

# STATE OF NEW YORK

S. 3335

A. 4652

2019-2020 Regular Sessions

## SENATE - ASSEMBLY

February 5, 2019

IN SENATE -- Introduced by Sen. KAMINSKY -- read twice and ordered printed, and when printed to be committed to the Committee on Education

IN ASSEMBLY -- Introduced by M. of A. ROZIC -- 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

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

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

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

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

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

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

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

36 § 4. Subdivision 20 of section 2590-h of the education law, as amended  
37 by chapter 345 of the laws of 2009, is amended to read as follows:

38 20. Ensure compliance with qualifications established for all person-  
39 nel employed in the city district, including **requiring** the taking of  
40 fingerprints as a prerequisite for licensure and/or employment of such  
41 personnel. Every set of fingerprints taken pursuant to this subdivision  
42 shall be promptly submitted to the division of criminal justice services  
43 where it shall be appropriately processed. Furthermore, the division of  
44 criminal justice services is authorized to submit the fingerprints to  
45 the federal bureau of investigation for a national criminal history  
46 record check.

47 § 5. Subdivision 20 of section 2590-h of the education law, as amended  
48 by chapter 100 of the laws of 2003, is amended to read as follows:

49 20. Ensure compliance with qualifications established for all person-  
50 nel employed in the city district, including **requiring** the taking of  
51 fingerprints as a prerequisite for licensure and/or employment of such  
52 personnel. Every set of fingerprints taken pursuant to this subdivision  
53 shall be promptly submitted to the division of criminal justice services  
54 where it shall be appropriately processed. Furthermore, the division of  
55 criminal justice services is authorized to submit the fingerprints to

1 the federal bureau of investigation for a national criminal history  
2 record check.

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

6 1. a. "Employee" shall mean any prospective employee of a nonpublic or  
7 private elementary or secondary school [~~which requires the fingerprint-~~  
8 ~~ing of prospective employees pursuant to this section~~], or employee of a  
9 contracted service provider or worker placed within such school under a  
10 public assistance employment program, pursuant to title nine-B of arti-  
11 cle five of the social services law, and consistent with the provisions  
12 of such title for the provision of services to such school, its students  
13 or employees, directly or through contract, whereby such services  
14 performed by such person involve direct student contact. [~~Any~~ **Every**  
15 nonpublic or private elementary or secondary school [~~which elects to~~  
16 **shall** submit for review criminal history information concerning prospec-  
17 tive employees [~~must do so with respect to each such prospective employ-~~  
18 ~~ee~~], as defined in this paragraph, in accordance with this section.

19 b. "Volunteer" shall mean any person, other than an employee, who  
20 provides services to a nonpublic or private elementary or secondary  
21 school [~~which elects to require the fingerprinting of prospective~~  
22 ~~employees pursuant to this section~~], which involve direct student  
23 contact.

24 2. [~~Any~~ **Every** nonpublic or private elementary or secondary school  
25 [~~may~~ **shall** require, for the purposes of a criminal history record  
26 check, the fingerprinting of all prospective employees pursuant to  
27 section three thousand thirty-five of this article, who do not hold  
28 valid clearance pursuant to such section or pursuant to section three  
29 thousand four-b of this article or section five hundred nine-cc or  
30 twelve hundred twenty-nine-d of the vehicle and traffic law. Prior to  
31 initiating the fingerprinting process, the prospective employer shall  
32 furnish the applicant with the form described in paragraph (c) of subdi-  
33 vision thirty of section three hundred five of this chapter and shall  
34 obtain the applicant's consent to the criminal history record search.  
35 Every set of fingerprints taken pursuant to this section shall be  
36 promptly submitted to the commissioner for the purposes of clearance for  
37 employment.

38 3. (a) Any nonpublic or private elementary or secondary school may  
39 conditionally appoint a prospective employee. A request for conditional  
40 clearance [~~may~~ **shall** be forwarded to the commissioner along with the  
41 prospective employee's fingerprints. Such appointment may be delayed  
42 until notification by the commissioner that the prospective employee has  
43 been conditionally cleared for employment and shall terminate when the  
44 prospective employer is notified of a determination by the commissioner  
45 to grant or deny clearance, provided that if clearance is granted, the  
46 appointment shall continue and the conditional status shall be removed.  
47 Prior to commencement of such conditional appointment, the prospective  
48 employer shall obtain a signed statement for conditional appointment  
49 from the prospective employee, indicating whether, to the best of his or  
50 her knowledge, he or she has a pending criminal charge or criminal  
51 conviction in any jurisdiction outside the state.

52 (b) Any nonpublic or private elementary or secondary school may make  
53 an emergency conditional appointment when an unforeseen emergency vacan-  
54 cy has occurred. When such appointment is made, the process for condi-  
55 tional appointment pursuant to paragraph (a) of this subdivision [~~may~~  
56 **shall** also be initiated. Emergency conditional appointment may commence

1 prior to notification from the commissioner on conditional clearance and  
2 shall terminate when the prospective employer is notified by the commis-  
3 sioner regarding conditional clearance, provided that if conditional  
4 clearance is granted, the appointment may continue as a conditional  
5 appointment. Prior to the commencement of such appointment, the  
6 prospective employer must obtain a signed statement for emergency condi-  
7 tional appointment from the prospective employee, indicating whether, to  
8 the best of his or her knowledge, he or she has a pending criminal  
9 charge or criminal conviction in any jurisdiction. An "unforeseen emer-  
10 gency vacancy" shall be defined as: (i) a vacancy that occurred less  
11 than ten business days before the start of any school session, including  
12 summer school, or during any school session, including summer school,  
13 without sufficient notice to allow for clearance or conditional clear-  
14 ance; (ii) when no other qualified person is available to fill the  
15 vacancy temporarily; and (iii) when emergency conditional appointment is  
16 necessary to maintain services which the school is legally required to  
17 provide or services necessary to protect the health, education or safety  
18 of students or staff.

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

24 § 7. This act shall take effect immediately; provided that the amend-  
25 ments to paragraph (d) of subdivision 30 of section 305 of the education  
26 law made by section three of this act shall not affect the expiration  
27 and repeal of such paragraph and shall expire and be deemed repealed  
28 therewith; provided further, however, that the amendments to subdivision  
29 20 of section 2590-h of the education law made by section four of this  
30 act shall not affect the expiration and repeal of such section and shall  
31 expire therewith, when upon such date section five of this act shall  
32 take effect.