§ 424-a. Access to information contained in the statewide central register of child abuse and maltreatment. 1. (a) (i) A licensing agency shall inquire of the department and the department shall, subject to the provisions of paragraph (e) of this subdivision, inform such agency and the subject of the inquiry whether an applicant for a certificate, license or permit, the director of a camp subject to the provisions of article thirteen-B of the public health law, a prospective successor guardian when a clearance is conducted pursuant to paragraph (d) of subdivision two of section four hundred fifty-eight-b of this article, and any person over the age of eighteen who resides in the home of a person who has applied to become an adoptive parent or a foster parent or any person over the age of eighteen residing in the home of a prospective successor guardian when a clearance is conducted of a prospective successor guardian pursuant to this paragraph, has been or is currently the subject of an indicated child abuse and maltreatment report on file with the statewide central register of child abuse and maltreatment.

(ii) A licensing agency shall inquire of the office whether an applicant for a certificate, license or permit to operate a child care program including a family day care home, group family day care home, child care center, school age child care program, or enrolled legally exempt provider or an employee, volunteer or applicant to be an employee or volunteer in such program who has potential for regular and substantial contact with children in the program, is the confirmed subject of an indicated child abuse report maintained by the statewide central register of child abuse and maltreatment. The office shall promulgate regulations related to the process by which providers and applicants will be informed whether the applicant is authorized or unauthorized to care for children based on the outcome of such inquiry.

(iii) A licensing agency shall inquire of the office whether any person age eighteen or older who is not related in any way to all children for whom care is provided that resides on the premises of where child care is provided in a setting that is not the child's own home by an enrolled legally-exempt provider as such term is defined in subdivision one-a of section three hundred ninety-b of this chapter is the confirmed subject of an indicated child abuse report maintained by the statewide central register of child abuse and maltreatment. The

office shall promulgate regulations related to the process by which providers and applicants will be informed whether the applicant is authorized or unauthorized to care for children based on the outcome of such inquiry.

(iv) A licensing agency conducting inquiries pursuant to subparagraphs (ii) and (iii) of this paragraph may inquire of the office whether any person who is to be hired as a consultant by such agency who has the potential for regular and substantial contact with individuals who are cared for by the agency is the subject of an indicated child abuse and maltreatment report on file with the statewide central register of child abuse and maltreatment. The office shall promulgate regulations related to the process by which providers and applicants will be informed whether the applicant is authorized or unauthorized to care for children based on the outcome of such inquiry.

(v) A licensing agency conducting inquiries pursuant to subparagraphs (ii) and (iii) or this paragraph may inquire of the office whether any person who has volunteered his or her services to such agency and who will have the potential for regular and substantial contact with individuals who are cared for by the agency, is the subject of an indicated child abuse and maltreatment report on file with the statewide central register of child abuse and maltreatment. The office shall promulgate regulations related to the process by which providers and applicants will be informed whether the applicant is authorized or unauthorized to care for children based on the outcome of such inquiry.

(b) (i) (A) Subject to the provisions of subdivision seven of this section, a provider agency shall inquire of the office and the office shall, subject to the provisions of paragraph (e) of this subdivision, inform such agency and the subject of the inquiry whether any person who is actively being considered for employment and who will have the potential for regular and substantial contact with individuals who are cared for by the agency, is the subject of an indicated child abuse and maltreatment report on file with the statewide central register of child abuse and maltreatment prior to permitting such person to have unsupervised contact with such individuals. Such agency may inquire of the office and the office shall inform such agency and the subject of the inquiry whether any person who is currently employed and who has the potential for regular and substantial contact with individuals who are

cared for by such agency is the subject of an indicated child abuse and maltreatment report on file with the statewide central register of child abuse and maltreatment. A provider agency shall also inquire of the office and the office shall inform such agency and the subject of the inquiry whether any person who is employed by an individual, corporation, partnership or association which provides goods or services to such agency who has the potential for regular and substantial contact with individuals who are cared for by the agency, is the subject of an indicated child abuse and maltreatment report on file with the statewide central register of child abuse and maltreatment prior to permitting such person to have unsupervised contact with such individuals. Inquiries made to the office pursuant to this subparagraph by a provider agency on current employees shall be made no more often than once in any six month period.

(B) Notwithstanding clause (A) of this subparagraph, where the provider agency is an authorized agency that operates a residential program for foster children that is licensed or certified by the office of children and family services such agency shall inquire of the office and the office shall, subject to the provisions of paragraph (e) of this subdivision, inform such agency and the subject of the inquiry whether:

(I) any person who is actively being considered for employment in such program who is not already required to be cleared pursuant to clause (A) of this subparagraph is the subject of an indicated child abuse and maltreatment report on file with the statewide central register of child abuse and maltreatment; and

(II) Notwithstanding any other provision of law to the contrary, prior to April first, two thousand twenty and in accordance with a schedule developed by the office of children and family services, whether any person who is employed in a residential foster care program that has not previously had a clearance conducted pursuant to this subparagraph in connection to such employment is the subject of an indicated child abuse and maltreatment report on file with the statewide central register of child abuse and maltreatment.

(ii) A provider agency may inquire of the office and the office shall, upon receipt of such inquiry and subject to the provisions of paragraph (e) of this subdivision, inform such agency and the subject of the inquiry whether any person who is to be hired as a consultant by such

agency who has the potential for regular and substantial contact with individuals who are cared for by the agency is the subject of an indicated child abuse and maltreatment report on file with the statewide central register of child abuse and maltreatment.

(iii) A provider agency may inquire of the office and the office shall, upon receipt of such inquiry and subject to the provisions of paragraph (e) of this subdivision, inform such agency and the subject of the inquiry whether any person who has volunteered his or her services to such agency and who will have the potential for regular and substantial contact with individuals who are cared for by the agency, is the subject of an indicated child abuse and maltreatment report on file with the statewide central register of child abuse and maltreatment.

(iv) The office shall promulgate regulations which effectuate the provisions of this paragraph.

(c) An authorized agency shall inquire of the department and the department shall inform such agency and the subject of the inquiry, whether any person who has applied to adopt a child is the subject of an indicated child abuse and maltreatment report on file with the statewide central register of child abuse and maltreatment.

(d) Any person who has applied to a licensing agency for a certificate, license or permit or who has applied to be an employee of a provider agency or who has applied to an authorized agency to adopt a child, or who may be hired as a consultant or used as a volunteer by a provider agency and any other person about whom an inquiry is made to the department pursuant to the provisions of this section shall be notified by such agency at the time of application or prior to the time that a person may be hired as a consultant or used as a volunteer that the agency will or may inquire of the department whether such person is the subject of an indicated child abuse and maltreatment report. All employees of a provider agency shall be notified by their employers that an inquiry may be made to the department pursuant to this section and no such inquiry shall be made regarding any employee until such notice has been made.

(d-1) A law enforcement agency pursuant to section eight hundred thirty-seven-k of the executive law may inquire of the department and the department may inform such agency and the subject of the inquiry, whether any person who has applied for a symbol provided for in section

eight hundred thirty-seven-k of the executive law or persons residing or regularly visiting said location are the subject of an indicated child abuse and maltreatment report on file with the statewide central register of child abuse and maltreatment.

(e) (i) Subject to the provisions of subparagraph (ii) of this paragraph, the office of children and family services shall inform the provider or licensing agency, or child care resource and referral programs pursuant to subdivision six of this section whether or not the person is the subject of an indicated child abuse and maltreatment report only if:

(A) (I) the time for the subject of the report to request an amendment of the record of the report pursuant to subdivision eight of section four hundred twenty-two has expired without any such request having been made; or

(II) such request was made within such time and a fair hearing regarding the request has been finally determined by the commissioner and the record of the report has not been amended to unfound the report or delete the person as a subject of the report; and

(B) (I) the person is the subject of an indicated report of child abuse; or

(II) the person is not the subject of an indicated report of child abuse and is the subject of a report of child maltreatment where the indication for child maltreatment occurred within less than eight years from the date of the inquiry.

(ii) If the subject of an indicated report of child abuse or maltreatment has not requested an amendment of the record of the report and an inquiry is made to the office of children and family services pursuant to this subdivision concerning the subject of the report, such office shall, as expeditiously as possible but within no more than ten working days of receipt of the inquiry, determine whether, in fact, the person about whom an inquiry is made is the subject of an indicated report. Upon making a determination that the person about whom the inquiry is made is the subject of an indicated report of child abuse and maltreatment, the office of children and family services shall immediately send a written request to the child protective service or state agency which was responsible for investigating the allegations of abuse or maltreatment for all records, reports and other information

maintained by the service or state agency on the subject. The service or state agency shall, as expeditiously as possible but within no more than twenty working days of receiving such request, forward all records, reports and other information it maintains on the indicated report to the office of children and family services, including a copy of any petition or court order based on the allegations that were indicated. Where a proceeding pursuant to article ten of the family court act is pending based on the same allegations that were indicated, the office of children and family services shall stay determination of whether there is a fair preponderance of the evidence to support the indication until the disposition of such family court proceeding. Unless such determination has been stayed, the office of children and family services shall, within fifteen working days of receiving such records, reports and other information from the child protective service or state agency, review all records, reports and other information in its possession concerning the subject and determine whether there is a fair preponderance of the evidence to find that the subject had committed the act or acts of child abuse or maltreatment giving rise to the indicated report.

(iii) If it is determined, after affording such service or state agency a reasonable opportunity to present its views, that there is not a fair preponderance of the evidence in the record to find that the subject committed such act or acts, the office of children and family services shall amend the record to indicate that the report was unfounded and notify the inquiring party that the person about whom the inquiry is made is not the subject of an indicated report.

(iv) (A) If it is determined after a review by the office of all records, reports and information in its possession concerning the subject of the report that there is a preponderance of the evidence to find that the subject committed the act or acts of child abuse or maltreatment giving rise to the indicated report, the office shall also determine whether such act or acts are relevant and reasonably related to issues concerning the employment of the subject by a provider agency or the subject being allowed to have regular and substantial contact with individuals cared for by a provider agency or the approval or disapproval of an application which has been submitted by the subject to a licensing agency, based on guidelines developed pursuant to

subdivision five of this section. If it is determined that such act or acts are not relevant and related to such issues, the office shall be precluded from informing the provider or licensing agency which made the inquiry to the office pursuant to this section that the person about whom the inquiry is made is the subject of an indicated report of child abuse or maltreatment.

(B) Where the subject of the report is not the subject of any indicated report of child abuse and is the subject of a report of child maltreatment where the indication for child maltreatment occurred more than eight years prior to the date of the inquiry, any such indication of child maltreatment shall be deemed to be not relevant and reasonably related to employment.

(v) If it is determined after a review by the office of children and family services of all records, reports and information in its possession concerning the subject of the report that there is a fair preponderance of the evidence to prove that the subject committed the act or acts of abuse or maltreatment giving rise to the indicated report the office of children and family services shall notify the subject of the determination of such report and of the subject's right to request a fair hearing. If the subject shall request a hearing, the office of children and family services shall schedule a fair hearing and shall provide notice of the scheduled hearing date to the subject, the statewide central register and, as appropriate, to the child protective service which investigated such report.

(vi) The burden of proof in such a hearing shall be on the child protective service which investigated the report. In such a hearing, where a family court proceeding pursuant to article ten of the family court act has occurred and where the petition for such proceeding alleges that a respondent in that proceeding committed abuse or maltreatment against the subject child in regard to an allegation contained in a report indicated pursuant to this section: (A) where the court finds that such respondent did commit abuse or maltreatment there shall be an irrebuttable presumption in a fair hearing held pursuant to this subdivision that said allegation is substantiated by a fair preponderance of the evidence as to that respondent on that allegation; and (B) where such child protective service withdraws such petition with prejudice, where the family court dismisses such petition, or where the

family court finds on the merits in favor of the respondent, there shall be an irrebuttable presumption in a fair hearing held pursuant to this subdivision that said allegation as to that respondent has not been proven by a fair preponderance of the evidence.

(vii) If it shall be determined at the fair hearing that there is no fair preponderance of the evidence in the record to find that the subject committed an act or acts of child abuse or maltreatment, the office of children and family services shall amend the record as to that respondent on that allegation to reflect that such a finding was made at the administrative hearing, order any child protective service which investigated the report as to that respondent to similarly amend its records of such report, notify the subject of the determination, and notify the inquiring party that the person about whom such inquiry was made is not the subject of an indicated report on that allegation.

(viii) Upon a determination at the fair hearing that the subject has been shown, by a fair preponderance of the evidence to have committed the act or acts of child abuse or maltreatment giving rise to the indicated report, the hearing officer shall determine, based on guidelines developed by the office of children and family services pursuant to subdivision five of this section, whether such act or acts are relevant and reasonably related to the subject being allowed to have regular and substantial contact with children who are cared for by a provider agency as defined in subdivision three of this section, or relevant and reasonably related to the approval or disapproval of an application submitted by the subject to a licensing agency as defined in subdivision four of this section.

(ix) Upon a determination made at a fair hearing that the act or acts of abuse or maltreatment are relevant and reasonably related to the employment of the subject by a provider agency as defined in subdivision three of this section, the subject being allowed to have regular and substantial contact with children who are cared for by a provider agency as defined in subdivision three of this section, or relevant and reasonably related to the approval or disapproval of an application submitted by the subject to a licensing agency as defined in subdivision four of this section, the office of children and family services shall notify the subject and shall inform the inquiring party that the person about whom such inquiry was made is the subject of an indicated report

of child abuse or maltreatment.

(x) The failure to determine at the fair hearing that the act or acts of abuse or maltreatment are relevant and reasonably related to the employment of the subject by a provider agency as defined in subdivision three of this section, the subject being allowed to have regular and substantial contact with children who are cared for by a provider agency as defined in subdivision three of this section, or relevant and reasonably related to the approval or disapproval of an application submitted by the subject to a licensing agency as defined in subdivision four of this section, shall preclude the office of children and family services from informing a provider agency as defined in subdivision three of this section or licensing agency as defined in subdivision four of this section that such person is the subject of an indicated report of child abuse or maltreatment on that allegation.

(f) The office of children and family services shall charge a fee of twenty-five dollars when it conducts a search of its records within the statewide central register for child abuse or maltreatment in accordance with this section or regulations of the office to determine whether an applicant for employment is the subject of an indicated child abuse or maltreatment report including an applicant to be a child day care provider and a request made pursuant to subdivision six of this section. Such fees shall be deposited in a special revenue - other account and shall be made available to the office for costs incurred in the implementation of this section.

(g) The office shall determine actions necessary to develop an automated search, available for the use of the office, of records at the statewide central registry of child abuse and maltreatment.

2. (a) Upon notification by the office or by a child care resource and referral program in accordance with subdivision six of this section that any person who has applied to a licensing agency for a license, certificate or permit or who seeks to become an employee of a provider agency, or to accept a child for adoptive placement or who will be hired as a consultant or used as a volunteer by a provider agency, or that any other person about whom an inquiry is made to the office pursuant to the provisions of this section is the subject of an indicated report, the licensing or provider agency shall determine on the basis of information

it has available whether to approve such application or retain the employee or hire the consultant or use the volunteer or permit an employee of another person, corporation, partnership or association to have access to the individuals cared for by the provider agency, provided, however, that if such application is approved, or such employee is retained or consultant hired or volunteer used or person permitted to have access to the children cared for by such agency the licensing or provider agency shall maintain a written record, as part of the application file or employment record, of the specific reasons why such person was determined to be appropriate to receive a foster care or adoption placement or to provide day care services, to be the director of a camp subject to the provisions of article thirteen-B of the public health law, to be approved as a successor guardian in accordance with subparagraph (ii) of paragraph (b) of subdivision five of section four hundred fifty-eight-b of this article, to be employed, to be retained as an employee, to be hired as a consultant, used as a volunteer or to have access to the individuals cared for by the agency.

(b) (i) Upon denial of such application by a licensing or a provider agency or failure to hire the consultant or use the volunteer, or denial of access by a person to the children cared for by the agency, or failure to approve a successor guardian in accordance with subparagraph (ii) of paragraph (b) of subdivision five of section four hundred fifty-eight-b of this article, such agency shall furnish the applicant, prospective consultant, volunteer or person who is denied access to the children cared for by the agency with a written statement setting forth whether its denial, failure to hire or failure to use was based, in whole or in part, on such indicated report, and if so, its reasons for the denial or failure to hire or failure to use.

(ii) Upon the termination of employment of an employee of a provider agency, who is the subject of an indicated report of child abuse or maltreatment on file with the statewide central register of child abuse and maltreatment, the agency shall furnish the employee with a written statement setting forth whether such termination was based, in whole or in part, on such indicated report and, if so, the reasons for the termination of employment.

(c) If the reasons for such denial or termination or failure to hire a consultant or use a volunteer or failure to approve a successor guardian

in accordance with subparagraph (ii) of paragraph (b) of subdivision five of section four hundred fifty-eight-b of this article include the fact that the person is the subject of an indicated child abuse or maltreatment report, such person may request from the department within ninety days of receipt of notice of such denial, termination, failure to hire a consultant or use a volunteer and shall be granted a hearing in accordance with the procedures set forth in section twenty-two of this chapter relating to fair hearings. All hearings held pursuant to the provisions of this subdivision shall be held within thirty days of a request for the hearing unless the hearing is adjourned for good cause shown. Any subsequent adjournment for good cause shown shall be granted only upon consent of the person who requested the hearing. The hearing decision shall be rendered not later than sixty days after the conclusion of the hearing.

(d) At any such hearing, the sole question before the department shall be whether the applicant, employee, prospective consultant, volunteer, prospective successor guardian or person who was denied access to the children cared for by a provider agency has been shown by a fair preponderance of the evidence to have committed the act or acts of child abuse or maltreatment giving rise to the indicated report. In such hearing, the burden of proof on the issue of whether an act of child abuse or maltreatment was committed shall be upon the local child protective service or the state agency which investigated the report, as the case may be. The failure to sustain the burden of proof at a hearing held pursuant to this section shall not result in the expungement or unfounding of an indicated report but shall be noted on the report maintained by the state central register and shall preclude the department from notifying a party which subsequently makes an inquiry to the department pursuant to this section that the person about whom the inquiry is made is the subject of an indicated report.

(e) Upon the failure, at the fair hearing held pursuant to this section, to prove by a fair preponderance of the evidence that the applicant committed the act or acts of child abuse or maltreatment giving rise to the indicated report, the department shall notify the provider or licensing agency which made the inquiry pursuant to this section that it should reconsider any decision to discharge an employee, or to deny the subject's application for employment, or to become an

adoptive parent, or to become a successor guardian, or for a certificate, license or permit; or not to hire a consultant, use a volunteer, or allow access to children cared for by the agency.

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 disabilities except family care homes; including head start programs which are funded pursuant to title V of the federal economic opportunity act of nineteen hundred sixty-four, as amended; early intervention service established pursuant to section twenty-five hundred forty of the public health law; preschool services established pursuant to section forty-four hundred ten of the education law; special act school districts as enumerated in chapter five hundred sixty-six of the laws of nineteen hundred sixty-seven, as amended; programs and facilities licensed by the office of alcoholism and substance abuse services; residential schools which are operated, supervised or approved by the education department; health homes, or any subcontractor of such health homes, who contracts with or is approved or otherwise authorized by the department of health to provide health home services to all those enrolled pursuant to a diagnosis of a developmental disability as defined in subdivision twenty-two of section 1.03 of the mental hygiene law and enrollees who are under twenty-one years of age under section three hundred sixty-five-l of this chapter, or any entity that provides home and community based services to enrollees who are under twenty-one years of age under a demonstration program pursuant to section eleven hundred fifteen of the federal social security act; publicly-funded emergency shelters for families with children, provided, however, for purposes of this section, when the provider or provider agency is a publicly-funded emergency shelter for families with children, then all references in this section to the "potential for regular and substantial

contact with individuals who are cared for by the agency" shall mean the potential for regular and substantial contact with children who are served by such shelter; and any other facility or provider agency, as defined in subdivision four of section four hundred eighty-eight of this chapter, in regard to the employment of staff, or use of providers of goods and services and staff of such providers, consultants, interns and volunteers.

4. For purposes of this section, the term "licensing agency" shall mean an authorized agency which has received an application to become an adoptive parent or an authorized agency which has received an application for a certificate or license to receive, board or keep any child pursuant to the provisions of section three hundred seventy-six or three hundred seventy-seven of this article or an authorized agency which has received an application from a relative within the second degree or third degree of consanguinity of the parent of a child or a relative within the second degree or third degree of consanguinity of the step-parent of a child or children, or the child's legal guardian for approval to receive, board or keep such child, or an authorized agency that conducts a clearance pursuant to paragraph (d) of subdivision two of section four hundred fifty-eight-b of this article, or a state or local governmental agency which receives an application to provide child day care services in a child day care center, school-age child care program, family day care home or group family day care home or enrolled legally-exempt provider as such term is defined in subdivision one-a of section three hundred ninety-b of this article pursuant to the provisions of section three hundred ninety of this article, or the department of health and mental hygiene of the city of New York, when such department receives an application for a certificate of approval to provide child day care services in a child day care center pursuant to the provisions of the health code of the city of New York, or the office of mental health or the office for people with developmental disabilities when such office receives an application for an operating certificate pursuant to the provisions of the mental hygiene law to operate a family care home, or a state or local governmental official who receives an application for a permit to operate a camp which is subject to the provisions of article thirteen-B

of the public health law or the office of children and family services which has received an application for a certificate to receive, board or keep any child at a foster family home pursuant to articles nineteen-G and nineteen-H of the executive law or any other facility or provider agency, as defined in subdivision four of section four hundred eighty-eight of this chapter, in regard to any licensing or certification function carried out by such facility or agency.

5. (a) The office of children and family services, after consultation with the justice center for the protection of people with special needs, the office of mental health, the office for people with developmental disabilities, the office of alcoholism and substance abuse services, the department of health, and the state education department shall develop guidelines to be utilized by a provider agency, as defined by subdivision three of this section, and a licensing agency, as defined by subdivision four of this section, in evaluating persons about whom inquiries are made to the office pursuant to this section who are the subjects of indicated reports of child abuse and maltreatment, as defined by subdivision four of section four hundred twelve of this chapter.

(b) The guidelines developed pursuant to subdivision one of this section shall not supersede similar guidelines developed by local governmental agencies prior to January first, nineteen hundred eighty-six.

6. A child care resource and referral program as defined in subdivision two of section four hundred ten-p of this article may inquire of the office of children and family services and the office shall, upon receipt of such inquiry and subject to the provisions of paragraph (e) of subdivision one of this section, inform such program and the subject of such inquiry whether any person who has requested and agreed to be included in a list of substitute child day care caregivers for employment by registered or licensed day care providers maintained by such program in accordance with regulations promulgated by the office, is the subject of an indicated child abuse and maltreatment report on file with the statewide central register of child abuse and maltreatment. Inquiries made to the office by such programs pursuant to

this subdivision shall be made no more often than once in any six month period and no less often than once in any twelve month period. Notwithstanding any provision of law to the contrary, a child care resource and referral program may redisclose such information only if the purpose of such redisclosure is to respond to a request for such information by a registered or licensed provider and only if after an individual included in the list of substitute child day care caregivers for employment by registered or licensed day care providers has consented to be referred for employment to such inquiring agency. Upon such referral, the provisions related to notice and fair hearing rights of this section shall otherwise apply. Inquiries made pursuant to this subdivision shall be in lieu of the inquiry requirements set forth in paragraph (b) of subdivision one of this section.

7. Any facility, provider agency, or program that is required to conduct an inquiry pursuant to section four hundred ninety-five of this chapter shall first conduct the inquiry required under such section. If the result of the inquiry under section four hundred ninety-five of this chapter is that the person about whom the inquiry is made is on the register of substantiated category one cases of abuse or neglect and the facility or provider agency is required to deny the application in accordance with article eleven of this chapter, the facility or provider agency shall not be required to make an inquiry of the office under this section.