

# STATE OF NEW YORK

4862--A

2019-2020 Regular Sessions

## IN SENATE

March 27, 2019

Introduced by Sens. MARTINEZ, 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

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.

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

LBD07679-06-9

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

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

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

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

52 (d) The commissioner shall develop forms to be provided to all school  
53 districts, charter schools, boards of cooperative educational services,  
54 construction contractors and to all nonpublic and private elementary and  
55 secondary schools that elect to fingerprint their prospective employees,

1 to be completed and signed by prospective employees when conditional  
2 appointment or emergency conditional appointment is offered.

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

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

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

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

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

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

1 (ii) Notwithstanding any other provisions of law to the contrary,  
2 information regarding the results of the investigation of current or  
3 prospective employees of construction contractors and subsequent changes  
4 in status related to such employees shall be transmitted via an inter-  
5 net-based system made available to construction contractors upon appli-  
6 cation of the construction contractor to the commissioner where, by  
7 logging into a protected web portal and entering in the employee name  
8 and social security number, and construction contractors would be able  
9 to access fingerprint results, whether the employee first completed a  
10 form provided to them by the construction contractors, or received a  
11 form previously from a school district, charter school or board of coop-  
12 erative educational services. Nothing in this section shall require an  
13 employee who has already submitted their fingerprints to the commis-  
14 ioner to have to submit them again, so long as they were not destroyed.

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

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

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

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

54 11. "Construction contractor" shall mean any individual or entity  
55 seeking permission either through a bid or otherwise to perform  
56 construction and/or maintenance work on facilities occupied at any point

1 by students of the school district, charter school, board of cooperative  
2 educational services, or nonpublic school.

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

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

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

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

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

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