§ 3001-d. Criminal history record checks and conditional appointments; nonpublic and private schools. 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 nonpublic or private elementary or secondary school which elects to 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 nonpublic or private elementary or secondary school may 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 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 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 commissioner 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.

4. Fees. Notwithstanding any other provision of law to the contrary, the commissioner is authorized to charge additional fees to applicants for certificates pursuant to this section in an amount equal to the fees established pursuant to law by the division of criminal justice services and the federal bureau of investigation for the searches authorized by this section.