

STATE OF NEW YORK

4862--B

2019-2020 Regular Sessions

IN SENATE

March 27, 2019

Introduced by Sens. MARTINEZ, BROOKS, GAUGHRAN, KAMINSKY, THOMAS -- read twice and ordered printed, and when printed to be committed to the Committee on Children and Families -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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) of subdivision 30 of section 305 of the education
16 law, as amended by chapter 630 of the laws of 2006, is amended to read
17 as follows:

18 (a) The commissioner, in cooperation with the division of criminal
19 justice services and in accordance with all applicable provisions of
20 law, shall promulgate rules and regulations to require the fingerprint-

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

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ing of prospective employees, as defined in section eleven hundred twenty-five of this chapter, of school districts, charter schools ~~[and]~~, boards of cooperative educational services, and construction contractors and authorizing the fingerprinting of prospective employees of nonpublic and private elementary and secondary schools, and for the use of information derived from searches of the records of the division of criminal justice services and the federal bureau of investigation based on the use of such fingerprints. The commissioner shall also develop a form for use by school districts, charter schools, boards of cooperative educational services, construction contractors, and nonpublic and private elementary and secondary schools in connection with the submission of fingerprints that contains the specific job title sought or the construction or maintenance project on which the individual will be working, and any other information that may be relevant to consideration of the applicant. The commissioner shall also create or expand the functionality of internet based systems to provide access to construction contractors upon application of the construction contractor to the commissioner to enable them to be able to review fingerprint results and subsequent arrest notifications based on the fingerprint and background check data by logging into a protected web portal, entering in the employee name and social security number, which would provide access to see the fingerprint results. The commissioner shall also establish a form for the recordation of allegations of child abuse in an educational setting, as required pursuant to section eleven hundred twenty-six of this chapter. No person who has been fingerprinted pursuant to section three thousand four-b of this chapter or pursuant to section five hundred nine-cc or twelve hundred twenty-nine-d of the vehicle and traffic law and whose fingerprints remain on file with the division of criminal justice services shall be required to undergo fingerprinting for purposes of a new criminal history record check. This subdivision and the rules and regulations promulgated pursuant thereto shall not apply to a school district within a city with a population of one million or more.

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

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

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

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

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

31. The commissioner shall direct that each school district, charter school, ~~[and]~~ private elementary and secondary school, and construction contractor appoint a designated educational official for the purposes

1 set forth in section 380.90 of the criminal procedure law, subdivision
2 seventeen of section 301.2 and subdivision three of section 380.1 of the
3 family court act. In addition, the commissioner shall promulgate rules
4 and regulations, in consultation with the office of court adminis-
5 tration, to facilitate electronic access by the courts to the names and
6 addresses of such designated educational officials.

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

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

31 § 7. Subdivision 3 of section 3035 of the education law, as amended by
32 section 7 of chapter 630 of the laws of 2006, is amended to read as
33 follows:

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

50 (ii) Notwithstanding any other provisions of law to the contrary,
51 information regarding the results of the investigation of current or
52 prospective employees of construction contractors and subsequent changes
53 in status related to such employees shall be transmitted via an inter-
54 net-based system made available to construction contractors upon appli-
55 cation of the construction contractor to the commissioner where, by
56 logging into a protected web portal and entering in the employee name

1 and social security number, and construction contractors would be able
2 to access fingerprint results, whether the employee first completed a
3 form provided to them by the construction contractors, or received a
4 form previously from a school district, charter school or board of coop-
5 erative educational services. Nothing in this section shall require an
6 employee who has already submitted their fingerprints to the commission-
7 er to have to submit them again, so long as they were not destroyed.

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

26 § 8. Subdivision 3 of section 3035 of the education law, as amended by
27 section 8 of chapter 630 of the laws of 2006, is amended to read as
28 follows:

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

45 § 9. Section 1125 of the education law is amended by adding a new
46 subdivision 11 to read as follows:

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

52 § 10. Subdivision 3 of section 424-a of the social services law, as
53 amended by section 14-a of part H of chapter 56 of the laws of 2019, is
54 amended to read as follows:

55 3. For purposes of this section, the term "provider" or "provider
56 agency" shall mean: an authorized agency; the office of children and

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

38 § 11. Paragraph (a) of subdivision 2 of section 390-a of the social
39 services law, as amended by chapter 416 of the laws of 2000, is amended
40 to read as follows:

41 (a) review and evaluate the backgrounds of and information supplied by
42 any person applying to be a child day care center or school-age child
43 care program employee or volunteer or group family day care assistant, a
44 provider of family day care or group family day care, or a director of a
45 child day care center, head start day care center or school-age child
46 care program or a construction contractor, or a construction contrac-
47 tor's employee who services any of these entities. Such procedures shall
48 include but not be limited to the following requirements: that the
49 applicant set forth his or her employment history, provide personal and
50 employment references; submit such information as is required for
51 screening with the statewide central register of child abuse and
52 maltreatment in accordance with the provisions of section four hundred
53 twenty-four-a of this article; sign a sworn statement indicating wheth-
54 er, to the best of his or her knowledge, he or she has ever been
55 convicted of a crime in this state or any other jurisdiction; and
56 provide his or her fingerprints for submission to the division of crimi-

nal justice services in accordance with the provisions of section three hundred ninety-b of this title. Notwithstanding the provisions of this paragraph, where a program has people working on their premises through a construction contractor as defined in subdivision eleven of section eleven hundred twenty-five of the education law and such construction contractor has properly performed checks on its employees as a provider or provider agency under section four hundred twenty-four-a of this chapter, then such program does not need to run the check itself on the construction contractor employees working on their site;

§ 12. This act shall take effect immediately; provided however that: (a) the amendments to section 1125 of the education law made by section one of this act shall take effect on the same date and in the same manner as chapter 363 of the laws of 2018, takes effect; (b) the amendments to paragraph (d) of subdivision 30 of section 305 of the education law made by section four of this act shall not affect the repeal of such paragraph and shall be deemed repealed therewith; and (c) the amendments to subdivision 3 of section 3035 of the education law made by section seven of this act shall be subject to the expiration and reversion of such subdivision, pursuant to section 12 of chapter 147 of the laws of 2001, as amended, when upon such date the provisions of section eight of this act shall take effect.