

# STATE OF NEW YORK

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3477--A

2023-2024 Regular Sessions

## IN SENATE

January 31, 2023

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Introduced by Sen. STAVISKY -- read twice and ordered printed, and when printed to be committed 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:

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) (1) Notwithstanding anything to the contrary in this section, if a  
19 school district, charter school, board of cooperative educational  
20 services, or non-public and private elementary or secondary school has  
21 engaged a contracted service provider of student support services, they

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

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1 may opt to allow the contracted service provider to oversee the finger-  
2 printing process of the contracted service provider's employees.

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

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

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

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

55 The commissioner, in cooperation with the division of criminal justice  
56 services, shall promulgate a form to be provided to all such prospective

1 employees of school districts, charter schools, boards of cooperative  
2 educational services, contracted service providers of student support  
3 services and nonpublic and private elementary and secondary schools that  
4 elect to fingerprint and seek clearance for prospective employees that  
5 shall:

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

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

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

39 § 7. Subdivision 3 of section 3035 of the education law, as amended by  
40 of chapter 630 of the laws of 2006, is amended to read as 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, contracted service providers of student support services or  
46 nonpublic or private elementary or secondary school whether the prospec-  
47 tive employee to which such report relates is cleared for employment  
48 based upon his or her criminal history. All determinations to grant or  
49 deny clearance for employment pursuant to this paragraph shall be  
50 performed in accordance with subdivision sixteen of section two hundred  
51 ninety-six of the executive law and article twenty-three-A of the  
52 correction law. When the commissioner denies a prospective employee  
53 clearance for employment, such prospective employee shall be afforded  
54 notice and the right to be heard and offer proof in opposition to such  
55 determination in accordance with the regulations of the commissioner.

(ii) Notwithstanding any other provisions of law to the contrary, information regarding the clearance status results of the investigation of current or prospective employees of contracted service providers of student support services and subsequent changes in status related to such employees shall be transmitted via an internet-based system made available to contracted service providers of student support services upon application of the contracted service provider of student support services to the commissioner where, by logging into a protected web portal and entering in the employee name and social security number, contracted service providers of student support services would be able to access clearance status results, whether the employee first completed a form provided to them by the contracted service provider of student support services, 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, contracted service providers of student support services or nonpublic or private elementary or secondary school that the prospective employee to which such report relates is conditionally cleared for employment 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. Section 1125 of the education law is amended by adding a new subdivision 11 to read as follows:

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

§ 9. Subdivision 3 of section 424-a of the social services law, as amended by chapter 611 of the laws of 2022, 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; a private, nonprofit incorporated agency that meets the state office of children and family services program standards for child advocacy centers; 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-residential or residential programs or facilities licensed or operated by the office of mental health or the office for people with developmental

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

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

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

1 of student support services has reviewed clearance statuses as a provid-  
2 er or provider agency under section four hundred twenty-four-a of this  
3 chapter, then such program does not need to run the check itself on the  
4 contracted service provider employees working on their site;  
5 § 11. This act shall take effect immediately.