



TO: Higher Education Committee

FROM: John L. D'Agati *John L. D'Agati*

SUBJECT: Legislative Proposal Relating to the Fingerprinting Process for Education Certification and Employment and Emergency Adoption of a Proposed Amendment to Section 83.4 of the Regulations of the Commissioner of Education Relating to Moral Character

DATE: April 11, 2013

AUTHORIZATION(S):

Richard A. Iacono *John B. P. G.*

SUMMARY

Issue for Decision

Should the Board of Regents direct the Department to prepare legislation to improve the fingerprinting process required for educator certification and employment?

Should the Board of Regents adopt, on an emergency basis, the proposed amendment to the Commissioner's Regulations to add a new paragraph (4) to section 83.4(d) to establish a rebuttable presumption that an individual convicted of a crime involving the submission of false information or who has committed fraud related to criminal history record checks lacks good moral character?

Proposed Handling

The concepts of a legislative proposal related to fingerprinting for clearance for certification and employment is submitted to the Higher Education Committee and Full Board at its April 2013 meeting. Department staff seeks approval to draft legislation pursuant to the concepts outlined herein, transmit it to the Legislature for consideration, and advocate for its adoption during the current legislative session.

In addition, the proposed regulatory amendment is submitted to the Higher Education Committee for recommendation and to the Full Board for adoption, as an emergency action at its April 2013 meeting. A copy of the proposed amendment and a statement of emergency facts and circumstances is attached. Supporting materials are available upon request to the Secretary of the Board of Regents. A Notice of

Emergency Adoption and Proposed Rule Making will be published in the State Register on May 8, 2013.

Background Information

The Department's Office of School Personnel Review & Accountability (OSPRA) is responsible for facilitating fingerprint generated criminal background checks in accordance with the Education Law (Chapter 180 of the Laws of 2000). All prospective covered school employees and/or applicants for a teaching certificate must be fingerprinted.

Generally, fingerprints are collected across the state at school districts, Boards of Cooperative Educational Services (BOCES), colleges and universities, and law enforcement agencies. Fingerprints are received by the Department in two formats: hard cards containing fingerprints that are collected through the "ink and roll" method and mailed, and scanned fingerprint images captured on a scanner and transmitted electronically via a server. All fingerprint images are delivered by the Department to the state Division of Criminal Justice Services (DCJS) to conduct a state criminal history records check and to forward them to the Federal Bureau of Investigation (FBI) for processing against their criminal record repository.

The Department has taken steps to better ensure the security of fingerprints in recent years by growing the number of fingerprints collected electronically. Approximately 75 percent of fingerprints are collected electronically, which reduces the opportunity for the integrity of fingerprints to be compromised.

The Department has begun to review the fingerprinting process to close potential gaps that may exist, such as the ability of a person to submit false fingerprints. As part of this review, the Department has identified potential legislative action that will improve the system and better ensure the security and integrity of fingerprints collected for the purpose of background checks.

The Department proposes to introduce and seek enactment of legislation that would:

- **Better ensure fingerprint security and integrity by phasing-in a requirement that all fingerprints be electronically submitted to the Department.** While the vast majority of fingerprints received by the Department are transmitted electronically, prospective employees and certificate applicants continue to be able to submit fingerprints on cards using the "ink and roll" method. By requiring electronic fingerprinting, the Department would better reduce the opportunity for tampering because electronic fingerprints are transmitted automatically to the Department via a secure server, whereas "ink and roll" fingerprints are mailed. There are currently approximately 90 locations throughout the state with capacity to collect and transmit electronic fingerprints.¹

¹ The proposed legislation will also need to address out-of-state applicants for employment or certification that require fingerprinting. It is recommended that out-of-state applicants be authorized to continue to

- **Authorize BOCES to conduct fingerprinting for non-component districts and applicants for certification.** Current law limits the ability of BOCES to collect fingerprints to prospective employees of component districts. In order to ensure broad access across the state to electronic fingerprint technology, BOCES should be able to establish a process to conduct fingerprinting of persons seeking teacher certification or seeking employment in public or private schools in their respective regions.²
- **Strengthen identification verification best practices at fingerprinting sites.** Although it is expected that fingerprinting sites around the state verify the identity of the people they fingerprint, there are no minimum standards or procedures that must be followed. Minimum standards and procedures should be established to include a requirement that all applicants show at least two recognizable forms of identification at the point of fingerprinting, including a picture identification, to verify their identity and reduce the chance of fingerprint fraud.
- **Close gaps by expanding fingerprinting requirements and criminal history record checks to employees of approved private special education schools.** There are various types of approved publicly funded schools that serve students with disabilities placed by school districts. While these schools may voluntarily opt to fingerprint their employees and conduct criminal history checks, they are not legally required to do so. This gap in state law needs to be closed to better ensure that special education students in approved private settings are afforded the same protections as students in public schools, charter schools and BOCES programs.
- **Enhance existing statutory and regulatory mechanisms to expedite removal of persons who commit fingerprint fraud.** Although there are mechanisms in law to expedite the removal of school district personnel that commit certain crimes, there are no provisions to expeditiously address actions related to fingerprint fraud. The proposed regulatory amendment would enhance the Department's current authority to address teacher discipline in this context by establishing a rebuttable presumption that a teacher who is convicted of any crime relating to the submission of false information, or who committed fraud related to his/her criminal history record check lacks good moral character.

Recommendation

It is recommended that the Board of Regents approve development of the proposed legislation related to fingerprinting in accordance with this item to be transmitted to the Legislature for this legislative session.

submit "ink and roll" fingerprints, but that they be required to submit electronic fingerprints after arrival in New York.

² The legislation would also require the Department to conduct a study to determine the feasibility of better aligning the fingerprinting process to the Statewide Vendor Managed Network administered by DCJS.

VOTED: That a new paragraph (4) of subdivision (d) of section 83.4 be added to the Regulations of the Commissioner of Education, as submitted, as an emergency action effective April 23, 2013, upon a finding by the Board of Regents that such action is necessary for the preservation of the general welfare to immediately expedite the procedures in good moral character proceedings for revocation or other action against the teaching certificates of teachers and school administrators who commit a crime involving the submission of false information or fraud related to their criminal history record checks in order to ensure the protection and safety of the children and faculty of the schools in this State.

Timetable for Implementation

Upon approval, staff will draft legislation, transmit it to the Legislature for consideration, and advocate for its adoption during the current legislative session.

If the proposed regulatory amendment is adopted by the Board of Regents at its April 2013 meeting, the proposed amendment will become effective on April 23, 2013 and will be presented to the Board of Regents at the July Regents meeting for adoption as a permanent rule.

STATEMENT OF FACTS AND CIRCUMSTANCES WHICH NECESSITATE
EMERGENCY ACTION

The Department's Office of School Personnel Review & Accountability (OSPRA) is responsible for facilitating fingerprint generated criminal background checks in accordance with the Education Law (Chapter 180 of the Laws of 2000). All prospective covered school employees and/or applicants for a teaching certificate must be fingerprinted.

Generally, fingerprints are collected across the state at school districts, Boards of Cooperative Educational Services (BOCES), colleges and universities, and law enforcement agencies. Fingerprints are received by the Department in two formats: hard cards containing fingerprints that are collected through the "ink and roll" method and mailed, and scanned fingerprint images captured on a scanner and transmitted electronically via a server. All fingerprint images are delivered by the Department to the state Division of Criminal Justice Services (DCJS) to conduct a state criminal history records check and to forward them to the Federal Bureau of Investigation (FBI) for processing against their criminal record repository.

The Department has taken steps to better ensure the security of fingerprints in recent years by growing the number of fingerprints collected electronically. Approximately 75 percent of fingerprints are collected electronically, which reduces the opportunity for the integrity of fingerprints to be compromised.

However, the Department has begun to review the fingerprinting process to close potential gaps that may exist, such as the ability of a person to submit false fingerprints. As part of this review, the Department has determined that the proposed amendment is needed to expedite the removal of school district personnel that commit certain crimes.

Currently, there are no provisions to expeditiously address actions related to fingerprint fraud, which can result in convicted felons whose presence in the classroom or school poses a danger to the safety of students and/or staff evading the criminal history record check process and gaining access to schools. The proposed amendment establishes a rebuttable presumption that a teacher or school administrator who is convicted of any crime relating to the submission of false information, or who has committed fraud, relating to his/her criminal history record check lacks good moral character.

Emergency action is needed for the preservation of the general welfare in order to ensure that action can be taken expeditiously to revoke or suspend the certificates of teachers and school administrators who commit a crime involving fraud or submission of information related to their criminal history record checks in order to ensure the safety of the children and faculty of the schools in this State.

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 207, 305, 3001, 3004, 3004-c, 3006, 3009, 3010 and 3035 of the Education Law.

1. Paragraph (4) of subdivision (d) of section 83.4 of the Regulations of the Commissioner of Education shall be amended, effective April 23, 2013, to read as follows:

(4) any crime committed involving the submission of false information, or the commission of fraud, related to a criminal history record check.



**THE STATE EDUCATION
DEPARTMENT**

THE UNIVERSITY
OF THE STATE
OF NEW YORK
ALBANY, NY 12234

OFFICE OF
GOVERNMENTAL
RELATIONS

T: 518.486.5644
F: 518.474.1488

NYSED.GOV
ENGAGENY.ORG

STRENGTHEN EDUCATOR FINGERPRINTING TO BETTER ENSURE STUDENT SAFETY

THE ISSUE:

The Department's Office of School Personnel Review & Accountability (OSPRA) is responsible for facilitating fingerprint generated criminal background checks in accordance with the Education Law. All prospective covered school employees and/or applicants for a teaching certificate must be fingerprinted.

Approximately 620,000 prospective employees have submitted fingerprints for a criminal history background check since 2001. Fingerprints are received by the Department in two formats: hard cards containing fingerprints that are collected through the "ink and roll" method and mailed, and scanned fingerprint images captured on a scanner and transmitted electronically via a server. All fingerprint images are delivered by the Department to the state Division of Criminal Justice Services (DCJS) and the Federal Bureau of Investigation (FBI) for processing against their respective criminal record repositories.

In light of a recent incident, the Department has begun to review the fingerprinting process to close potential gaps that may exist. While the Department has taken steps to better ensure the security of fingerprints in recent years by growing the number of fingerprints collected electronically, statutory action is necessary to strengthen existing requirements.

THE SOLUTION:

The State Education Department (SED) seeks to better ensure the security and integrity of fingerprints collected for the purpose of educator background checks by strengthening existing mechanism in law and implementing the following enhancements:

- Requiring electronic fingerprint submission to reduce the opportunity for tampering;
- Require prospective employees of approved private special education programs to be fingerprinted to the same extent as public school educators;
- Expand BOCES authority to conduct electronic fingerprinting of prospective employees of public schools and nonpublic schools and candidates for teacher certification;
- Enact best practices at the point of fingerprint collections, including by requiring best practice identification verification procedures;
- Establish electronic fingerprinting processes for out-of-state candidates for certification or employment; and
- Study mechanisms to better align the fingerprinting process with the Statewide Vendor Managed Network administered by DCJS.

The Department supports enactment of this legislation to better ensure student safety by enhancing the fingerprinting and background check process and eliminating opportunities for fingerprint fraud.

For more information contact Nicolas Storelli-Castro, Director of Governmental Relations
Office of Governmental Relations, New York Education Department, (518) 486-5844