

STATE OF NEW YORK

929--A

2023-2024 Regular Sessions

IN ASSEMBLY

January 11, 2023

Introduced by M. of A. L. ROSENTHAL, BENEDETTO, WEPRIN, THIELE, STIRPE, FAHY, WOERNER, RA, MORINELLO -- Multi-Sponsored by -- M. of A. BARCLAY, BLANKENBUSH, FITZPATRICK, LUPARDO -- read once and referred to the Committee on Education -- 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 contracted service providers of student support services

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 person or entity that contracts with a school to provide student support services, 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-2) of subdivision 3 of section 2854 of the education law is amended by adding a new subparagraph (v) to read as follows:

(v) (1) Notwithstanding anything to the contrary in this section, if a school district, charter school, board of cooperative educational services, or non-public and private elementary or secondary school has

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

LBD01309-02-3

1 engaged a contracted service provider of student support services, they
2 may opt to allow the contracted service provider to oversee the finger-
3 printing process of the contracted service provider's employees.

4 (2) Any school district, charter school, board of cooperative educa-
5 tional services, or non-public and private elementary or secondary
6 school that opts in shall not be required to oversee the fingerprinting
7 process for employees of a contracted service provider of student
8 support services such as, but not limited to, substitute teachers,
9 substitute teacher aides, substitute nurses, educational consultants,
10 tutors, substitute school administrative support and other temporary
11 student services professionals, so long as they have engaged a
12 contracted service provider of student support services who has complied
13 with the fingerprinting requirements elsewhere in this chapter.

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

17 (a) The commissioner, in cooperation with the division of criminal
18 justice services and in accordance with all applicable provisions of
19 law, shall promulgate rules and regulations to require the fingerprint-
20 ing of prospective employees, as defined in section eleven hundred twen-
21 ty-five of this chapter, of school districts, charter schools ~~[and]~~,
22 boards of cooperative educational services and contracted service
23 providers of student support services and authorizing the fingerprinting
24 of prospective employees of nonpublic and private elementary and second-
25 ary schools, and for the use of information derived from searches of the
26 records of the division of criminal justice services and the federal
27 bureau of investigation based on the use of such fingerprints. The
28 commissioner shall also develop a form for use by school districts,
29 charter schools, boards of cooperative educational services, contracted
30 service providers of student support services, and nonpublic and private
31 elementary and secondary schools in connection with the submission of
32 fingerprints that contains the specific job title sought and any other
33 information that may be relevant to consideration of the applicant. The
34 commissioner shall also create or expand the functionality of internet
35 based systems to provide access to contracted service providers of
36 student support services upon application of the contracted service
37 provider of student support services to the commissioner to enable them
38 to be able to view clearance status results and subsequent arrest
39 notifications by logging into a protected web portal, entering in the
40 employee name and social security number, which would provide access to
41 see the clearance status results. The commissioner shall also establish
42 a form for the recordation of allegations of child abuse in an educa-
43 tional setting, as required pursuant to section eleven hundred twenty-
44 six of this chapter. No person who has been fingerprinted pursuant to
45 section three thousand four-b of this chapter or pursuant to section
46 five hundred nine-cc or twelve hundred twenty-nine-d of the vehicle and
47 traffic law and whose fingerprints remain on file with the division of
48 criminal justice services shall be required to undergo fingerprinting
49 for purposes of a new criminal history record check. This subdivision
50 and the rules and regulations promulgated pursuant thereto shall not
51 apply to a school district within a city with a population of one
52 million or more.

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

1 The commissioner, in cooperation with the division of criminal justice
2 services, shall promulgate a form to be provided to all such prospective
3 employees of school districts, charter schools, boards of cooperative
4 educational services, contracted service providers of student support
5 services and nonpublic and private elementary and secondary schools that
6 elect to fingerprint and seek clearance for prospective employees that
7 shall:

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

11 (d) The commissioner shall develop forms to be provided to all school
12 districts, charter schools, boards of cooperative educational services,
13 contracted service providers of student support services and to all
14 nonpublic and private elementary and secondary schools that elect to
15 fingerprint their prospective employees, to be completed and signed by
16 prospective employees when conditional appointment or emergency condi-
17 tional appointment is offered.

18 § 6. Subdivision 1 of section 3035 of the education law, as amended by
19 chapter 630 of the laws of 2006, is amended to read as follows:

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

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

43 3. (a) Clearance. (i) After receipt of a criminal history record from
44 the division of criminal justice services and the federal bureau of
45 investigation the commissioner shall promptly notify the appropriate
46 school district, charter school, board of cooperative educational
47 services, contracted service providers of student support services or
48 nonpublic or private elementary or secondary school whether the prospec-
49 tive employee to which such report relates is cleared for employment
50 based upon his or her criminal history. All determinations to grant or
51 deny clearance for employment pursuant to this paragraph shall be
52 performed in accordance with subdivision sixteen of section two hundred
53 ninety-six of the executive law and article twenty-three-A of the
54 correction law. When the commissioner denies a prospective employee
55 clearance for employment, such prospective employee shall be afforded

1 notice and the right to be heard and offer proof in opposition to such
2 determination in accordance with the regulations of the commissioner.

3 (ii) Notwithstanding any other provisions of law to the contrary,
4 information regarding the clearance status results of the investigation
5 of current or prospective employees of contracted service providers of
6 student support services and subsequent changes in status related to
7 such employees shall be transmitted via an internet-based system made
8 available to contracted service providers of student support services
9 upon application of the contracted service provider of student support
10 services to the commissioner where, by logging into a protected web
11 portal and entering in the employee name and social security number,
12 contracted service providers of student support services would be able
13 to access clearance status results, whether the employee first completed
14 a form provided to them by the contracted service provider of student
15 support services, or received a form previously from a school district,
16 charter school or board of cooperative educational services. Nothing in
17 this section shall require an employee who has already submitted their
18 fingerprints to the commissioner to have to submit them again, so long
19 as they were not destroyed.

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

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

40 11. "Contracted service provider of student support services" shall
41 mean any individual or entity that contracts with, but not limited to, a
42 school district, a charter school, a board of cooperative educational
43 services, or a nonpublic school for the provision of substitute teach-
44 ers, substitute teacher assistants, substitute nurses, educational
45 professional, tutors, substitute school administrative support, and
46 other temporary student service personnel.

47 § 9. Subdivision 3 of section 424-a of the social services law, as
48 amended by chapter 611 of the laws of 2022, is amended to read as
49 follows:

50 3. For purposes of this section, the term "provider" or "provider
51 agency" shall mean: an authorized agency; the office of children and
52 family services; a private, nonprofit incorporated agency that meets the
53 state office of children and family services program standards for child
54 advocacy centers; juvenile detention facilities subject to the certifi-
55 cation of the office of children and family services; programs estab-
56 lished pursuant to article nineteen-H of the executive law; non-residen-

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

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

39 (a) review and evaluate the backgrounds of and information supplied by
40 any person applying to be a child day care center or school-age child
41 care program employee or volunteer or group family day care assistant, a
42 provider of family day care or group family day care, or a director of a
43 child day care center, head start day care center or school-age child
44 care program. Such procedures shall include but not be limited to the
45 following requirements: that the applicant set forth his or her employ-
46 ment history, provide personal and employment references; submit such
47 information as is required for screening with the statewide central
48 register of child abuse and maltreatment in accordance with the
49 provisions of section four hundred twenty-four-a of this article; sign a
50 sworn statement indicating whether, to the best of his or her knowledge,
51 he or she has ever been convicted of a crime in this state or any other
52 jurisdiction; and provide his or her fingerprints for submission to the
53 division of criminal justice services in accordance with the provisions
54 of section three hundred ninety-b of this title. Notwithstanding the
55 provisions of this paragraph, where a program has people working on
56 their premises through a contracted service provider of student support

services as defined in subdivision eleven of section eleven hundred twenty-five of the education law, and such contracted services provider of student support services has reviewed clearance statuses 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 contracted service provider employees working on their site;

§ 11. This act shall take effect immediately.