

STATE OF NEW YORK

3695

2021-2022 Regular Sessions

IN ASSEMBLY

January 28, 2021

Introduced by M. of A. L. ROSENTHAL, BENEDETTO, WEPRIN, THIELE, STIRPE, GALEF, FAHY, WOERNER, GRIFFIN, RA, MONTESANO, McDONOUGH, MORINELLO -- Multi-Sponsored by -- M. of A. BARCLAY, BLANKENBUSH, FITZPATRICK, LUPARDO -- 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:

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 person or entity that
12 contracts with a school to provide student support services, and
13 consistent with the provisions of such title for the provision of
14 services to such school, its students or employees, directly or through
15 contract.

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

18 (v) Notwithstanding anything to the contrary in this section, the
19 board of trustees of a charter school shall not be required to oversee
20 the fingerprinting process for employees of a contracted service provid-
21 er of student support services such as, but not limited to, substitute

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

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1 teachers, substitute teacher aides, substitute nurses, educational
2 consultants, tutors, substitute school administrative support and other
3 temporary student services professionals, so long as they have engaged a
4 contracted service provider of student support services who has complied
5 with the fingerprinting requirements elsewhere in this chapter.

6 § 3. Paragraph (a) of subdivision 30 of section 305 of the education
7 law, as amended by chapter 630 of the laws of 2006, is amended to read
8 as follows:

9 (a) The commissioner, in cooperation with the division of criminal
10 justice services and in accordance with all applicable provisions of
11 law, shall promulgate rules and regulations to require the fingerprint-
12 ing of prospective employees, as defined in section eleven hundred twenty-
13 five of this chapter, of school districts, charter schools ~~[and]~~,
14 boards of cooperative educational services and contracted service
15 providers of student support services and authorizing the fingerprinting
16 of prospective employees of nonpublic and private elementary and second-
17 ary schools, and for the use of information derived from searches of the
18 records of the division of criminal justice services and the federal
19 bureau of investigation based on the use of such fingerprints. The
20 commissioner shall also develop a form for use by school districts,
21 charter schools, boards of cooperative educational services, contracted
22 service providers of student support services, and nonpublic and private
23 elementary and secondary schools in connection with the submission of
24 fingerprints that contains the specific job title sought and any other
25 information that may be relevant to consideration of the applicant. The
26 commissioner shall also create or expand the functionality of internet
27 based systems to provide access to contracted service providers of
28 student support services upon application of the contracted service
29 provider of student support services to the commissioner to enable them
30 to be able to review fingerprint results and subsequent arrest notifica-
31 tions based on the fingerprint and background check data by logging into
32 a protected web portal, entering in the employee name and social securi-
33 ty number, which would provide access to see the fingerprint results.

34 The commissioner shall also establish a form for the recordation of
35 allegations of child abuse in an educational setting, as required pursu-
36 ant to section eleven hundred twenty-six of this chapter. No person who
37 has been fingerprinted pursuant to section three thousand four-b of this
38 chapter or pursuant to section five hundred nine-cc or twelve hundred
39 twenty-nine-d of the vehicle and traffic law and whose fingerprints
40 remain on file with the division of criminal justice services shall be
41 required to undergo fingerprinting for purposes of a new criminal histo-
42 ry record check. This subdivision and the rules and regulations promul-
43 gated pursuant thereto shall not apply to a school district within a
44 city with a population of one million or more.

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

48 The commissioner, in cooperation with the division of criminal justice
49 services, shall promulgate a form to be provided to all such prospective
50 employees of school districts, charter schools, boards of cooperative
51 educational services, contracted service providers of student support
52 services and nonpublic and private elementary and secondary schools that
53 elect to fingerprint and seek clearance for prospective employees that
54 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 14-a of part H of chapter 56 of the laws of 2019, 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 certif-
20 ication 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; including head start programs
25 which are funded pursuant to title V of the federal economic opportunity
26 act of nineteen hundred sixty-four, as amended; early intervention
27 service established pursuant to section twenty-five hundred forty of the
28 public health law; preschool services established pursuant to section
29 forty-four hundred ten of the education law; contracted service provid-
30 ers of student support services as defined in subdivision eleven of
31 section eleven hundred twenty-five of the education law; special act
32 school districts as enumerated in chapter five hundred sixty-six of the
33 laws of nineteen hundred sixty-seven, as amended; programs and facili-
34 ties licensed by the office of [~~alcoholism and substance abuse~~]addiction
35 services and supports; residential schools which are operated, super-
36 vised or approved by the education department; health homes, or any
37 subcontractor of such health homes, who contracts with or is approved or
38 otherwise authorized by the department of health to provide health home
39 services to all those enrolled pursuant to a diagnosis of a develop-
40 mental disability as defined in subdivision twenty-two of section 1.03
41 of the mental hygiene law and enrollees who are under twenty-one years
42 of age under section three hundred sixty-five-1 of this chapter, or any
43 entity that provides home and community based services to enrollees who
44 are under twenty-one years of age under a demonstration program pursuant
45 to section eleven hundred fifteen of the federal social security act;
46 publicly-funded emergency shelters for families with children, provided,
47 however, for purposes of this section, when the provider or provider
48 agency is a publicly-funded emergency shelter for families with chil-
49 dren, then all references in this section to the "potential for regular
50 and substantial contact with individuals who are cared for by the agen-
51 cy" shall mean the potential for regular and substantial contact with
52 children who are served by such shelter; and any other facility or
53 provider agency, as defined in subdivision four of section four hundred
54 eighty-eight of this chapter, in regard to the employment of staff, or
55 use of providers of goods and services and staff of such providers,
56 consultants, interns and volunteers.

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

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

29 § 13. This act shall take effect immediately; provided however that:
30 (a) the amendments to paragraph (a-2) of subdivision 3 of section 2854
31 of the education law made by section two of this act shall not affect
32 the expiration of such paragraph and shall expire and be deemed repealed
33 therewith; (b) the amendments to paragraph (d) of subdivision 30 of
34 section 305 of the education law made by section five of this act shall
35 not affect the repeal of such paragraph and shall be deemed repealed
36 therewith; and (c) the amendments to subdivision 3 of section 3035 of
37 the education law made by section eight of this act shall be subject to
38 the expiration and reversion of such subdivision, pursuant to section 12
39 of chapter 147 of the laws of 2001, as amended, when upon such date the
40 provisions of section nine of this act shall take effect.