STATE OF NEW YORK

5778

2019-2020 Regular Sessions

IN ASSEMBLY

February 19, 2019

Introduced by M. of A. GALEF -- read once and referred to the Committee on Education

AN ACT to amend the education law, in relation to including current school district employees in the requirements for fingerprinting and criminal history record checks

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision 30 of section 305 of the education law, as added by chapter 180 of the laws of 2000, paragraph (a), the opening paragraph and subparagraph (i) of paragraph (b), subparagraph (vii) of paragraph (c) and paragraph (d) as amended by chapter 630 of the laws of 2006, subparagraph (vi) of paragraph (c) as added and subparagraph (viii) of paragraph (c) as renumbered by chapter 182 of the laws of 2000, and paragraph (e) as added by chapter 147 of the laws of 2001, is amended to read as follows:

30. (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 **all employees and** 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 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, and nonpublic and private elementary and secondary schools in connection with the submission of fingerprints that contains the specific job title **held or** sought and any other information that may be relevant [~~to consideration of the applicant~~]. The commissioner shall also

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

LBD09179-02-9

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.

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

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

(ii) inform the **employee or** prospective employee that he or she has the right to obtain, review and seek correction of his or her criminal history information pursuant to regulations and procedures established by the division of criminal justice services.

(c) The [~~prospective~~] employer shall obtain the signed, informed consent of the **employee or** prospective employee on such form supplied by the commissioner which indicates that such person has:

(i) been informed of the right and procedures necessary to obtain, review and seek correction of his or her criminal history information;

(ii) been informed of the reason for the request for his or her criminal history information;

(iii) consented to such request for a report;

(iv) supplied on the form a current mailing or home address for the **employee or** prospective employee;

(v) been informed that he or she may withdraw his or her application for employment pursuant to this section, without prejudice, at any time before employment is offered or declined, regardless of whether the prospective employee or employer has reviewed such prospective employee's criminal history information;

(vi) where the applicant **or employee** is to be fingerprinted pursuant to section three thousand thirty-five of this chapter, the process for seeking a waiver of the fees associated with conducting a criminal history records check, pursuant to paragraph (b) of subdivision four of section three thousand thirty-five of this chapter,

(vii) been informed that in the event his or her employment is terminated and such person has not become employed in the same or another school district, charter school, board of cooperative educational services, or nonpublic or private elementary or secondary school within twelve-months of such termination, the commissioner shall notify the division of criminal justice services of such termination, and the division of criminal justice services shall destroy the fingerprints of such person. Such person may request that the commissioner notify the divi-

sion of criminal justice services that his or her fingerprints shall be destroyed prior to the expiration of such twelve month period in which case the commissioner shall notify the division of criminal justice services and the division shall destroy the fingerprints of such person promptly upon receipt of the request; and

(viii) been informed of the manner in which he or she may submit to the commissioner any information that may be relevant to the consideration of his or her application for clearance including, where applicable, information in regard to his or her good conduct and rehabilitation.

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

(e) The commissioner may promulgate rules and regulations regarding the conditional appointment and emergency conditional appointment of a prospective employee.

§ 2. Section 3035 of the education law, as added by chapter 180 of the laws of 2000, subdivision 1 as amended by chapter 630 of the laws of 2006, subdivision 3 as amended by section 7 of chapter 630 of the laws of 2006, subdivision 3-a as added by chapter 380 of the laws of 2001, subdivisions 4 and 6 as amended by chapter 182 of the laws of 2000, is amended to read as follows:

§ 3035. Duties of commissioner; submission of fingerprints. 1. The commissioner shall submit to the division of criminal justice services two sets of fingerprints of **all employees and** 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 and of **all employees and** 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.

2. No cause of action against the commissioner, the department or the division of criminal justice services for damages related to the dissemination of criminal history records pursuant to this section shall exist when the commissioner, department or division of criminal justice services has reasonably and in good faith relied upon the accuracy and completeness of criminal history information furnished to it by qualified agencies. The provision of such information by the division of criminal justice services shall be subject to the provisions of subdivision sixteen of section two hundred ninety-six of the executive law. The

consideration of such criminal history record by the commissioner shall be subject to article twenty-three-A of the correction law.

3. (a) Clearance. 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, or nonpublic or private elementary or secondary school whether the **employee or** prospective employee to which such report relates is cleared for employment based upon his or her criminal history. All determinations to grant or deny clearance for employment pursuant to this paragraph shall be performed in accordance with subdivision sixteen of section two hundred ninety-six of the executive law and article twenty-three-A of the correction law. When the commissioner denies **an employee or** a prospective employee clearance for employment, such **employee or** prospective employee shall be afforded notice and the right to be heard and offer proof in opposition to such determination in accordance with the regulations of the commissioner.

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

3-a. Upon request from **an employee or** a prospective employee who has been cleared by the commissioner for employment and/or certification, the commissioner shall have the authority to forward a copy of such criminal history record to the city school district of the city of New York by the most expeditious means available. Furthermore, upon notification that such prospective employee is employed by the city school district of the city of New York, the division of criminal justice services shall have the authority to provide subsequent criminal history notifications directly to the city school district of the city of New York. Upon request from **an employee or** a prospective employee who has been cleared for licensure and/or employment by the city school district of the city of New York, such school district shall have the authority to forward a copy of the **employee's or** prospective employee's criminal history record to the commissioner, by the most expeditious means available, for the purposes of this section. Furthermore, upon notification that such **employee or** prospective employee is employed by a school district outside the city of New York, the division of criminal justice services shall have the authority to provide subsequent criminal history notifications directly to the commissioner.

4. The fee provisions of subdivision two of section three thousand four-b of this chapter shall apply to criminal history records searches conducted pursuant to this section; provided however that, notwithstand-

ing the provisions of any other law: (a) the fees associated with an employee participating in a public assistance employment program, pursuant to title nine-B of article five of the social services law, or receiving employment services through the federal temporary assistance for needy families block grant pursuant to appropriations to the office of temporary disability assistance, shall be paid by the social services district making such employment placement or assignment and the cost of such fees, if not subject to full reimbursement under such federal block grant, shall be deemed to be an employment services administrative expense. In no event shall such a participant described herein be required to personally pay any fee imposed by the division of criminal justice services or the federal bureau of investigation or any other fee for the purpose of conducting a criminal history records search; and (b) any prospective employee, including, notwithstanding any provision of law to the contrary, a prospective employee applying for a position in a school district within a city with a population of one million or more, may submit a request to a governing body of a school district, on a form prescribed by the commissioner, that the fees imposed for conducting a criminal history records check be waived. Such governing body may grant such a request if such governing body determines that payment of such a fee would impose an unreasonable financial hardship on the applicant or his or her family and, upon such determination, the governing body shall pay such fee on behalf of the prospective employee to the appropriate authority.

5. The commissioner and the division of criminal justice services shall enter into an agreement for the purposes of implementing the provisions of this section.

6. Nothing in this section shall be construed or interpreted to alter or in any way diminish the integrity of collective bargaining agreements negotiated between an employer and any certified or authorized collective bargaining agent, with respect to payment of fees for criminal history records searches, nor to diminish any rights pursuant to such agreements.

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

3. 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, or nonpublic or private elementary or secondary school whether the **employee or** prospective employee to which such report relates is cleared for employment based upon his or her criminal history. All determinations to grant or deny clearance for employment pursuant to this subdivision shall be performed in accordance with subdivision sixteen of section two hundred ninety-six of the executive law and article twenty-three-A of the correction law. When the commissioner denies **an employee or** a prospective employee clearance for employment, such **employee or** prospective employee shall be afforded notice and the right to be heard and offer proof in opposition to such determination in accordance with the regulations of the commissioner.

§ 4. Section 3001-d of the education law, as added by chapter 630 of the laws of 2006, is amended to read as follows:

§ 3001-d. Criminal history record checks and conditional appointments; nonpublic and private schools. 1. a. "Employee" shall mean any **employee or** prospective employee of a nonpublic or private elementary or second-

ary school which requires the fingerprinting of prospective employees pursuant to this section, or employee of a contracted service provider or worker placed within such school under a public assistance employment program, pursuant to title nine-B of article five of the social services law, and consistent with the provisions of such title for the provision of services to such school, its students or employees, directly or through contract, whereby such services performed by such person involve direct student contact. Any nonpublic or private elementary or secondary school which elects to submit for review criminal history information concerning **employees and/or** prospective employees must do so with respect to each such **employee or** prospective employee, as defined in this paragraph, in accordance with this section.

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

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

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

(b) Any nonpublic or private elementary or secondary school may make an emergency conditional appointment when an unforeseen emergency vacancy has occurred. When such appointment is made, the process for conditional appointment pursuant to paragraph (a) of this subdivision may also be initiated. Emergency conditional appointment may commence prior to notification from the commissioner on conditional clearance and shall terminate when the prospective employer is notified by the commissioner regarding conditional clearance, provided that if conditional clearance is granted, the appointment may continue as a conditional appointment. Prior to the commencement of such appointment, the prospective employer must obtain a signed statement for emergency conditional appointment from the prospective employee, indicating whether, to the best of his or

her knowledge, he or she has a pending criminal charge or criminal conviction in any jurisdiction. An "unforeseen emergency vacancy" shall be defined as: (i) a vacancy that occurred less than ten business days before the start of any school session, including summer school, or during any school session, including summer school, without sufficient notice to allow for clearance or conditional clearance; (ii) when no other qualified person is available to fill the vacancy temporarily; and (iii) when emergency conditional appointment is necessary to maintain services which the school is legally required to provide or services necessary to protect the health, education or safety of students or staff.

(c) Each nonpublic or private elementary or secondary school, which elects to fingerprint **employees and/or** prospective employees pursuant to subdivision two of this section, shall develop a policy for the safety of the children who have contact with an employee holding conditional appointment or emergency conditional appointment.

4. Fees. Notwithstanding any other provision of law to the contrary, the commissioner is authorized to charge additional fees to applicants for certificates pursuant to this section in an amount equal to the fees established pursuant to law by the division of criminal justice services and the federal bureau of investigation for the searches authorized by this section.

§ 5. This act shall take effect on the one hundred eightieth day after it shall have become a law; provided that the amendments to paragraphs (d) and (e) of subdivision 30 of section 305 of the education law made by section one of this act, shall not affect the repeal of such provisions and shall expire and be deemed repealed therewith; and provided further that the amendments to subdivision 3 of section 3035 of the education law made by section two of this act shall be subject to the expiration of such subdivision when upon such date the provisions of section three of this act shall take effect.