STATE OF NEW YORK

3406

2021-2022 Regular Sessions

IN ASSEMBLY

January 26, 2021

Introduced by M. of A. GRIFFIN, THIELE, LAVINE -- Multi-Sponsored by -- M. of A. ENGLEBRIGHT -- 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 construction contractors

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 construction contractor,** 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) 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 construction contractors**

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

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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, **construction contractors,** and nonpublic and private elementary and secondary schools in connection with the submission of fingerprints that contains the specific job title sought **or the construction or maintenance project on which the individual will be working,** 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 construction contractors upon application of the construction contractor 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.

§ 3. 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, **construction contractors** and nonpublic and private elementary and secondary schools that elect to fingerprint and seek clearance for prospective employees that shall:

§ 4. 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, **construction contractors** 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.

§ 5. 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 construction contractor** 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.

§ 6. 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~~] **Prior to the awarding of a contract to perform services, 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**, construction contractors** 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.

§ 7. 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, **construction contractors** or nonpublic or private elementary or secondary school whether the prospective employee to which such report relates is cleared for employment **or for access to the proposed project to perform construction and/or maintenance work** 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 a prospective employee clearance for employment, such 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.

(ii) Notwithstanding any other provisions of law to the contrary, information regarding the results of the investigation of current or prospective employees of construction contractors and subsequent changes in status related to such employees shall be transmitted via an internet-based system made available to construction contractors upon application of the construction contractor to the commissioner where, by logging into a protected web portal and entering in the employee name and social security number, and construction contractors would be able to access fingerprint results, whether the employee first completed a form provided to them by the construction contractors, or received a

form previously from a school district, charter school or board of cooperative educational services. Nothing in this section shall require an employee who has already submitted their fingerprints to the commissioner to have to submit them again, so long as they were not destroyed.

(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, **construction contractors** or nonpublic or private elementary or secondary school that the prospective employee to which such report relates is conditionally cleared for employment **or work on a construction or maintenance project** 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.

§ 8. 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, **construction contractor,** or nonpublic or private elementary or secondary school whether the prospective employee to which such report relates is cleared for employment **or for access to a proposed project site to perform construction and/or maintenance work** based upon his or her criminal history. All determinations to grant or deny clearance for employment **or ability to work on a proposed project** 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 a prospective employee clearance for employment, such 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.

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

11. "Construction contractor" shall mean any individual or entity seeking permission either through a bid or otherwise to perform construction and/or maintenance work on facilities occupied at any point by students of the school district, charter school, board of cooperative educational services, or nonpublic school.

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

3. For purposes of this section, the term "provider" or "provider agency" shall mean: an authorized agency; the office of children and family services; juvenile detention facilities subject to the certification of the office of children and family services; programs established pursuant to article nineteen-H of the executive law; non-residen-

tial or residential programs or facilities licensed or operated by the office of mental health or the office for people with developmental disabilities except family care homes; including head start programs which are funded pursuant to title V of the federal economic opportunity act of nineteen hundred sixty-four, as amended; early intervention service established pursuant to section twenty-five hundred forty of the public health law; preschool services established pursuant to section forty-four hundred ten of the education law; **construction contractors as defined in subdivision eleven of section eleven hundred twenty-five of the education law;** special act school districts as enumerated in chapter five hundred sixty-six of the laws of nineteen hundred sixty-seven, as amended; programs and facilities licensed by the office of [~~alcoholism and substance abuse~~] **addiction** services **and supports**; residential schools which are operated, supervised or approved by the education department; health homes, or any subcontractor of such health homes, who contracts with or is approved or otherwise authorized by the department of health to provide health home services to all those enrolled pursuant to a diagnosis of a developmental disability as defined in subdivision twenty-two of section 1.03 of the mental hygiene law and enrollees who are under twenty-one years of age under section three hundred sixty-five-l of this chapter, or any entity that provides home and community based services to enrollees who are under twenty-one years of age under a demonstration program pursuant to section eleven hundred fifteen of the federal social security act; publicly-funded emergency shelters for families with children, provided, however, for purposes of this section, when the provider or provider agency is a publicly-funded emergency shelter for families with children, then all references in this section to the "potential for regular and substantial contact with individuals who are cared for by the agency" shall mean the potential for regular and substantial contact with children who are served by such shelter; and any other facility or provider agency, as defined in subdivision four of section four hundred eighty-eight of this chapter, in regard to the employment of staff, or use of providers of goods and services and staff of such providers, consultants, interns and volunteers.

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

(a) review and evaluate the backgrounds of and information supplied by any person applying to be a child day care center or school-age child care program employee or volunteer or group family day care assistant, a provider of family day care or group family day care, or a director of a child day care center, head start day care center or school-age child care program **or a construction contractor, or a construction contractor's employee who services any of these entities**. Such procedures shall include but not be limited to the following requirements: that the applicant set forth his or her employment history, provide personal and employment references; submit such information as is required for screening with the statewide central register of child abuse and maltreatment in accordance with the provisions of section four hundred twenty-four-a of this article; sign a sworn statement indicating whether, to the best of his or her knowledge, he or she has ever been convicted of a crime in this state or any other jurisdiction; and provide his or her fingerprints for submission to the division of criminal justice services in accordance with the provisions of section three hundred ninety-b of this title**. Notwithstanding the provisions of this paragraph, where a program has people working on their premises through**

a construction contractor as defined in subdivision eleven of section eleven hundred twenty-five of the education law and such construction contractor has properly performed checks on its employees as a provider or provider agency under section four hundred twenty-four-a of this chapter, then such program does not need to run the check itself on the construction contractor employees working on their site;

§ 12. This act shall take effect immediately; provided however that: (a) the amendments to section 1125 of the education law made by section one of this act shall take effect on the same date and in the same manner as chapter 363 of the laws of 2018, takes effect; (b) the amendments to paragraph (d) of subdivision 30 of section 305 of the education law made by section four of this act shall not affect the repeal of such paragraph and shall be deemed repealed therewith; and (c) the amendments to subdivision 3 of section 3035 of the education law made by section seven of this act shall be subject to the expiration and reversion of such subdivision, pursuant to section 12 of chapter 147 of the laws of 2001, as amended, when upon such date the provisions of section eight of this act shall take effect.