§ 3035. Duties of commissioner; submission of fingerprints. 1. 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 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subdivision shall be confidential pursuant to the applicable federal and state laws, rules and regulations, and shall not be published or in any way disclosed to persons other than the commissioner, unless otherwise authorized by law.

2. No cause of action against the commissioner, the department or the division of criminal justice services for damages related to the dissemination of criminal history records pursuant to this section shall exist when the commissioner, department or division of criminal justice services has reasonably and in good faith relied upon the accuracy and completeness of criminal history information furnished to it by qualified agencies. The provision of such information by the division of criminal justice services shall be subject to the provisions of subdivision sixteen of section two hundred ninety-six of the executive law. The consideration of such criminal history record by the commissioner shall be subject to article twenty-three-A of the correction law.

3. (a) Clearance. 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, or nonpublic or private elementary or secondary school whether the prospective employee to which such report relates is cleared for employment 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.

(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, 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.

3-a. Upon request from a prospective employee who has been cleared by the commissioner for employment and/or certification, the commissioner shall have the authority to forward a copy of such criminal history record to the city school district of the city of New York by the most expeditious means available. Furthermore, upon notification that such prospective employee is employed by the city school district of the city of New York, the division of criminal justice services shall have the

authority to provide subsequent criminal history notifications directly to the city school district of the city of New York. Upon request from a prospective employee who has been cleared for licensure and/or employment by the city school district of the city of New York, such school district shall have the authority to forward a copy of the prospective employee's criminal history record to the commissioner, by the most expeditious means available, for the purposes of this section. Furthermore, upon notification that such prospective employee is employed by a school district outside the city of New York, the division of criminal justice services shall have the authority to provide subsequent criminal history notifications directly to the commissioner.

4. The fee provisions of subdivision two of section three thousand four-b of this chapter shall apply to criminal history records searches conducted pursuant to this section; provided however that, notwithstanding the provisions of any other law: (a) the fees associated with an employee participating in a public assistance employment program, pursuant to title nine-B of article five of the social services law, or receiving employment services through the federal temporary assistance for needy families block grant pursuant to appropriations to the office of temporary disability assistance, shall be paid by the social services district making such employment placement or assignment and the cost of such fees, if not subject to full reimbursement under such federal block grant, shall be deemed to be an employment services administrative expense. In no event shall such a participant described herein be required to personally pay any fee imposed by the division of criminal justice services or the federal bureau of investigation or any other fee for the purpose of conducting a criminal history records search; and (b) any prospective employee, including, notwithstanding any provision of law to the contrary, a prospective employee applying for a position in a school district within a city with a population of one million or more, may submit a request to a governing body of a school district, on a form prescribed by the commissioner, that the fees imposed for conducting a criminal history records check be waived. Such governing body may grant such a request if such governing body determines that payment of such a fee would impose an unreasonable financial hardship on the applicant or his or her family and, upon such

determination, the governing body shall pay such fee on behalf of the prospective employee to the appropriate authority.

5. The commissioner and the division of criminal justice services shall enter into an agreement for the purposes of implementing the provisions of this section.

6. Nothing in this section shall be construed or interpreted to alter or in any way diminish the integrity of collective bargaining agreements negotiated between an employer and any certified or authorized collective bargaining agent, with respect to payment of fees for criminal history records searches, nor to diminish any rights pursuant to such agreements.