STATE OF NEW YORK

392

2021-2022 Regular Sessions

IN SENATE

(Prefiled)

January 6, 2021

Introduced by Sen. KAMINSKY -- read twice and ordered printed, and when printed to be committed to the Committee on Education

AN ACT to amend the education law, in relation to requiring nonpublic and private elementary and secondary schools to apply to the commissioner of education for criminal history record checks on prospective employees

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

Section 1. 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 [~~authorizing~~] **requiring** 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 sought and any other information that may be relevant to consideration of the applicant. 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

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

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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.

§ 2. The opening paragraph and subparagraph (i) of paragraph (b) of subdivision 30 of section 305 of the education law, as amended by chapter 630 of the laws of 2006, are 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, and nonpublic and private elementary and secondary schools [~~that elect to fingerprint and seek clearance for prospective employees~~] that shall:

(i) inform the 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;

§ 3. 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, 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.

§ 4. Subdivision 20 of section 2590-h of the education law, as amended by chapter 345 of the laws of 2009, is amended to read as follows:

20. Ensure compliance with qualifications established for all personnel employed in the city district, including **requiring** the taking of fingerprints as a prerequisite for licensure and/or employment of such personnel. Every set of fingerprints taken pursuant to this subdivision shall be promptly submitted to the division of criminal justice services where it shall be appropriately processed. Furthermore, the division of criminal justice services is authorized to submit the fingerprints to the federal bureau of investigation for a national criminal history record check.

§ 5. Subdivision 20 of section 2590-h of the education law, as amended by chapter 100 of the laws of 2003, is amended to read as follows:

20. Ensure compliance with qualifications established for all personnel employed in the city district, including **requiring** the taking of fingerprints as a prerequisite for licensure and/or employment of such personnel. Every set of fingerprints taken pursuant to this subdivision shall be promptly submitted to the division of criminal justice services where it shall be appropriately processed. Furthermore, the division of criminal justice services is authorized to submit the fingerprints to the federal bureau of investigation for a national criminal history record check.

§ 6. Subdivisions 1, 2 and 3 of section 3001-d of the education law, as added by chapter 630 of the laws of 2006, are amended to read as follows:

1. a. "Employee" shall mean any prospective employee of a nonpublic or private elementary or secondary 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~~] **Every** nonpublic or private elementary or secondary school [~~which elects to~~] **shall** submit for review criminal history information concerning prospective employees [~~must do so with respect to each such 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~~] **Every** nonpublic or private elementary or secondary school [~~may~~] **shall** require, for the purposes of a criminal history record check, the fingerprinting of all 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 prospective employer shall furnish the applicant with the form described in paragraph (c) of subdivision thirty of section three hundred five of this chapter and shall obtain the 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~~] **shall** 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~~] **shall** 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 commis-

sioner 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 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.

§ 7. This act shall take effect immediately; provided that the amendments to paragraph (d) of subdivision 30 of section 305 of the education law made by section three of this act shall not affect the expiration and repeal of such paragraph and shall expire and be deemed repealed therewith; provided further, however, that the amendments to subdivision 20 of section 2590-h of the education law made by section four of this act shall not affect the expiration and repeal of such section and shall expire therewith, when upon such date section five of this act shall take effect.