§ 13.09 Powers of the office and commissioner; how exercised.

(a) The commissioner shall exercise all powers vested in the office. He or she may delegate any function, power, or duty assigned to him or her or to the office to any officer or employee of the office, unless otherwise provided by law. He or she may enter into agreements with other commissioners of the department in order to ensure that programs and services are provided for all of the mentally disabled.

(b) The commissioner shall adopt rules and regulations necessary and proper to implement any matter under his jurisdiction. In promulgating rules and regulations, the commissioner shall comply with the requirements of subdivision (e) of section 13.05 of this article.

(c) The commissioner and directors of office facilities may request and upon such request the coroner, coroner's physician or medical examiner shall provide to such persons access to original autopsy slides, tissue materials and specimens derived from any autopsy or inquiry with respect to the death of a patient or resident in a mental hygiene facility, as defined in subdivision two of section five hundred fifty of the executive law. Such original materials shall be preserved intact, except for unavoidable changes due to necessary scientific testing and shall be returned to the coroner, coroner's physician or medical examiner.

(c-1) The commissioner shall accept custody of a juvenile under an order issued by the family court pursuant to the provisions of section 322.2 of the family court act. He or she may place the juvenile in any appropriate facility or program under his or her jurisdiction, but he or she shall comply with any order requiring treatment in a residential facility made pursuant to paragraph (c) of subdivision five of section 322.2 of the family court act, unless, after a hearing held in accordance with subdivision seven of section 322.2 of the family court act, the court modifies the order. In determining the appropriate placement, the commissioner shall be furnished with a copy of the findings of the court pursuant to subdivision four or five of section 322.2 of the family court act and shall consider the nature of the act alleged in such findings and the level of the juvenile's mental disability. The commissioner shall review the condition of the juvenile in accordance with the requirements of section 322.2 of the family court act and he or she may petition the family court at any time for any

relief authorized by such section.

(d) The commissioner shall work cooperatively with the commissioner of the office of mental health and the commissioner of the office of temporary and disability assistance to assist the commissioner of education in furnishing integrated employment services to individuals with severe disabilities, including the development of an integrated employment implementation plan, pursuant to article twenty-one of the education law.

(e) The commissioner shall promulgate rules and regulations to address the communications needs of non-English speaking individuals seeking or receiving services in facilities operated or licensed by the office in order to facilitate their access to services. Such rules and regulations shall include, but not be limited to, reasonable means to accommodate the language capabilities and preferences of non-English speaking individuals in such facilities where a significant number of non-English speaking individuals seek or receive services.

(f) Notwithstanding any other law, rule or regulation, on request by a representative of a cemetery organization or funeral establishment, the commissioner and directors of office facilities shall release to the representative the name, date of birth, or date of death of a person who was a patient at the facility when the person died, unless the person or the person's guardian provided written instructions to the facility not to release such person's name or dates of birth and death. A representative of a cemetery organization or a funeral establishment may use a name or date released under this subdivision only for the purpose of inscribing the name or date on a grave marker.

(g) (1) The commissioner, in cooperation with other applicable state agencies, shall collect, retain or modify data or records, and shall transmit such data or records to: (i) the division of criminal justice services, or to the criminal justice information services division of the federal bureau of investigation, for the purposes of responding to queries to the national instant criminal background check system regarding attempts to purchase or otherwise take possession of firearms, as defined in 18 USC 921(a)(3), in accordance with applicable federal laws or regulations, or (ii) to the division of criminal justice services, for the purposes of determining whether a license issued pursuant to section 400.00 of the penal law should be denied, suspended

or revoked, under subdivision eleven of such section, or for determining whether a person is no longer permitted under federal or state law to possess a firearm. Such records shall include only names and other non-clinical identifying information of persons who have had a guardian appointed for them pursuant to any provision of state law, based on a determination that as a result of marked subnormal intelligence, mental illness, incapacity, condition or disease, they lack the mental capacity to contract or manage their own affairs, and persons who have been involuntarily committed to a facility pursuant to article fifteen of this chapter, or article seven hundred thirty or section 330.20 of the criminal procedure law or sections 322.2 or 353.4 of the family court act.

(2) The commissioner shall establish within the office for people with developmental disabilities an administrative process to permit a person who has been or may be disqualified from possessing such a firearm pursuant to 18 USC 922(4)(d), or who has been or may be disqualified from continuing to have a license to carry, possess, repair, or dispose of a firearm under section 400.00 of the penal law because such person was involuntarily committed or civilly confined to a facility under the jurisdiction of the commissioner, to petition for relief from that disability where such person's record and reputation are such that such person will not be likely to act in a manner dangerous to public safety and where the granting of the relief would not be contrary to public safety. The commissioner shall promulgate regulations to establish the relief from disabilities program, which shall include, but not be limited to, provisions providing for: (i) an opportunity for a disqualified person to petition for relief in writing; (ii) the authority for the agency to require that the petitioner undergo a clinical evaluation and risk assessment; and (iii) a requirement that the agency issue a decision in writing explaining the reasons for a denial or grant of relief. The denial of a petition for relief from disabilities may be reviewed de novo pursuant to the proceedings under article seventy-eight of the civil practice law and rules.

(h) The commissioner shall be authorized to have access to criminal history information, as defined in paragraph (c) of subdivision one of section eight hundred forty-five-b of the executive law, contained in the central data facility established by the division of criminal

justice services, upon such terms and conditions as the commissioner and the commissioner of the division of criminal justice services shall agree. The report containing such criminal history information may be summarized for inclusion in the individual's clinical record, however, such report shall be destroyed within fourteen days of its receipt. Such information shall be used for purposes of making decisions regarding care and treatment, health and safety, privileges and discharge planning for individuals admitted to or retained in a school, as defined in section 15.03 of this title, operated by the office. The commissioner shall promulgate standards regarding the use of such information, which may include, but not be limited to, consideration of the type of offense and the date of conviction, and its relevance, if any, to care and treatment, health and safety and discharge planning. Individuals shall be given written notice that their criminal history information will be obtained by the school, that the opportunity exists to request such criminal history information and seek the correction of any inaccurate criminal history information in accordance with the regulations of the division of criminal justice services, and that the opportunity exists to challenge the accuracy of such information maintained in the individual's clinical record to the extent authorized by section 33.16 of this chapter. Such information shall be kept confidential to the extent required under applicable federal and state law, including section 33.13 of this chapter.

(i) The commissioner, in consultation with the commissioner of mental health, shall develop and implement a public awareness campaign that combats the discrimination, stigma and stereotyping of individuals with developmental disabilities across the state. Such campaign shall utilize public forums, social media and mass media, including but not limited to internet, radio, and print advertising and shall include educational materials and information on the office's website. The campaign shall be tailored to educate the general public about developmental disabilities and shall also highlight the accomplishments and contributions of individuals with developmental disabilities to the state and their respective communities. The office shall consult with stakeholders and consumer advocates to ensure such campaign is culturally competent and linguistically appropriate. Such campaign shall end on December thirty-first, two thousand twenty-three.