent to the criminal history record search.
12 Every set of fingerprints taken pursuant to this section shall be
13 promptly submitted to the commissioner for the purposes of clearance for
14 employment.

15 3. (a) Any nonpublic or private elementary or secondary school may
16 conditionally appoint a prospective employee. A request for conditional
17 clearance [may] SHALL be forwarded to the commissioner along with the
18 prospective employee's fingerprints. Such appointment may be delayed
19 until notification by the commissioner that the prospective employee has
20 been conditionally cleared for employment and shall terminate when the
21 prospective employer is notified of a determination by the commissioner
22 to grant or deny clearance, provided that if clearance is granted, the
23 appointment shall continue and the conditional status shall be removed.
24 Prior to commencement of such conditional appointment, the prospective
25 employer shall obtain a signed statement for conditional appointment
26 from the prospective employee, indicating whether, to the best of his or
27 her knowledge, he or she has a pending criminal charge or criminal
28 conviction in any jurisdiction outside the state.

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

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

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