

# STATE OF NEW YORK

2719

2019-2020 Regular Sessions

## IN ASSEMBLY

January 25, 2019

Introduced by M. of A. L. ROSENTHAL, BENEDETTO, WEPRIN, THIELE, JAFFEE, STIRPE, GALEF, FAHY, WOERNER, JOHNS, RA, MONTESANO, McDONOUGH, MORI-NELLO -- Multi-Sponsored by -- M. of A. BARCLAY, BLANKENBUSH, DenDEKKER, LENTOL, LUPARDO, SCHIMMINGER -- 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:

Section 1. Subdivision 3 of section 1125 of the education law, as amended by chapter 363 of the laws of 2018, is amended to read as follows:

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

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

(v) Notwithstanding anything to the contrary in this section, the board of trustees of a charter school shall not be required to oversee the fingerprinting process for employees of a contracted service provid-

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

LBD07679-01-9

er of student support services such as, but not limited to, substitute teachers, substitute teacher aides, substitute nurses, educational consultants, tutors, substitute school administrative support and other temporary student services professionals, so long as they have engaged a contracted service provider of student support services who has complied with the fingerprinting requirements elsewhere in this chapter.

§ 3. Paragraph (a) 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:

(a) The commissioner, in cooperation with the division of criminal justice services and in accordance with all applicable provisions of law, shall promulgate rules and regulations to require the fingerprinting 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 contracted service providers of student support services 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, contracted service providers of student support services, and nonpublic and private elementary and secondary schools in connection with the submission of fingerprints that contains the specific job title sought 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 contracted service providers of student support services upon application of the contracted service provider of student support services 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.

§ 4. 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, contracted service providers of student support services and nonpublic and private elementary and secondary schools that elect to fingerprint and seek clearance for prospective employees that shall:

§ 5. 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, contracted service providers of student support services 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.

§ 6. 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 contracted service provider of student support services appoint a designated educational official for the purposes set forth in section 380.90 of the criminal procedure law, subdivision seventeen of section 301.2 and subdivision three of section 380.1 of the family court act. In addition, the commissioner shall promulgate rules and regulations, in consultation with the office of court administration, to facilitate electronic access by the courts to the names and addresses of such designated educational officials.

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

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

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

3. (a) Clearance. (i) After receipt of a criminal history record from the division of criminal justice services and the federal bureau of investigation the commissioner shall promptly notify the appropriate school district, charter school, board of cooperative educational services, contracted service providers of student support services or nonpublic or private elementary or secondary school whether the prospective employee to which such report relates is cleared for employment based upon his or her criminal history. All determinations to grant or

1 deny clearance for employment pursuant to this paragraph shall be  
2 performed in accordance with subdivision sixteen of section two hundred  
3 ninety-six of the executive law and article twenty-three-A of the  
4 correction law. When the commissioner denies a prospective employee  
5 clearance for employment, such prospective employee shall be afforded  
6 notice and the right to be heard and offer proof in opposition to such  
7 determination in accordance with the regulations of the commissioner.

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

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

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

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

1 commissioner denies a prospective employee clearance for employment,  
2 such prospective employee shall be afforded notice and the right to be  
3 heard and offer proof in opposition to such determination in accordance  
4 with the regulations of the commissioner.

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

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

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

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

1 goods and services and staff of such providers, consultants, interns and  
2 volunteers.

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

6 (a) review and evaluate the backgrounds of and information supplied by  
7 any person applying to be a child day care center or school-age child  
8 care program employee or volunteer or group family day care assistant, a  
9 provider of family day care or group family day care, or a director of a  
10 child day care center, head start day care center or school-age child  
11 care program. Such procedures shall include but not be limited to the  
12 following requirements: that the applicant set forth his or her employ-  
13 ment history, provide personal and employment references; submit such  
14 information as is required for screening with the statewide central  
15 register of child abuse and maltreatment in accordance with the  
16 provisions of section four hundred twenty-four-a of this article; sign a  
17 sworn statement indicating whether, to the best of his or her knowledge,  
18 he or she has ever been convicted of a crime in this state or any other  
19 jurisdiction; and provide his or her fingerprints for submission to the  
20 division of criminal justice services in accordance with the provisions  
21 of section three hundred ninety-b of this title. Notwithstanding the  
22 provisions of this paragraph, where a program has people working on  
23 their premises through a contracted service provider of student support  
24 services as defined in subdivision eleven of section eleven hundred  
25 twenty-five of the education law, and such contracted services provider  
26 of student support services has properly performed checks on its employ-  
27 ees as a provider or provider agency under section four hundred twenty-  
28 four-a of this chapter, then such program does not need to run the check  
29 itself on the contracted service provider employees working on their  
30 site;

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

32 (a) the amendments to section 1125 of the education law made by section  
33 one of this act shall take effect on the same date and in the same  
34 manner as chapter 363 of the laws of 2018, takes effect; (b) the amend-  
35 ments to paragraph (a-2) of subdivision 3 of section 2854 of the educa-  
36 tion law made by section two of this act shall not affect the expiration  
37 of such paragraph and shall expire and be deemed repealed therewith; (c)  
38 the amendments to paragraph (d) of subdivision 30 of section 305 of the  
39 education law made by section five of this act shall not affect the  
40 repeal of such paragraph and shall be deemed repealed therewith; and (d)  
41 the amendments to subdivision 3 of section 3035 of the education law  
42 made by section eight of this act shall be subject to the expiration and  
43 reversion of such subdivision, pursuant to section 12 of chapter 147 of  
44 the laws of 2001, as amended, when upon such date the provisions of  
45 section nine of this act shall take effect.