

STATE OF NEW YORK

4862

2019-2020 Regular Sessions

IN SENATE

March 27, 2019

Introduced by Sen. MARTINEZ -- read twice and ordered printed, and when printed to be committed to the Committee on Children and Families

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 construction contractors

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 amended by chapter 363 of the laws of 2018, is amended to read as
3 follows:

4 3. "Employee" shall mean any person: (i) who is receiving compensation
5 from a school or (ii) whose duties involve direct student contact and
6 (a) who is receiving compensation from any person or entity that
7 contracts with a school to provide transportation services to children,
8 or (b) who is an employee of a contracted service provider or worker
9 placed within the school under a public assistance employment program,
10 pursuant to title nine-B of article five of the social services law, or
11 (c) who is receiving compensation from any construction contractor, and
12 consistent with the provisions of such title for the provision of
13 services to such school, its students or employees, directly or through
14 contract.

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

17 (v) Notwithstanding anything to the contrary in this section, the
18 board of trustees of a charter school shall not be required to oversee
19 the fingerprinting process for employees of a construction contractor so
20 long as they have engaged a construction contractor who has complied
21 with the fingerprinting requirements elsewhere in this chapter.

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

37 § 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, construction contractors and nonpublic and private
44 elementary and secondary schools that elect to fingerprint and seek
45 clearance for prospective employees that shall:

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

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

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

1 31. The commissioner shall direct that each school district, charter
2 school, ~~[and]~~ private elementary and secondary school, and construction
3 contractor appoint a designated educational official for the purposes
4 set forth in section 380.90 of the criminal procedure law, subdivision
5 seventeen of section 301.2 and subdivision three of section 380.1 of the
6 family court act. In addition, the commissioner shall promulgate rules
7 and regulations, in consultation with the office of court adminis-
8 tration, to facilitate electronic access by the courts to the names and
9 addresses of such designated educational officials.

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

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

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

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

53 (ii) Notwithstanding any other provisions of law to the contrary,
54 information regarding the results of the investigation of current or
55 prospective employees of construction contractors and subsequent changes
56 in status related to such employees shall be transmitted via an inter-

1 net-based system made available to construction contractors upon appli-
2 cation of the construction contractor to the commissioner where, by
3 logging into a protected web portal and entering in the employee name
4 and social security number, and construction contractors would be able
5 to access fingerprint results, whether the employee first completed a
6 form provided to them by the construction contractors, or received a
7 form previously from a school district, charter school or board of coop-
8 erative educational services. Nothing in this section shall require an
9 employee who has already submitted their fingerprints to the commission-
10 er to have to submit them again, so long as they were not destroyed.

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

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

32 3. After receipt of a criminal history record from the division of
33 criminal justice services and the federal bureau of investigation the
34 commissioner shall promptly notify the appropriate school district,
35 charter school, board of cooperative educational services, construction
36 contractor, or nonpublic or private elementary or secondary school
37 whether the prospective employee to which such report relates is cleared
38 for employment or for access to a proposed project site to perform
39 construction and/or maintenance work based upon his or her criminal
40 history. All determinations to grant or deny clearance for employment or
41 ability to work on a proposed project pursuant to this subdivision shall
42 be performed in accordance with subdivision sixteen of section two
43 hundred ninety-six of the executive law and article twenty-three-A of
44 the correction law. When the commissioner denies a prospective employee
45 clearance for employment, such prospective employee shall be afforded
46 notice and the right to be heard and offer proof in opposition to such
47 determination in accordance with the regulations of the commissioner.

48 § 10. Section 1125 of the education law is amended by adding a new
49 subdivision 11 to read as follows:

50 11. "Construction contractor" shall mean any individual or entity
51 seeking permission either through a bid or otherwise to perform
52 construction and/or maintenance work on facilities occupied at any point
53 by students of the school district, charter school, board of cooperative
54 educational services, or nonpublic school.

1 § 11. Subdivision 3 of section 424-a of the social services law, as
2 amended by section 6 of part C of chapter 57 of the laws of 2018, is
3 amended to read as follows:

4 3. For purposes of this section, the term "provider" or "provider
5 agency" shall mean: an authorized agency; the office of children and
6 family services; juvenile detention facilities subject to the certifi-
7 cation of the office of children and family services; programs estab-
8 lished pursuant to article nineteen-H of the executive law; non-residen-
9 tial or residential programs or facilities licensed or operated by the
10 office of mental health or the office for people with developmental
11 disabilities except family care homes; licensed child day care centers,
12 including head start programs which are funded pursuant to title V of
13 the federal economic opportunity act of nineteen hundred sixty-four, as
14 amended; early intervention service established pursuant to section
15 twenty-five hundred forty of the public health law; preschool services
16 established pursuant to section forty-four hundred ten of the education
17 law; school-age child care programs; construction contractors as defined
18 in subdivision eleven of section eleven hundred twenty-five of the
19 education law; special act school districts as enumerated in chapter
20 five hundred sixty-six of the laws of nineteen hundred sixty-seven, as
21 amended; programs and facilities licensed by the office of alcoholism
22 and substance abuse services; residential schools which are operated,
23 supervised or approved by the education department; health homes, or any
24 subcontractor of such health homes, who contracts with or is approved or
25 otherwise authorized by the department of health to provide health home
26 services to all those enrolled pursuant to a diagnosis of a develop-
27 mental disability as defined in subdivision twenty-two of section 1.03
28 of the mental hygiene law and enrollees who are under twenty-one years
29 of age under section three hundred sixty-five-1 of this chapter, or any
30 entity that provides home and community based services to enrollees who
31 are under twenty-one years of age under a demonstration program pursuant
32 to section eleven hundred fifteen of the federal social security act;
33 publicly-funded emergency shelters for families with children, provided,
34 however, for purposes of this section, when the provider or provider
35 agency is a publicly-funded emergency shelter for families with chil-
36 dren, then all references in this section to the "potential for regular
37 and substantial contact with individuals who are cared for by the agen-
38 cy" shall mean the potential for regular and substantial contact with
39 children who are served by such shelter; and any other facility or
40 provider agency, as defined in subdivision four of section four hundred
41 eighty-eight of this chapter, in regard to the employment of staff, or
42 use of providers of goods and services and staff of such providers,
43 consultants, interns and volunteers.

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

47 (a) review and evaluate the backgrounds of and information supplied by
48 any person applying to be a child day care center or school-age child
49 care program employee or volunteer or group family day care assistant, a
50 provider of family day care or group family day care, or a director of a
51 child day care center, head start day care center or school-age child
52 care program or a construction contractor, or a construction contrac-
53 tor's employee who services any of these entities. Such procedures shall
54 include but not be limited to the following requirements: that the
55 applicant set forth his or her employment history, provide personal and
56 employment references; submit such information as is required for

1 screening with the statewide central register of child abuse and
2 maltreatment in accordance with the provisions of section four hundred
3 twenty-four-a of this article; sign a sworn statement indicating wheth-
4 er, to the best of his or her knowledge, he or she has ever been
5 convicted of a crime in this state or any other jurisdiction; and
6 provide his or her fingerprints for submission to the division of crimi-
7 nal justice services in accordance with the provisions of section three
8 hundred ninety-b of this title. Notwithstanding the provisions of this
9 paragraph, where a program has people working on their premises through
10 a construction contractor as defined in subdivision eleven of section
11 eleven hundred twenty-five of the education law and such construction
12 contractor has properly performed checks on its employees as a provider
13 or provider agency under section four hundred twenty-four-a of this
14 chapter, then such program does not need to run the check itself on the
15 construction contractor employees working on their site;

16 § 13. This act shall take effect immediately; provided however that:
17 (a) the amendments to section 1125 of the education law made by section
18 one of this act shall take effect on the same date and in the same
19 manner as chapter 363 of the laws of 2018, takes effect; (b) the amend-
20 ments to paragraph (a-2) of subdivision 3 of section 2854 of the educa-
21 tion law made by section two of this act shall not affect the expiration
22 of such paragraph and shall expire and be deemed repealed therewith; (c)
23 the amendments to paragraph (d) of subdivision 30 of section 305 of the
24 education law made by section five of this act shall not affect the
25 repeal of such paragraph and shall be deemed repealed therewith; and (d)
26 the amendments to subdivision 3 of section 3035 of the education law
27 made by section eight of this act shall be subject to the expiration and
28 reversion of such subdivision, pursuant to section 12 of chapter 147 of
29 the laws of 2001, as amended, when upon such date the provisions of
30 section nine of this act shall take effect.