

# STATE OF NEW YORK

4983

2017-2018 Regular Sessions

## IN ASSEMBLY

February 6, 2017

Introduced by M. of A. ROSENTHAL, WEPRIN -- 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 Assembly, 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 § 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.

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

LBD05150-01-7

1 § 3. Paragraph (a) of subdivision 30 of section 305 of the education  
2 law, as amended by chapter 630 of the laws of 2006, is amended to read  
3 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~~],  
9 boards of cooperative educational services and contracted service  
10 providers of student support services and authorizing the fingerprinting  
11 of prospective employees of nonpublic and private elementary and second-  
12 ary schools, and for the use of information derived from searches of the  
13 records of the division of criminal justice services and the federal  
14 bureau of investigation based on the use of such fingerprints. The  
15 commissioner shall also develop a form for use by school districts,  
16 charter schools, boards of cooperative educational services, contracted  
17 service providers of student support services, and nonpublic and private  
18 elementary and secondary schools in connection with the submission of  
19 fingerprints that contains the specific job title sought and any other  
20 information that may be relevant to consideration of the applicant. The  
21 commissioner shall also create or expand the functionality of internet  
22 based systems to provide access to contracted service providers of  
23 student support services upon application of the contracted service  
24 provider of student support services to the commissioner to enable them  
25 to be able to review fingerprint results and subsequent arrest notifica-  
26 tions based on the fingerprint and background check data by logging into  
27 a protected web portal, entering in the employee name and social securi-  
28 ty number, which would provide access to see the fingerprint results.  
29 The commissioner shall also establish a form for the recordation of  
30 allegations of child abuse in an educational setting, as required pursu-  
31 ant to section eleven hundred twenty-six of this chapter. No person who  
32 has been fingerprinted pursuant to section three thousand four-b of this  
33 chapter or pursuant to section five hundred nine-cc or twelve hundred  
34 twenty-nine-d of the vehicle and traffic law and whose fingerprints  
35 remain on file with the division of criminal justice services shall be  
36 required to undergo fingerprinting for purposes of a new criminal histo-  
37 ry record check. This subdivision and the rules and regulations promul-  
38 gated pursuant thereto shall not apply to a school district within a  
39 city with a population of one million or more.

40 § 4. The opening paragraph of paragraph (b) of subdivision 30 of  
41 section 305 of the education law, as amended by chapter 630 of the laws  
42 of 2006, is amended to read as follows:

43 The commissioner, in cooperation with the division of criminal justice  
44 services, shall promulgate a form to be provided to all such prospective  
45 employees of school districts, charter schools, boards of cooperative  
46 educational services, contracted service providers of student support  
47 services and nonpublic and private elementary and secondary schools that  
48 elect to fingerprint and seek clearance for prospective employees that  
49 shall:

50 § 5. Paragraph (d) of subdivision 30 of section 305 of the education  
51 law, as amended by chapter 630 of the laws of 2006, is amended to read  
52 as follows:

53 (d) The commissioner shall develop forms to be provided to all school  
54 districts, charter schools, boards of cooperative educational services,  
55 contracted service providers of student support services and to all  
56 nonpublic and private elementary and secondary schools that elect to

1 fingerprint their prospective employees, to be completed and signed by  
2 prospective employees when conditional appointment or emergency condi-  
3 tional appointment is offered.

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

6 31. The commissioner shall direct that each school district, charter  
7 school, ~~and~~ private elementary and secondary school, and contracted  
8 service provider of student support services appoint a designated educa-  
9 tional official for the purposes set forth in section 380.90 of the  
10 criminal procedure law, subdivision seventeen of section 301.2 and  
11 subdivision three of section 380.1 of the family court act. In addition,  
12 the commissioner shall promulgate rules and regulations, in consultation  
13 with the office of court administration, to facilitate electronic access  
14 by the courts to the names and addresses of such designated educational  
15 officials.

16 § 7. Subdivision 1 of section 3035 of the education law, as amended by  
17 chapter 630 of the laws of 2006, is amended to read as follows:

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

39 § 8. Subdivision 3 of section 3035 of the education law, as amended by  
40 section 7 of chapter 630 of the laws of 2006, is amended to read as  
41 follows:

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

1 (ii) Notwithstanding any other provisions of law to the contrary,  
2 information regarding the results of the investigation of current or  
3 prospective employees of contracted service providers of student support  
4 services and subsequent changes in status related to such employees  
5 shall be transmitted via an internet-based system made available to  
6 contracted service providers of student support services upon applica-  
7 tion of the contracted service provider of student support services to  
8 the commissioner where, by logging into a protected web portal and  
9 entering in the employee name and social security number, contracted  
10 service providers of student support services would be able to access  
11 fingerprint results, whether the employee first completed a form  
12 provided to them by the contracted service provider of student support  
13 services, or received a form previously from a school district, charter  
14 school or board of cooperative educational services. Nothing in this  
15 section shall require an employee who has already submitted their fing-  
16 erprints to the commissioner to have to submit them again, so long as  
17 they were not destroyed.

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

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

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

54 § 10. Section 1125 of the education law is amended by adding a new  
55 subdivision 10 to read as follows:

1 10. "Contracted service provider of student support services" shall  
2 mean any individual or entity that contracts with, but not limited to, a  
3 school district, a charter school, a board of cooperative educational  
4 services, or a nonpublic school for the provision of substitute teach-  
5 ers, substitute teacher assistants, substitute nurses, educational  
6 professional, tutors, substitute school administrative support, and  
7 other temporary student service personnel.

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

11 3. For purposes of this section, the term "provider" or "provider  
12 agency" shall mean an authorized agency, the office of children and  
13 family services, juvenile detention facilities subject to the certif-  
14 ication of such office, programs established pursuant to article nine-  
15 teen-H of the executive law, non-residential or residential programs or  
16 facilities licensed or operated by the office of mental health or the  
17 office for people with developmental disabilities except family care  
18 homes, licensed child day care centers, including head start programs  
19 which are funded pursuant to title V of the federal economic opportunity  
20 act of nineteen hundred sixty-four, as amended, early intervention  
21 service established pursuant to section twenty-five hundred forty of the  
22 public health law, preschool services established pursuant to section  
23 forty-four hundred ten of the education law, school-age child care  
24 programs, contracted service providers of student support services as  
25 defined in subdivision ten of section eleven hundred twenty-five of the  
26 education law, special act school districts as enumerated in chapter  
27 five hundred sixty-six of the laws of nineteen hundred sixty-seven, as  
28 amended, programs and facilities licensed by the office of alcoholism  
29 and substance abuse services, residential schools which are operated,  
30 supervised or approved by the education department, and any other facil-  
31 ity or provider agency, as defined in subdivision four of section four  
32 hundred eighty-eight of this chapter, in regard to the employment of  
33 staff, or use of providers of goods and services and staff of such  
34 providers, consultants, interns and volunteers.

35 § 12. Paragraph (a) of subdivision 2 of section 390-a of the social  
36 services law, as amended by chapter 416 of the laws of 2000, is amended  
37 to read as follows:

38 (a) review and evaluate the backgrounds of and information supplied by  
39 any person applying to be a child day care center or school-age child  
40 care program employee or volunteer or group family day care assistant, a  
41 provider of family day care or group family day care, or a director of a  
42 child day care center, head start day care center or school-age child  
43 care program. Such procedures shall include but not be limited to the  
44 following requirements: that the applicant set forth his or her employ-  
45 ment history, provide personal and employment references; submit such  
46 information as is required for screening with the statewide central  
47 register of child abuse and maltreatment in accordance with the  
48 provisions of section four hundred twenty-four-a of this article; sign a  
49 sworn statement indicating whether, to the best of his or her knowledge,  
50 he or she has ever been convicted of a crime in this state or any other  
51 jurisdiction; and provide his or her fingerprints for submission to the  
52 division of criminal justice services in accordance with the provisions  
53 of section three hundred ninety-b of this title. Notwithstanding the  
54 provisions of this paragraph, where a program has people working on  
55 their premises through a contracted service provider of student support  
56 services as defined in subdivision ten of section eleven hundred twen-

1 ty-five of the education law, and such contracted services provider of  
2 student support services has properly performed checks on its employees  
3 as a provider or provider agency under section four hundred  
4 twenty-four-a of this chapter, then such program does not need to run  
5 the check itself on the contracted service provider employees working on  
6 their site;

7 § 13. This act shall take effect immediately; provided however that:

8 (a) the amendments to paragraph (a-2) of subdivision 3 of section 2854  
9 of the education law made by section two of this act shall not affect  
10 the expiration of such paragraph and shall expire and be deemed repealed  
11 therewith; (b) the amendments to paragraph (d) of subdivision 30 of  
12 section 305 of the education law made by section five of this act shall  
13 not affect the repeal of such paragraph and shall be deemed repealed  
14 therewith; and (c) the amendments to subdivision 3 of section 3035 of  
15 the education law made by section eight of this act shall be subject to  
16 the expiration and reversion of such subdivision, pursuant to section 12  
17 of chapter 147 of the laws of 2001, as amended, when upon such date the  
18 provisions of section nine of this act shall take effect.