

10086

I N   A S S E M B L Y

May 10, 2016

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Introduced by M. of A. ROSENTHAL -- read once and referred to the  
Committee on Education

AN ACT to amend the education law, in relation to background checks and  
fingerprinting; and to amend the social services law, in relation to  
statewide central registry clearances by contracted service providers  
of student support services

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

1     Section 1. Subdivision 3 of section 1125 of the education law, as  
2     added by chapter 180 of the laws of 2000, is amended to read as follows:  
3     3. "Employee" shall mean any person receiving compensation from a  
4     school district or employee of a contracted service provider, A  
5     CONTRACTED SERVICE PROVIDER OF STUDENT SUPPORT SERVICES or worker placed  
6     within the school under a public assistance employment program, pursuant  
7     to title nine-B of article five of the social services law, and consist-  
8     ent with the provisions of such title for the provision of services to  
9     such district, its students or employees, directly or through contract,  
10    whereby such services performed by such person involve direct student  
11    contact.

12    S 2. Paragraph (a-2) of subdivision 3 of section 2854 of the education  
13    law is amended by adding a new subparagraph (v) to read as follows:

14    (V) NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS SECTION, THE  
15    BOARD OF TRUSTEES OF A CHARTER SCHOOL SHALL NOT BE REQUIRED TO OVERSEE  
16    THE FINGERPRINTING PROCESS FOR EMPLOYEES OF A CONTRACTED SERVICE PROVID-  
17    ER OF STUDENT SUPPORT SERVICES SUCH AS, BUT NOT LIMITED TO, SUBSTITUTE  
18    TEACHERS, SUBSTITUTE TEACHER AIDES, SUBSTITUTE NURSES, EDUCATIONAL  
19    CONSULTANTS, TUTORS, SUBSTITUTE SCHOOL ADMINISTRATIVE SUPPORT AND OTHER  
20    TEMPORARY STUDENT SERVICES PROFESSIONALS, SO LONG AS THE HAVE ENGAGED A  
21    CONTRACTED SERVICE PROVIDER OF STUDENT SUPPORT SERVICES WHO HAS COMPLIED  
22    WITH THE FINGERPRINTING REQUIREMENTS ELSEWHERE IN THIS CHAPTER.

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

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

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1 (a) The commissioner, in cooperation with the division of criminal  
2 justice services and in accordance with all applicable provisions of  
3 law, shall promulgate rules and regulations to require the fingerprint-  
4 ing of prospective employees, as defined in section eleven hundred twen-  
5 ty-five of this chapter, of school districts, charter schools [and],  
6 boards of cooperative educational services AND CONTRACTED SERVICE  
7 PROVIDERS OF STUDENT SUPPORT SERVICES and authorizing the fingerprinting  
8 of prospective employees of nonpublic and private elementary and second-  
9 ary schools, and for the use of information derived from searches of the  
10 records of the division of criminal justice services and the federal  
11 bureau of investigation based on the use of such fingerprints. The  
12 commissioner shall also develop a form for use by school districts,  
13 charter schools, boards of cooperative educational services, CONTRACTED  
14 SERVICE PROVIDERS OF STUDENT SUPPORT SERVICES, and nonpublic and private  
15 elementary and secondary schools in connection with the submission of  
16 fingerprints that contains the specific job title sought and any other  
17 information that may be relevant to consideration of the applicant. THE  
18 COMMISSIONER SHALL ALSO CREATE OR EXPAND THE FUNCTIONALITY OF INTERNET  
19 BASED SYSTEMS TO PROVIDE ACCESS TO CONTRACTED SERVICE PROVIDERS OF  
20 STUDENT SUPPORT SERVICES UPON APPLICATION OF THE CONTRACTED SERVICE  
21 PROVIDER OF STUDENT SUPPORT SERVICES TO THE COMMISSIONER TO ENABLE THEM  
22 TO BE ABLE TO REVIEW FINGERPRINT RESULTS AND SUBSEQUENT ARREST NOTIFICA-  
23 TIONS BASED ON THE FINGERPRINT AND BACKGROUND CHECK DATA BY LOGGING INTO  
24 A PROTECTED WEB PORTAL, ENTERING IN THE EMPLOYEE NAME AND SOCIAL SECURI-  
25 TY NUMBER, WHICH WOULD PROVIDE ACCESS TO SEE THE FINGERPRINT RESULTS.  
26 The commissioner shall also establish a form for the recordation of  
27 allegations of child abuse in an educational setting, as required pursu-  
28 ant to section eleven hundred twenty-six of this chapter. No person who  
29 has been fingerprinted pursuant to section three thousand four-b of this  
30 chapter or pursuant to section five hundred nine-cc or twelve hundred  
31 twenty-nine-d of the vehicle and traffic law and whose fingerprints  
32 remain on file with the division of criminal justice services shall be  
33 required to undergo fingerprinting for purposes of a new criminal histo-  
34 ry record check. This subdivision and the rules and regulations promul-  
35 gated pursuant thereto shall not apply to a school district within a  
36 city with a population of one million or more.

37 S 4. The opening paragraph of paragraph (b) of subdivision 30 of  
38 section 305 of the education law, as amended by chapter 630 of the laws  
39 of 2006, is amended to read as follows:

40 The commissioner, in cooperation with the division of criminal justice  
41 services, shall promulgate a form to be provided to all such prospective  
42 employees of school districts, charter schools, boards of cooperative  
43 educational services, CONTRACTED SERVICE PROVIDERS OF STUDENT SUPPORT  
44 SERVICES and nonpublic and private elementary and secondary schools that  
45 elect to fingerprint and seek clearance for prospective employees that  
46 shall:

47 S 5. Paragraph (d) of subdivision 30 of section 305 of the education  
48 law, as amended by chapter 630 of the laws of 2006, is amended to read  
49 as follows:

50 (d) The commissioner shall develop forms to be provided to all school  
51 districts, charter schools, boards of cooperative educational services,  
52 CONTRACTED SERVICE PROVIDERS OF STUDENT SUPPORT SERVICES and to all  
53 nonpublic and private elementary and secondary schools that elect to  
54 fingerprint their prospective employees, to be completed and signed by  
55 prospective employees when conditional appointment or emergency condi-  
56 tional appointment is offered.

1 S 6. Subdivision 31 of section 305 of the education law, as added by  
2 chapter 380 of the laws of 2001, is amended to read as follows:

3 31. The commissioner shall direct that each school district, charter  
4 school, [and] private elementary and secondary school, AND CONTRACTED  
5 SERVICE PROVIDER OF STUDENT SUPPORT SERVICES appoint a designated educa-  
6 tional official for the purposes set forth in section 380.90 of the  
7 criminal procedure law, subdivision seventeen of section 301.2 and  
8 subdivision three of section 380.1 of the family court act. In addition,  
9 the commissioner shall promulgate rules and regulations, in consultation  
10 with the office of court administration, to facilitate electronic access  
11 by the courts to the names and addresses of such designated educational  
12 officials.

13 S 7. Subdivision 1 of section 3035 of the education law, as amended by  
14 chapter 630 of the laws of 2006, is amended to read as follows:

15 1. The commissioner shall submit to the division of criminal justice  
16 services two sets of fingerprints of prospective employees as defined in  
17 subdivision three of section eleven hundred twenty-five of this chapter  
18 received from a school district, charter school or board of cooperative  
19 educational services, CONTRACTED SERVICE PROVIDERS OF STUDENT SUPPORT  
20 SERVICES and of prospective employees received from nonpublic and  
21 private elementary and secondary schools pursuant to title two of this  
22 chapter, and the division of criminal justice services processing fee  
23 imposed pursuant to subdivision eight-a of section eight hundred thir-  
24 ty-seven of the executive law and any fee imposed by the federal bureau  
25 of investigation. The division of criminal justice services and the  
26 federal bureau of investigation shall forward such criminal history  
27 record to the commissioner in a timely manner. For the purposes of this  
28 section, the term "criminal history record" shall mean a record of all  
29 convictions of crimes and any pending criminal charges maintained on an  
30 individual by the division of criminal justice services and the federal  
31 bureau of investigation. All such criminal history records sent to the  
32 commissioner pursuant to this subdivision shall be confidential pursuant  
33 to the applicable federal and state laws, rules and regulations, and  
34 shall not be published or in any way disclosed to persons other than the  
35 commissioner, unless otherwise authorized by law.

36 S 8. Subdivision 3 of section 3035 of the education law, as amended by  
37 section 7 of chapter 630 of the laws of 2006, is amended to read as  
38 follows:

39 3. (a) Clearance. (I) After receipt of a criminal history record from  
40 the division of criminal justice services and the federal bureau of  
41 investigation the commissioner shall promptly notify the appropriate  
42 school district, charter school, board of cooperative educational  
43 services, CONTRACTED SERVICE PROVIDERS OF STUDENT SUPPORT SERVICES or  
44 nonpublic or private elementary or secondary school whether the prospec-  
45 tive employee to which such report relates is cleared for employment  
46 based upon his or her criminal history. All determinations to grant or  
47 deny clearance for employment pursuant to this paragraph shall be  
48 performed in accordance with subdivision sixteen of section two hundred  
49 ninety-six of the executive law and article twenty-three-A of the  
50 correction law. When the commissioner denies a prospective employee  
51 clearance for employment, such prospective employee shall be afforded  
52 notice and the right to be heard and offer proof in opposition to such  
53 determination in accordance with the regulations of the commissioner.

54 (II) NOTWITHSTANDING ANY OTHER PROVISIONS OF LAW TO THE CONTRARY,  
55 INFORMATION REGARDING THE RESULTS OF THE INVESTIGATION OF CURRENT OR  
56 PROSPECTIVE EMPLOYEES OF CONTRACTED SERVICE PROVIDERS OF STUDENT SUPPORT

1 SERVICES AND SUBSEQUENT CHANGES IN STATUS RELATED TO SUCH EMPLOYEES  
2 SHALL BE TRANSMITTED VIA AN INTERNET-BASED SYSTEM MADE AVAILABLE TO  
3 CONTRACTED SERVICE PROVIDERS OF STUDENT SUPPORT SERVICES UPON APPLICA-  
4 TION OF THE CONTRACTED SERVICE PROVIDER OF STUDENT SUPPORT SERVICES TO  
5 THE COMMISSIONER WHERE, BY LOGGING INTO A PROTECTED WEB PORTAL AND  
6 ENTERING IN THE EMPLOYEE NAME AND SOCIAL SECURITY NUMBER, CONTRACTED  
7 SERVICE PROVIDERS OF STUDENT SUPPORT SERVICES WOULD BE ABLE TO ACCESS  
8 FINGERPRINT RESULTS, WHETHER THE EMPLOYEE FIRST COMPLETED A FORM  
9 PROVIDED TO THEM BY THE CONTRACTED SERVICE PROVIDER OF STUDENT SUPPORT  
10 SERVICES, OR RECEIVED A FORM PREVIOUSLY FROM A SCHOOL DISTRICT, CHARTER  
11 SCHOOL OR BOARD OF COOPERATIVE EDUCATIONAL SERVICES. NOTHING IN THIS  
12 SECTION SHALL REQUIRE AN EMPLOYEE WHO HAS ALREADY SUBMITTED THEIR FING-  
13 ERPRINTS TO THE COMMISSIONER TO HAVE TO SUBMIT THEM AGAIN, SO LONG AS  
14 THEY WERE NOT DESTROYED.

15 (b) Conditional clearance. When the commissioner receives a request  
16 for a determination on the conditional clearance of a prospective  
17 employee, the commissioner, after receipt of a criminal history record  
18 from the division of criminal justice services, shall promptly notify  
19 the prospective employee and the appropriate school district, charter  
20 school, board of cooperative educational services, CONTRACTED SERVICE  
21 PROVIDERS OF STUDENT SUPPORT SERVICES or nonpublic or private elementary  
22 or secondary school that the prospective employee to which such report  
23 relates is conditionally cleared for employment based upon his or her  
24 criminal history or that more time is needed to make the determination.  
25 If the commissioner determines that more time is needed, the notifica-  
26 tion shall include a good faith estimate of the amount of additional  
27 time needed. Such notification shall be made within fifteen business  
28 days after the commissioner receives the prospective employee's finger-  
29 prints. All determinations to grant or deny conditional clearance for  
30 employment pursuant to this paragraph shall be performed in accordance  
31 with subdivision sixteen of section two hundred ninety-six of the execu-  
32 tive law and article twenty-three-A of the correction law.

33 S 9. Subdivision 3 of section 3035 of the education law, as amended by  
34 section 8 of chapter 630 of the laws of 2006, is amended to read as  
35 follows:

36 3. After receipt of a criminal history record from the division of  
37 criminal justice services and the federal bureau of investigation the  
38 commissioner shall promptly notify the appropriate school district,  
39 charter school, board of cooperative educational services, CONTRACTED  
40 SERVICE PROVIDERS OF STUDENT SUPPORT SERVICES or nonpublic or private  
41 elementary or secondary school whether the prospective employee to which  
42 such report relates is cleared for employment based upon his or her  
43 criminal history. All determinations to grant or deny clearance for  
44 employment pursuant to this subdivision shall be performed in accordance  
45 with subdivision sixteen of section two hundred ninety-six of the execu-  
46 tive law and article twenty-three-A of the correction law. When the  
47 commissioner denies a prospective employee clearance for employment,  
48 such prospective employee shall be afforded notice and the right to be  
49 heard and offer proof in opposition to such determination in accordance  
50 with the regulations of the commissioner.

51 S 10. Section 1125 of the education law is amended by adding a new  
52 subdivision 10 to read as follows:

53 10. "CONTRACTED SERVICE PROVIDER OF STUDENT SUPPORT SERVICES" SHALL  
54 MEAN ANY INDIVIDUAL OR ENTITY THAT CONTRACTS WITH, BUT NOT LIMITED TO, A  
55 SCHOOL DISTRICT, A CHARTER SCHOOL, A BOARD OF COOPERATIVE EDUCATIONAL  
56 SERVICES, OR A NONPUBLIC SCHOOL FOR THE PROVISION OF SUBSTITUTE TEACH-

1 ERS, SUBSTITUTE TEACHER ASSISTANTS, SUBSTITUTE NURSES, EDUCATIONAL  
2 PROFESSIONAL, TUTORS, SUBSTITUTE SCHOOL ADMINISTRATIVE SUPPORT, AND  
3 OTHER TEMPORARY STUDENT SERVICE PERSONNEL.

4 S 11. Subdivision 3 of section 424-a of the social services law, as  
5 amended by section 8 of part D of chapter 501 of the laws of 2012, is  
6 amended to read as follows:

7 3. For purposes of this section, the term "provider" or "provider  
8 agency" shall mean an authorized agency, the office of children and  
9 family services, juvenile detention facilities subject to the certifi-  
10 cation of such office, programs established pursuant to article nine-  
11 teen-H of the executive law, non-residential or residential programs or  
12 facilities licensed or operated by the office of mental health or the  
13 office for people with developmental disabilities except family care  
14 homes, licensed child day care centers, including head start programs  
15 which are funded pursuant to title V of the federal economic opportunity  
16 act of nineteen hundred sixty-four, as amended, early intervention  
17 service established pursuant to section twenty-five hundred forty of the  
18 public health law, preschool services established pursuant to section  
19 forty-four hundred ten of the education law, school-age child care  
20 programs, CONTRACTED SERVICE PROVIDERS OF STUDENT SUPPORT SERVICES AS  
21 DEFINED IN SUBDIVISION TEN OF SECTION ELEVEN HUNDRED TWENTY-FIVE OF THE  
22 EDUCATION LAW, special act school districts as enumerated in chapter  
23 five hundred sixty-six of the laws of nineteen hundred sixty-seven, as  
24 amended, programs and facilities licensed by the office of alcoholism  
25 and substance abuse services, residential schools which are operated,  
26 supervised or approved by the education department, and any other facil-  
27 ity or provider agency, as defined in subdivision four of section four  
28 hundred eighty-eight of this chapter, in regard to the employment of  
29 staff, or use of providers of goods and services and staff of such  
30 providers, consultants, interns and volunteers.

31 S 12. Paragraph (a) of subdivision 2 of section 390-a of the social  
32 services law, as amended by chapter 416 of the laws of 2000, is amended  
33 to read as follows:

34 (a) review and evaluate the backgrounds of and information supplied by  
35 any person applying to be a child day care center or school-age child  
36 care program employee or volunteer or group family day care assistant, a  
37 provider of family day care or group family day care, or a director of a  
38 child day care center, head start day care center or school-age child  
39 care program. Such procedures shall include but not be limited to the  
40 following requirements: that the applicant set forth his or her employ-  
41 ment history, provide personal and employment references; submit such  
42 information as is required for screening with the statewide central  
43 register of child abuse and maltreatment in accordance with the  
44 provisions of section four hundred twenty-four-a of this article; sign a  
45 sworn statement indicating whether, to the best of his or her knowledge,  
46 he or she has ever been convicted of a crime in this state or any other  
47 jurisdiction; and provide his or her fingerprints for submission to the  
48 division of criminal justice services in accordance with the provisions  
49 of section three hundred ninety-b of this title. NOTWITHSTANDING THE  
50 PROVISIONS OF THIS PARAGRAPH, WHERE A PROGRAM HAS PEOPLE WORKING ON  
51 THEIR PREMISES THROUGH A CONTRACTED SERVICE PROVIDER OF STUDENT SUPPORT  
52 SERVICES AS DEFINED IN SUBDIVISION TEN OF SECTION ELEVEN HUNDRED TWEN-  
53 TY-FIVE OF THE EDUCATION LAW, AND SUCH CONTRACTED SERVICES PROVIDER OF  
54 STUDENT SUPPORT SERVICES HAS PROPERLY PERFORMED CHECKS ON ITS EMPLOYEES  
55 AS A PROVIDER OR PROVIDER AGENCY UNDER SECTION FOUR HUNDRED  
56 TWENTY-FOUR-A OF THIS CHAPTER, THEN SUCH PROGRAM DOES NOT NEED TO RUN

1 THE CHECK ITSELF ON THE CONTRACTED SERVICE PROVIDER EMPLOYEES WORKING ON  
2 THEIR SITE;  
3 S 13. This act shall take effect immediately; provided however that:  
4 (a) the amendments to paragraph (a-2) of subdivision 3 of section 2854  
5 of the education law made by section two of this act shall not affect  
6 the expiration of such paragraph and shall expire and be deemed repealed  
7 therewith; (b) the amendments to paragraph (d) of subdivision 30 of  
8 section 305 of the education law made by section five of this act shall  
9 not affect the repeal of such paragraph and shall be deemed repealed  
10 therewith; and (c) the amendments to subdivision 3 of section 3035 of  
11 the education law made by section eight of this act shall be subject to  
12 the expiration and reversion of such subdivision, pursuant to section 12  
13 of chapter 142 of the laws of 2001, as amended, when upon such date the  
14 provisions of section nine of this act shall take effect.